IN THE COURT OF APPEALS OF IOWA

No. 22-1903
Filed February 21, 2024

MITCHELL J. CRAWFORD and ANGELA L. VARGAS, Individually and as Parents and Next Friends of M.J.C.,
Plaintiffs-Appellants,

vs.

CHRISTOPHER L. MITROS, M.D.; EAST CENTRAL IOWA ACUTE CARE, LLP; ST. LUKE'S METHODIST HOSPITAL; ST. LUKE'S METHODIST HOSPITAL d/b/a UNITYPOINT HEALTH CEDAR RAPIDS; and STATE OF IOWA,
Defendants-Appellees.

Appeal from the Iowa District Court for Linn County, Christopher L. Bruns, Judge.

Plaintiffs appeal the district court's order granting the defendants' motion for directed verdict. **AFFIRMED.**

James K. Weston II and Hugh G. Albrecht of Tom Riley Law Firm, Iowa City, for appellants.

Richard A. Stefani and Thomas F. Ochs of Gray, Stefani & Mitvalsky, P.L.C., Cedar Rapids, for appellees East Central Iowa Acute Care LLP and Christopher L. Mitros, M.D.

Jessica Tucker Glick and Carolyn Russel Wallace of Phelan Tucker Law L.L.P., Iowa City, for appellee State of Iowa.

Tricia Hoffman-Simanek and Graham R. Carl of Shuttleworth & Ingersoll, P.L.C., Cedar Rapids, for appellee Unitypoint Health Cedar Rapids.

Tricia Hoffman-Simanek, Graham R. Carl, and Ross T. Andrews of Shuttleworth & Ingersoll, P.L.C., Cedar Rapids, for appellee St. Luke's Methodist Hospital.

Heard by Schumacher, P.J., and Ahlers and Langholz, JJ.

AHLERS, Judge.

Angela Vargas gave birth to her child prematurely, at twenty-four weeks of gestation. Believing medical staff who examined her in the days leading up to her delivery could have done more to delay it, Vargas and her now-husband, Mitchell Crawford, brought this negligence action individually and as parents and next friends of their child, M.C., against various health care providers and entities. At the close of the plaintiffs' case at trial, the district court granted a directed verdict to the defendant health care providers and entities. Vargas and Crawford appeal.

I. Standard of Review

"We review a district court's rulings on motions for directed verdict for correction of errors at law." *Rumsey v. Woodgrain Millwork, Inc.*, 962 N.W.2d 9, 20 (Iowa 2021) (citation omitted). When reviewing the evidence, we view it in the light most favorable to the non-moving party. *Heinz v. Heinz*, 653 N.W.2d 334, 338 (Iowa 2002). "A directed verdict is required only if there was no substantial evidence to support the elements of the plaintiff's claim." *Rumsey*, 962 N.W.2d at 20 (internal quotation marks and citation omitted). "To overcome a motion for directed verdict, substantial evidence must exist to support each element of the claim or defense." *Yates v. Iowa West Racing Ass'n*, 721 N.W.2d 762, 768 (Iowa 2006). "Substantial evidence exists if reasonable minds could accept the evidence to reach the same findings." *Id.*

II. Background Facts and Prior Proceedings

Applying our standard of review to view the evidence in the light most favorable to Vargas and Crawford, we glean the following facts from the trial record. Vargas learned she was pregnant in March 2015. Medical providers gave her a

November due date. Vargas waited until June 5 to start receiving prenatal care because that was when her employer-provided health insurance started.

On July 20, Vargas experienced some nausea[1] and side pain before she went to bed. She woke up around midnight needing to use the restroom. Vargas used the restroom and noticed blood on the toilet paper she used and in the toilet. Feeling panicked, Vargas called her mother, who told her to go to the emergency room.

Vargas went to the emergency room at St. Luke's Methodist Hospital just after midnight on July 21. A nurse examined her in the triage area of the emergency room, and Vargas recounted her concerns about her pregnancy. Later, a physician's assistant examined Vargas, as did nurses from the labor and delivery department. Vargas was diagnosed with kidney stones and discharged from the hospital.

After leaving the hospital, Vargas went back to bed. Vargas woke up in the late morning and used the restroom. She noticed more blood and clotting in the toilet. Again, Vargas panicked and called her mother for advice. Then Vargas called her own doctor's office. Following that phone call, Vargas went back to the emergency room at St. Luke's. She told the person at the registration desk that she was bleeding even more than before and was cramping. When seen by a nurse, Vargas explained that she returned to the emergency room because she saw more blood when using the restroom and had "cramping pain in [her] pelvic area." Vargas submitted to another urine test, which revealed no blood in her urine.

[1] Vargas experienced nausea and vomiting throughout her pregnancy.

Then she had an ultrasound to look for kidney stones. But the ultrasound did not show any kidney stones. The treating physician still believed she had kidney stones and told her to come back if she was still bleeding in ten to fourteen days. Vargas was then discharged from the hospital.

