IN THE COURT OF APPEALS OF IOWA

No. 7-750 / 06-1820
Filed November 29, 2007

ROBERTA J. BLANSHAN and
JOHN H. BLANSHAN,
Plaintiffs-Appellants,

vs.

THOMAS A. CARLSTROM and
THE IOWA CLINIC, P.C.,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II, Judge.

Plaintiffs appeal the trial court's denial of their motion for new trial arguing they were prejudiced by the court's submission of one jury instruction. **AFFIRMED.**

H. Daniel Holm, Jr. and Max E. Kirk of Ball, Kirk & Holm, Waterloo, for appellants.

Richard C. Garberson, Jennifer Rinden, and Tricia Hoffman-Simanek, of Shuttleworth & Ingersoll, PLC, Cedar Rapids, for appellees.

Heard by Huitink, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

Plaintiffs Roberta J. Blanshan (Roberta) and John H. Blanshan appeal a jury verdict and district court judgment in favor of defendants Dr. Thomas A. Carlstrom and The Iowa Clinic, P.C. (Dr. Carlstrom for both). The Blanshans argue the district court erred in denying their new trial motion because they were prejudiced by the court's submission of jury instruction twelve over their objection. Finding no error, we affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

On December 13, 2002, Dr. Carlstrom performed cervical spine surgery on Roberta. When Roberta's symptoms returned, Dr. Carlstrom recommended and performed another cervical spine surgery on December 21, 2002.

When Roberta's pain continued to increase, she went to the Boone County Hospital emergency room on December 24, 2002, and was transferred to the Mayo Clinic in Rochester, Minnesota. On January 6, 2003, Mayo placed Roberta in cervical traction, followed by a third cervical spine surgery.

On February 24, 2004, the Blanshans filed a petition alleging negligence on the part of Dr. Carlstrom. After trial, the jury returned a verdict for defendants on May 10, 2006. The Blanshan's motion for new trial was denied on October 12, 2006, and they appeal.

II. SCOPE AND STANDARDS OF REVIEW.

When a new trial motion is based on an alleged error regarding challenged jury instructions, our review is for correction of errors of law. *Estate of Long v. Broadlawns Med. Ctr.*, 656 N.W.2d 71, 91 (Iowa 2002).

III. PHYSICIAN OPINION INSTRUCTION.

At trial, the Blanshans objected to the use of instruction twelve by stating:

> [T]he only objection the plaintiffs would have would be to instruction number 12. I realize the court has broadened the scope of that in my objections. I simply don't believe it's a necessary instruction in the case. I think it serves to give undue emphasis to certain aspects of testimony in this case and not others. And I just don't think it's necessary to be given.

Instruction twelve informed the jury:

> You are to determine the standard of care, that being the degree of skill, care, and learning to be possessed and exercised by Dr. Carlstrom, based only on the opinions of the physicians, including Dr. Carlstrom, who have testified as to the standard of care.
>
> You are also to determine whether Dr. Carlstrom met or failed to meet the standard of care based only on the opinions of the physicians, including Dr. Carlstrom, who have testified on the issue.
>
> Finally, you are to determine whether the failure to meet the standard of care, if any, was a proximate cause of Plaintiff's injury based only on the opinions of the physicians, including Dr. Carlstrom, who have testified in this case.

The Blanshans advance three arguments on appeal: (1) instruction twelve incorrectly required the jury to "only" consider physician opinions; (2) instruction twelve is inconsistent with instruction three; and (3) instruction twelve unduly emphasizes Dr. Carlsrom's testimony and credibility by utilizing his name five times in three sentences.

We first address the second alleged error concerning an inconsistency with instruction three. Since this was never argued before the district court, we will not consider it for the first time on appeal. *Meier v. Senecaut,* 641 N.W.2d 532, 537 (Iowa 2002); *Morgan v. Perlowski*, 508 N.W.2d 724, 729 (Iowa 1993). *See* Iowa R. Civ. P. 1.924.

Alleged error concerning the use of the word "only" and the use of Dr. Carlstom's name were argued to the district court in the Blanshan's motion for new trial. In addressing the issue of use of the word "only," the district court stated: "Plaintiffs' objection at trial was not specific on this issue." Regarding the use of Dr. Carlstrom's name as emphasizing his testimony, the district court stated: "This argument was not made at trial as part of the objection to this instruction. Plaintiffs' counsel's objection . . . did not apprise the Court of a defect in the instruction which Plaintiffs' now want to assert."

The Blanshans' objection is required to "be sufficiently specific to alert the trial court to the basis for the complaint so that if error does exist the court may correct it before placing the case in the hands of the jury." *Morgan*, 508 N.W.2d at 729. We conclude there is nothing in the general objection the Blanshans made to instruction twelve which would alert the trial court, at a time when the instruction could have been changed, to the more specific arguments made in the motion for new trial and on appeal. We fail to see how the trial court should have discerned the Blanshans were specifically concerned about the use of the word "only" or the use of Dr. Carlstrom's name. In summary, the Blanshans did not adequately identify the specific portions of instruction twelve deemed objectionable and it is too late to supply these particulars on appeal. *See Boham v. City of Sioux City*, 567 N.W.2d 431, 438 (Iowa 1997); Iowa R. Civ. P. 1.924.

AFFIRMED.