[Cite as *Drew-Mansfield v. MetroHealth Med. Ctr.*, 2015-Ohio-3033.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102254

CHERYL L. DREW-MANSFIELD, ET AL.

PLAINTIFFS-APPELLANTS

vs.

METROHEALTH MEDICAL CENTER, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-800406

BEFORE: Laster Mays, J., Kilbane, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: July 30, 2015

ATTORNEY FOR APPELLANTS

Paul M. Kaufman
Law Office of Paul M. Kaufman
1300 Fifth Third Center
600 Superior Avenue East
Cleveland, Ohio 44114

ATTORNEYS FOR APPELLEES

Deirdre G. Henry
Shawn W. Maestle
Weston Hurd, L.L.P.
1301 East 9th Street, Suite 1900
Cleveland, Ohio 44114

ANITA LASTER MAYS, J.:

{¶1} In this appeal, assigned to the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1, plaintiffs-appellants Cheryl L. Drew-Mansfield and her husband Richard Mansfield (hereinafter referred to in the singular as "Mansfield") appeal from the trial court order that granted summary judgment on a claim for medical malpractice to defendants-appellees MetroHealth Medical Center ("MetroHealth") and Heather A. Vallier, M.D. ("Dr. Vallier").

{¶2} The purpose of an accelerated appeal is to permit this court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983); App.R. 11.1(E).

{¶3} Mansfield presents a single assignment of error. She asserts that summary judgment was unwarranted, because the trial court had sufficient evidence to present a jury question concerning MetroHealth's breach of a duty toward her and whether that breach proximately caused her injuries. In support of her assertion, Mansfield relies upon the rule of res ipsa loquitur.

{¶4} The Ohio Supreme Court has explained that the doctrine of res ipsa loquitur is an evidentiary rule that allows the factfinder "to draw an inference of negligence when the logical premises for the inference are demonstrated. * * * [i]t is merely a method of proving the defendant's negligence through the use of circumstantial evidence." *Morgan v. Children's Hosp.*, 18 Ohio St.3d 185, 187, 480 N.E.2d 464 (1985), quoting *Jennings Buick, Inc. v. Cincinnati*, 63 Ohio St.2d 167, 169-170, 406 N.E.2d 1385 (1980).

{¶5} The doctrine, however, requires that a plaintiff (1) provide expert testimony on the standard of care ordinarily observed under the circumstances; and (2) that the breach of the standard care was the proximate cause of the injury. *Johnson v. Hammond*, 47 Ohio App.3d 125, 128, 547 N.E.2d 1004 (8th Dist.1988); *Lambert v. MetroHealth Med. Ctr.*, 8th Dist. Cuyahoga No. 87861, 2007-Ohio-83, ¶ 16. Mansfield's failure to provide evidence in the form of an expert's opinion on proximate causation made summary judgment in favor of MetroHealth on her claim appropriate.

{¶6} The evidence presented to the trial court indicated that Mansfield sustained a fracture of her right mid-shaft femur in a motor vehicle accident on December 17, 2009. She was treated at MetroHealth for this injury. Surgery to repair the fracture with a metal plate secured with vertical screws was successful, and she was transferred to a rehabilitation area at MetroHealth.

{¶7} On December 24, 2009, still in rehabilitation, Mansfield stated her surgical repair came under stress as the result of negligently being "left on the commode for a prolonged period of time" by the nursing staff. She testified she was on the commode for approximately 40 minutes and that, during that time, she attempted to alleviate the discomfort of the cast's weight on her leg since her feet did not reach the floor.

{¶8} On January 10, 2010, still in rehabilitation, Mansfield attempted to place a bed pan beneath her while lying in bed. She heard a pop and x-rays revealed a femoral neck fracture of her right leg. The femoral neck is the part of the bone that connects the round headed ball of the hip joint to the long shaft of the femur. Mansfield required a

second surgery to repair this fracture by internal fixation. The internal fixation failed approximately two weeks later and required another internal fixation surgery, followed by another internal fixation surgery six months later due to ongoing irritation and pain. Mansfield also complained of reactions from various medications. Mansfield ultimately received hip replacement surgery that was conducted by a doctor in Lake County, Ohio.

{¶9} Mansfield eventually filed this medical malpractice action, asserting that "[a]ll medications, instrumentalities and procedures used for [her] care and treatment * * * were exclusively in the control and possession of MetroHealth," and her injuries were "unusual and extraordinary and are the direct result of unusual and extraordinary occurrences which would not reasonably have occurred if [MetroHealth] had been reasonably skilled and careful in treating" her. After MetroHealth filed its answer, and the parties filed copies of deposition transcripts in the trial court, MetroHealth filed a motion for summary judgment on Mansfield's claim.

