IN THE COURT OF APPEALS OF IOWA

No. 6-086 / 05-0865
Filed July 12, 2006

JOYCE J. DAVIS and S. L. DAVIS,
Wife and Husband,
Plaintiffs-Appellees,

vs.

MONTGOMERY COUNTY MEMORIAL HOSPITAL,
Defendant-Appellant.

Appeal from the Iowa District Court for Mills County, G.C. Abel, Judge.

Defendant appeals from judgment entered in favor of plaintiffs in a negligence action. **AFFIRMED.**

Randall H. Stefani and Nathan J. Overberg of Ahlers & Cooney, P.C., Des Moines, for appellant.

John M. French of Peters Law Firm, P.C., Council Bluffs, and Gary T. Gee, Shenandoah, for appellees.

Heard by Vaitheswaran, P.J., and Eisenhauer, J. and Brown, S.J.*

*Senor judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

BROWN, S.J.

Montgomery County Memorial Hospital (Hospital) appeals from a judgment in favor of Joyce J. Davis and S.L. Davis in a negligence action arising out of injuries to Joyce Davis as a result of a fall while a patient in the Hospital. Our review of the issues presented on appeal discloses no reversible error and we affirm.

I. Background Facts and Proceedings

Joyce Davis was transferred to the Hospital in July 2001 following hip replacement surgery in Omaha, Nebraska. She was a skilled-care patient, receiving rehabilitation following surgery. On the afternoon of August 2, 2001, Natalia Findley, a Certified Nurse Assistant (CNA), responded to a call from Davis requesting assistance to go to the bathroom. While being assisted by Findley, Davis lost her balance and ended up on the floor. She was later diagnosed with fractures in her back and pelvis.

Davis and her husband filed this negligence action against the Hospital, alleging the Hospital was negligent in failing to properly attend to her during her hospitalization. Prior to trial, plaintiffs filed a motion in limine asserting expert testimony was not required because the activities of the Hospital's employees were those of a non-medical, administrative, ministerial or routine care nature. Further, plaintiffs argued that in the event expert testimony on standard-of-care issues was not required, the Hospital should be precluded from presenting any expert opinion testimony.

The morning of trial, the parties presented arguments to the district court as to the expert issues. Counsel for the Hospital contended the process of

transferring a skilled-care patient from a bed to the bathroom required expert testimony on the standard of care involved. Plaintiffs' counsel argued the facts of the case placed it within the category of hospital negligence cases in which no expert testimony was required because only non-medical, administrative, ministerial or routine care was involved. *See generally Landes v. Women's Christian Ass'n*, 504 N.W.2d 139 (Iowa Ct. App. 1993); *Cockerton v. Mercy Hosp. Medical Ctr.*, 490 N.W.2d 856 (Iowa Ct. App. 1992); *Kastler v. Iowa Methodist Hosp.*, 193 N.W.2d 98 (Iowa 1971).

The district court agreed with plaintiffs, concluding "the Iowa Supreme Court seems to view this type of fall situation as a routine, ministerial type of matter and not one subject to expert testimony." Therefore, plaintiffs would not be required to present expert testimony.

In view of the district court's ruling, the Hospital indicated to the court it intended to call its nursing expert to testify that based on her experience, education, training, and her review of the records in this case, the nursing staff at the Hospital "acted reasonably and provided reasonable care." Plaintiffs contended such testimony would be improper opinion testimony and therefore should be excluded at trial. The court indicated it would allow the Hospital to make a proffer of the expert's testimony outside the jury's presence during trial, to preserve the issue for appeal, but the *Landes, Cockerton,* and *Kastler* cases indicated otherwise and the Hospital's expert would not be allowed to testify at trial.

Plaintiff Davis and CNA Findley testified at trial. Findley testified she walked into Davis's room, opened the bathroom door and helped Davis sit up in

bed. She placed a gait belt on Davis, helped her stand up, and gave her a walker. She asked Davis if she was dizzy, to which Davis responded, "no." As they got close to the bathroom, Davis lost her balance and Findley tried to take the gait belt and lower Davis slowly to the floor. Davis told Findley she was okay after the incident.

Davis, on the other hand, testified Findley came in and brought Davis the walker. Findley had her right arm around Davis's waist as they started to walk to the bathroom. According to Davis, Findley reached across and yanked on the curtain that was pulled two-thirds of the way across the room. Davis lost her balance and fell. The walker and Findley fell on top of her.

A nurse, Linda Shackelford, testified that she could not remember if Davis had a gait belt on when she came into the room after the fall. Davis told her later that Findley had not been holding onto her and let her fall. Another nurse, Melanie Jackson, testified her late entry in the nurse's note describing the fall made no mention of whether a gait belt was used. She could not recall seeing a gait belt when she went into the room after the fall.