Over the next two days, Vargas went to work. She did not feel well though and routinely vomited. Her bleeding continued over those two days but did not worsen. Vargas awoke on July 24 feeling "very, very sick." She "was sweaty" and "could barely get out of bed." But she made it to a previously scheduled ultrasound appointment at St. Luke's. At the ultrasound, Vargas was told that everything looked okay. Vargas still did not feel well, so she called her obstetrician's office and eventually she was able to see her provider that day. At her appointment, Vargas was told that she needed to "trust [her] physicians."

That evening Vargas was "very uncomfortable," to the point she "could not physically sit in [her] chair at the dinner table." Eventually, Vargas's mother took her to the labor and delivery department of St. Luke's. When Vargas changed into a hospital gown, she discovered her underwear was "filled with blood." A physician completed a pelvic exam and determined Vargas suffered from a pregnancy complication called preterm premature rupture of the membranes (PPROM). Vargas was moved to a delivery room, where she received one dose of steroids and an antibiotic. Shortly thereafter, Vargas gave birth to M.C., who went to the neonatal intensive care unit.

M.C. remained at St. Luke's until October 9, then she was transferred to the University of Iowa Hospital where she stayed for seven months. M.C. required home healthcare assistance until she was three years old. She breathed through

a tracheostomy tube until she was four years old. And she has undergone several medical procedures to address complications associated with her extremely premature birth.[2]

In 2017, Vargas and Crawford, individually and as parents and next friends of M.C., initiated this action asserting negligence claims against various medical providers and related entities.[3] The case went to jury trial. At trial, the plaintiffs claimed the defendants' conduct was negligent and resulted in a lost chance at a better outcome for M.C. The plaintiffs presented testimony from two expert witnesses—an emergency-care physician and a physician specializing in maternal-fetal care. They also presented Vargas's and M.C.'s medical records and testimony from several treating physicians. At the close of plaintiffs' case, the defendants moved for directed verdict, which the district court ultimately granted.

The plaintiffs appeal. They ask this court to recognize lost chance of a better outcome as a viable cause of action and argue they presented substantial evidence satisfying the elements of such a claim.[4]

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[2] A treating physician described an infant born at twenty-six- or twenty-seven-weeks gestation as experiencing extreme prematurity.

[3] Throughout the lifespan of the case, different medical care providers and related entities have been named as defendants, with some being added and others being dismissed from the suit. As the outcome of this case on appeal does not hinge on the specific medical care providers or related entities involved, we are not reciting the history of the changes to the list of named defendants resulting in the remaining defendants listed in the caption.

[4] No one disputes that the plaintiffs presented theories of traditional medical negligence as well as lost chance of a better outcome. The district court directed a verdict in the defendants' favor on both theories. On appeal, the plaintiffs do not challenge the dismissal of their traditional medical negligence claim, choosing instead to rely entirely on their theory of lost chance of a better outcome.

III. Discussion

On appeal, the plaintiffs focus specifically on their lost-chance-of-a-better-outcome claim. They argue there is no logical or legal reason to allow claims for lost chance of survival, which Iowa clearly does, *see Deburkarte v. Louvar*, 393 N.W.2d 131, 137 (Iowa 1986), but not allow claims for lost chance of a better outcome. They also argue that our supreme court already implicitly recognized lost chance of a better outcome as a viable cause of action in *Susie v. Family Health Care of Siouxland*, *P.L.C.* 942 N.W.2d 333 (Iowa 2020). In *Susie*, Sharon Susie fell in her living room, injured her arm, and contracted necrotizing fasciitis in her arm. *Id.* at 335. Unaware of the infection, she went to an urgent care clinic for treatment about a week later. *Id.* The treating physician's assistant did not diagnose the infection. *Id.* By the time Sharon was properly diagnosed the next day, she required amputation of her arm and lost eight of her toes due to treatment complications. *Id.* When analyzing whether Sharon and her husband had a viable negligence claim, our supreme court considered the lost-chance-of-survival doctrine and its principles relative to Sharon's injury despite the fact that she actually survived. *Id.* at 340.

The plaintiffs argue that the analysis in *Susie* is the functional equivalent to a lost-chance-of-a-better-outcome analysis and urge us to explicitly recognize the cause of action for the first time. But we leave that declaration for another day and consider our supreme court better suited to make such declaration. *See State v. Chavez*, No. 22-1280, 2023 WL 7014142, at *2 (Iowa Ct. App. Oct. 25, 2023) ("[S]uch a significant expansion of [a legal concept] is better left to our supreme court." (citing *Luana Sav. Bank v. Pro-Build Holdings, Inc.*, 856 N.W.2d 892, 893

(Iowa 2014))). Instead, we conclude that, even assuming without deciding that Iowa recognizes a claim for lost chance of a better outcome as a viable cause of action, plaintiffs did not present substantial evidence to warrant submission of the issue to the jury. See *Yates*, 721 N.W.2d at 768.