{¶10} Dr. Vallier, Mansfield's orthopedic surgeon, testified that she did not believe that leaving Mansfield on a bedside commode for 40 or 45 minutes would cause a right femoral neck fracture. Dr. Vallier opined that such a fracture is "the result of [a] moderate [to] high level of force, a fall or some type of impact." Dr. Vallier stated that "some type of force * * * caused the fracture."

{¶11} In her summary judgment affidavit, Dr. Vallier stated that her opinion was "to a reasonable degree of medical probability." Even when asked about a note in Mansfield's medical file that said Mansfield's hip was x-rayed on or about December 27,

2009, three days after the commode occurrence, and the results were negative for acute fracture or dislocation, Dr. Vallier maintained that, while it was possible that the x-rays failed to reveal a fracture, with no history of a fall or some type of moderate high energy impact to the hip, Mansfield's theory of the femoral fracture causation "just doesn't fit."

{¶12} In opposition to MetroHealth's motion, Mansfield presented the deposition testimony of one of the nursing staff who attended her during her stay, Dorothy Todd, C.C.P. ("Todd"). Todd opined that leaving Mansfield on the commode for approximately 40 minutes was not in accordance with the acceptable standard of medical care. Based upon this, Mansfield argued that her injury could have been caused only by MetroHealth's negligence.

{¶13} The trial court granted MetroHealth's motion for summary judgment. Mansfield appeals from the trial court's order. She asserts in her sole assignment of error that the trial court's decision was improper because, based upon the rule of res ipsa loquitur, the evidence was sufficient to raise a jury question on her medical malpractice claim. This court disagrees.

{¶14} MetroHealth provided evidence in the form of expert testimony to demonstrate the existence of opposing opinions on causation "which was not attributable to negligence — the rule of res ipsa loquitur did not apply." *Estate of Hall v. Akron Gen. Med. Ctr.*, 125 Ohio St.3d 300, 2010-Ohio-1041, 927 N.E.2d 1112, ¶ 33. In the face of this evidence, and in order to support her cause of action, Mansfield was required to establish by expert testimony that MetroHealth's negligence, if any, was the proximate

cause of her injury. Civ.R. 56(C) and (E); *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996).

{¶15} As the court in *Click v. Georgopoulos*, 7th Dist. Mahoning No. 08 MA 240, 2009-Ohio-6245, ¶ 29, stated:

> Even assuming arguendo that the doctrine of res ipsa loquitor [sic] applies in this case and negligence can be presumed in the absence of expert testimony, [plaintiff's] failure to produce evidence relating to proximate cause was fatal and supports the trial court's decision to grant summary judgment in [defendant's] favor.
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> "The general rule, in medical malpractice cases, is that the plaintiff must prove causation through medical expert testimony in terms of probability to establish that the injury was, more likely than not, caused by the defendant's negligence." *Wilson v. Kenton Surgical Corp* (2001), 141 Ohio App.3d 702, 705, 2001-Ohio-2166, 753 N.E.2d 233, citing, *Roberts v. Ohio Permanente Med. Group, Inc.* (1996), 76 Ohio St.3d 483, 1996-Ohio-375, 668 N.E.2d 480. Hence, to establish proximate cause, a plaintiff must introduce evidence demonstrating that it was a probability the doctor's alleged negligence was the cause of the plaintiff's injury. *Wilson* at 705-706.

See also, Golec v. Fairview Gen. Hosp., 139 Ohio App.3d 788, 745 N.E.2d 1082 (8th Dist.2000); *Hubbard v. Laurelwood Hosp.*, 85 Ohio App.3d 607, 620 N.E.2d 895 (11th Dist.1993); *Johnson v. Hammond*, 68 Ohio App.3d 491, 589 N.E.2d 65 (8th Dist.1990); *Morgan v. Children's Hosp.*, 18 Ohio St.3d 185, 480 N.E.2d 464 (1985) (in the face of defendant's expert evidence, even to invoke the rule of res ipsa loquitur plaintiff must offer expert testimony to prove that "the injury, [itself], bespeaks negligence").

{¶16} An injury such as the one presented in this case is not one that can be, by "common knowledge," attributed to MetroHealth alone. Mansfield provided no expert testimony that leaving her for an extended period of time "on the commode" proximately caused her hip fracture. Under these circumstances, Mansfield did not sustain her burden of proof so as to make the rule of res ipsa loquitur

applicable to her case. *Peterson v. Cleveland Surgi-Center*, 8th Dist. Cuyahoga No. 69562, 1996 Ohio App. LEXIS 3539 (Aug. 22, 1996). The trial court, therefore, did not err in granting MetroHealth's motion for summary judgment.

{¶17} Consequently, Mansfield's assignment of error is overruled and the trial court's order is affirmed.

It is ordered that appellees recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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ANITA LASTER MAYS, JUDGE

MARY EILEEN KILBANE, P.J., and
MELODY J. STEWART, J., CONCUR