

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-017

AUGUST TERM, 2006

James Daignault	}	APPEALED FROM:
	}	
	}	
v.	}	Addison Superior Court
	}	
Fletcher Allen Health Care, Kathleen Manley	}	
and Robert Gelb	}	DOCKET NO. 25-1-05 Ancv

Trial Judge: Matthew I. Katz

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals the decision of the superior court granting summary judgment to defendants on plaintiff=s claims of medical malpractice. We affirm in part and reverse in part.

Plaintiff was a surgery patient at defendant Fletcher Allen Health Care. He alleges three acts of negligence connected with his treatment at Fletcher Allen: that (1) nurses injured his knee when transferring him from a gurney to a hospital bed following surgery; (2) a nurse injured his arm while he was in the hospital by handling it improperly, and (3) a physical therapist caused plaintiff to fall and then injured plaintiff when attempting to catch him. Defendants moved for summary judgment, which the superior court granted, concluding

that plaintiff had presented no reliable evidence describing exactly how his alleged knee injury occurred and that plaintiff failed to offer expert testimony to support his medical malpractice claims based on incidents (2) and (3) described above.

Defendant appealed. We review the decision granting summary judgment under the same standard applied by the superior court: summary judgment is appropriate where the undisputed facts demonstrate that the moving party is entitled to judgment as a matter of law. In re Estate of Kurrelmeyer, 2006 VT 19, & 7.

Under Vermont law, a plaintiff in a medical malpractice action must show, among other things, what standard of care is normally exercised by a medical professional under similar circumstances and that the defendant failed to meet that standard. See 12 V.S.A. ' 1908 (setting forth detailed requirements for medical malpractice claim). Expert testimony is required to prove these elements except where the alleged violation of the standard of care is so apparent that it may be understood by a lay trier of fact without the aid of an expert. @ Larson v. Candlish, 144 Vt. 499, 502 (1984). The actions alleged in incidents (2) and (3) implicate the standard of care for a medical professional and therefore fall within the category of cases where expert testimony is required, such that plaintiff's failure to offer such testimony in opposition to summary judgment was fatal to those claims.

By contrast, plaintiff's claim based on the allegation that medical personnel were negligent in transferring him from a gurney to a hospital bed arguably falls within the exception to the expert testimony requirement. Accordingly, rather than granting judgment for defendants on that basis, the superior court concluded that the only evidence plaintiff offered in support of this claim was incompetent as plaintiff was under the continuing effects of sedation at the time.*

Plaintiff's deposition testimony established that he entered the hospital for surgery on his spine/neck, and sustained an injury to his knee during his stay there. It is not disputed that plaintiff was in the care of defendants at the time this injury occurred. In addition, while under the effect of sedation, plaintiff distinctly recalled discomfort at the time he was transferred from the gurney to the hospital bed. It is not the function of the trial court to find facts on a motion for summary judgment, even if the record appears to lean strongly in one

direction.@ Fritzeen v. Trudell Consulting Eng=rs, Inc., 170 Vt. 632, 633 (2000) (mem.). Further, on a motion for summary judgment, A[t]he nonmoving party must receive the benefit of all reasonable doubts and inferences[.]@ L=Esperance v. Benware, 2003 VT 43, & 13, 175 Vt. 292. Under the summary judgment standard, plaintiff=s evidence is sufficient to create a disputed issue of fact precluding summary judgment.

We affirm summary judgment as to plaintiff=s claims based on manipulation of his arm and his physical therapy treatment, but reverse as to plaintiff=s claim based on the bed transfer.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this decision.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

* Defendants argue in their brief that the superior court concluded that plaintiff=s testimony would be excluded under Vermont Rule of Evidence 602, such that plaintiff had no admissible evidence in support of his claim. In fact, while the superior court cited Rule 602, its decision to grant summary judgment rested on the conclusion that A[n]o reasonable juror would, on the basis of [plaintiff=s] testimony, conclude that, probably, his knee was injured by reason of the leg having been caught between gurney and bed while hospital staff were moving him from one to the other, immediately post-surgery.@