After the jury returned a verdict in favor of plaintiffs, the Hospital filed a motion for new trial, arguing that the district court erred in sustaining plaintiffs' pretrial motion in limine thus negating the necessity for expert witnesses, and also in precluding the Hospital from calling an expert, either for standard of care

opinions or for opinions regarding reasonable care. The district court overruled the motion, and the Hospital appealed, asserting both of these issues as error.[1]

II. Standard of Review

Our review is for correction of errors at law. Iowa R. App. P. 6.4. The trial court has broad discretion in ruling on the admissibility of evidence, *Horak v. Argosy Gaming Co.*, 648 N.W.2d 137, 149 (Iowa 2002), including whether a witness may testify as an expert with reference to a particular topic. *Heinz v. Heinz*, 653 N.W.2d 334, 341 (Iowa 2002). The court may abuse its discretion if it rejects relevant evidence based on an erroneous application of the law, *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000), or if it unreasonably refuses to permit relevant testimony from a qualified expert. *Schlader v. Interstate Power Co.*, 591 N.W.2d 10, 11 (Iowa 1999). Reversal based on an evidentiary ruling is warranted where the court clearly abused its discretion to the complaining party's prejudice. *Horak*, 648 N.W.2d at 149.

III. Discussion

A. Relevant Case Law: From *Kastler* to *Thompson*

In *Kastler v. Iowa Methodist Hospital*, 193 N.W.2d 98, 101-02 (Iowa 1971), the supreme court first distinguished between the standard of care required with respect to "professional activities" of hospitals versus "non-medical, administrative, ministerial, or routine care" provided by hospitals:

> With respect to professional activities of hospitals, we adhere to our rule that the standard is the care "which obtains in hospitals generally under similar circumstances." …. [W]ith respect to

[1] Plaintiffs contend the Hospital failed to preserve error by failing to object to jury instructions and certain testimony at trial. It is clear from the record that the Hospital adequately preserved error on the issues raised in its appeal.

> nonmedical, administrative, ministerial, or routine care, we adopt the rule that the standard is such reasonable care for patients as their known mental and physical condition may require. We will not at this time attempt to formulate a precise distinction between the two kinds of activities.

(citation omitted). The plaintiff in *Kastler* brought a negligence action against the hospital for injuries sustained in a fall while showering. *Id.* at 100. Even though hospital personnel were aware the plaintiff was subject to fainting spells, an aide sent her into the shower room alone, where she fell and injured herself. *Kastler,*193 N.W. 2d at 100.

The supreme court held "the activity in the present case—showers of patients—was routine care," therefore the hospital "was required to use such reasonable care as their known mental and physical condition required." *Id.* at 102. Further, plaintiff "was not required to adduce proof of the practice of hospitals generally respecting showers or to introduce expert testimony. The jury could use its own knowledge and good sense with respect to the hospital's conduct in question." *Id.* at 102.

The court of appeals applied the *Kastler* decision in *Cockerton v. Mercy Hospital Medical Center*, 490 N.W.2d 856 (Iowa Ct. App. 1992) and *Landes v. Women's Christian Association*, 504 N.W.2d 139 (Iowa Ct. App. 1993). In *Cockerton*, a patient brought a negligence action for injuries sustained when she allegedly fell in an x-ray room. *Cockerton*, 490 N.W.2d at 858. The district court did not require expert testimony concerning the standard of care given by the x-ray technician. *Id.* The court of appeals affirmed the district court, concluding the facts were analogous to those in *Kastler*:

> The focus of [plaintiff's] case is upon the routine care that [the hospital] provided her in transporting her and in handling her person during the x-ray examination. We reject [the hospital's] argument that the x-ray procedure cannot be categorized as routine or ministerial care. The conduct in question is simply the way the x-ray technician handled [plaintiff] during the x-ray examination. … [T]he fact that an x-ray technician must meet certain requirements under the Iowa Administrative Code does not make all of her conduct professional in nature.

Id. at 859. The court held expert testimony was not necessary and, therefore, the applicable standard was that of "reasonable care." *Id.*

In *Landes*, plaintiff filed a negligence action against the hospital after falling while in the bathroom following surgery. *Landes*, 504 N.W.2d at 140. The district court granted the hospital's motion for summary judgment and dismissed the case. *Id.* at 141. On appeal, plaintiff argued summary judgment for failure to designate an expert was inappropriate because expert testimony was not required. *Id.* The court of appeals concluded:

> The hospital's activity here, *taking plaintiff to the bathroom*, was nonmedical and routine. Thus, as in *Kastler* and *Cockerton*, the applicable standard is such reasonable care as [plaintiff's] known mental or physical condition may have required. [Plaintiff] is not required to introduce expert testimony to prove his case.