Looking to *Susie*, it is apparent this cause of action would require an expert witness to opine on "the percent of lost chance attributed to the intervening act of negligence." 942 N.W.2d at 340 (citation omitted). Inherent in this analysis is that the plaintiffs must establish what the potential better outcome would have been absent the purported negligent act. In *Susie*, the better outcome was obvious—no loss of limb and toes. But the potential better outcome is not clear in this case.

Here, the plaintiffs complain M.C. suffered medical complications from being born extremely prematurely. They contend that medical providers negligently failed to diagnose Vargas with PPROM and provide treatment when she went to the emergency room on July 21. Their expert witness, Dr. Victor Rosenberg, who practices in maternal-fetal medicine, explained that a publication compiling various studies stated administration of two steroid injections twenty-four hours apart to patients diagnosed with PPROM reduces the risks of premature birth by thirty to sixty percent. He also explained PPROM patients should be given antibiotics because it reduces the chance of an ascending infection and prolongs the pregnancy by a few days. However, Dr. Rosenburg also recognized that even had Vargas received two doses of steroids and a full course of antibiotics, M.C. still would have been born extremely prematurely. So the condition that caused M.C.'s medical complications, extreme prematurity, would not have been abated

even had Vargas received the two doses of steroids and a full course of antibiotics as Dr. Rosenberg stated she should have received.

The record also does not establish what M.C.'s outcome could have been had Vargas received the two steroid doses and a full course of antibiotics. Dr. Rosenberg would not opine as to what conditions from which M.C. suffered could have been lessened had Vargas received the steroids and antibiotics when she went to the emergency room on July 21. Nor could Dr. Rosenberg opine as to what degree any specific condition would have been lessened with treatment. Instead, he had "no opinion on the extent of [M.C.]'s injuries." So we have no evidence that would have allowed the jury to determine what the potential better outcome would have been in this case, nor is there any evidence of the degree M.C.'s medical conditions deviated from that potential better outcome.

To be sure, inherent in this type of claim is a certain amount of uncertainty. But in this instance, too many variables are unknown for a factfinder to reach any meaningful conclusion. Even seizing on Dr. Rosenberg's testimony that a publication stated that the risk of complications is reduced by thirty to sixty percent if the mother is given steroids, that is not enough specificity in this instance. We still don't know which of the conditions M.C. suffered could have been lessened, nor do we know to what extent any of her conditions would have been lessened. The only expert witness in that area to testify, Dr. Rosenberg, could not provide an opinion. With respect to M.C. and the particular record in this case, there is simply not enough evidence to establish what the potential better outcome was that M.C. lost out on or how her chances of achieving that better outcome were reduced. *See id.* ("There is no expert testimony from which a jury could decide what the

reduction in Susies' chance of survival was. The jury cannot be left to speculate about the lost chance of survival.").

To elaborate on the point, we contrast the facts of this case with the facts in *DeBurkarte* and *Susie*—the two cases comprising the foundation upon which the plaintiffs build their claim. In *DeBurkarte*, the plaintiffs presented evidence of the best-case outcome (i.e., surviving)[5] and the likelihood of achieving that outcome (i.e., fifty to eighty percent). 393 N.W.2d at 135. As a result, the plaintiffs asserted a viable claim. *Id.* at 135–38. In *Susie*, the plaintiffs presented evidence of the best-case outcome (i.e., not losing an arm and eight toes), but they failed to present evidence of the likelihood of achieving that outcome. 942 N.W.2d at 338–39. As a result of this lack of evidence of causation, their claim failed. *Id.* at 339–40. Here, we have somewhat of the opposite scenario of that in *Susie* in that the plaintiffs arguably presented evidence of the likelihood of achieving the better outcome (i.e., thirty to sixty percent reduction in complications),[6] but they failed to present sufficient evidence of what that better outcome was. *DeBurkarte* teaches us that, when we have both evidence of what the better outcome would be and evidence of the likelihood of achieving it, causation has been established. 393 N.W.2d at 137. *Susie* teaches us that when one of those two links in the causation chain is missing—in that case, missing proof of the likelihood of the better

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[5] *DeBurkarte* involved a failure to diagnose breast cancer resulting in medical opinions that the plaintiff had no chance of surviving ten years. 393 N.W.2d at 135.

[6] We question whether Dr. Rosenberg's testimony regarding the potential thirty to sixty percent reduction in premature-birth complications is even sufficient, as his testimony touched on the potential reduction in complications generally as opposed to opining to the lost potential reduction in complications M.C. specifically suffered.

outcome—the claim fails. 942 N.W.2d at 339–40. Here, as in *Susie*, at least one of the two links in the causation chain is missing. The missing link here is the proof of what the better outcome would be.[7] But the plaintiffs need both links in the causation chain. As they are missing at least one of the links, their claim fails.

We conclude that the district court correctly granted the defendants' motion for directed verdict.

AFFIRMED.

[7] Again, we note that we question whether Dr. Rosenberg's testimony on the general potential reduction of premature-birth complications is sufficient to establish proof of the likelihood of achieving a better outcome with respect to M.C. specifically.