Id. at 141-42 (emphasis added).

As mentioned, the district court relied on *Kastler*, *Cockerton*, and *Landes* in reaching its conclusion expert testimony was not necessary in this case. On appeal, the Hospital contends the district court failed to recognize and apply the "new approach" articulated by the supreme court in *Thompson v. Embassy Rehabilitation & Care Center*, 604 N.W.2d 643, 646 (Iowa 2000).[2] The Hospital

[2] Notably, the Hospital did not rely upon or cite this case in making its argument to the district court.

argues *Thompson* and two subsequent unpublished court of appeals cases[3] reflect an "analytical shift" in the application of the *Kastler* exception to the general rule requiring expert testimony in hospital negligence cases.

Thompson contended a skilled nursing facility was negligent in management of a bedsore that developed into a severe coccyx ulcer. *Thompson*, 604 N.W.2d at 644. The district court granted summary judgment to defendants after Thompson failed to designate an expert witness to testify concerning the standard of care. *Id.* The supreme court, citing *Kastler*, concluded that "on the surface," the actions of the care facility staff in allegedly failing to regularly reposition Thompson properly in response to instructions from a doctor and nurse "appear to have been ministerial and thus subject to a standard of proof not requiring expert testimony." *Id.* at 646. However,

> [t]he *special circumstances* of the present case are such that the issue had become one of forced repositioning of the care facility resident contrary to his own wishes. We believe that *under these circumstances* the proper course of action was not a matter that would be within the common understanding of the jury.

Id. (emphasis added). The court articulated the test as follows:

> [I]f all the primary facts can be accurately and intelligibly described to the jury, and if they, as [persons] of common understanding, are as capable of comprehending the primary facts and of drawing correct conclusions from them as are witnesses possessed of

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[3] *Llewellyn v. Genesis Medical Center*, No. 03-1506 (Iowa Ct. App. Nov. 15, 2004) (holding expert testimony as to the appropriate standard of care was required where it was not of common understanding whether the physician owed the plaintiff a duty to protect him from fainting under the circumstances, and whether the physician breached that duty); *Miller v. Trimark Physicians Group, Inc.*, No. 03-0055 (Iowa Ct. App. Oct. 15, 2003) (holding expert testimony was required to establish the standard of care because whether the nurses followed the proper course of action in waiting several hours to call a doctor, in light of the patient's complicated medical condition, was not a matter of common understanding).

> special or peculiar training, experience, or observation in respect of the subject under investigation, [expert testimony is not required.]

Id. (quoting *Schlader*, 591 N.W.2d at 14).

B. Analysis

1. Whether plaintiffs were required to present expert testimony

As we noted, the Hospital argues *Thompson* represents an "analytical shift" in the application of the *Kastler* exception to the general rule requiring expert testimony in hospital negligence cases. We disagree. The *Thompson* court concluded the particular facts of the case presented "special circumstances" that required expert testimony. *Thompson*, 604 N.W.2d at 646. The "test" articulated by the *Thompson* court had been set out in *Schlader*, 591 N.W.2d at 14 (holding expert testimony was not required in an action brought by dairy farmers against electrical utility alleging stray voltage caused their dairy cow herd to suffer decreased milk production and health problems). The *Thompson* court may have clarified the *Kastler* exception by articulating and adopting the test from *Schlader*, but it does not fundamentally change the way these cases are to be analyzed, as the Hospital suggests.

The Hospital, applying the "*Thompson* test," contends that expert testimony was required to assist the jury in understanding whether it was appropriate to ambulate an elderly patient rehabilitating from hip surgery and, if so, how it should properly be carried out, including the appropriate circumstances for utilizing a gait belt to assist in ambulating a patient. In this case, the decision was made to allow Davis to go the bathroom and CNA Findley assisted her.

Findley said she used a gait belt. Davis said she did not, and the other after-the-fact witnesses were ambivalent. Thus, the question concerning the gait belt, as it developed here, was not how it was used, but whether it was used. The crucial question the jury had to determine was not whether she should have been allowed to go to the bathroom, but rather whether the assistance given was adequate. Obviously the jury concluded it was not. We conclude the facts of this case do not require expert assistance to the jury in analyzing the issue. Ambulating a patient to the bathroom is exactly the type of non-medical, routine care that was at issue in *Kastler*, 193 N.W.2d at 102 (providing showers to patients), *Cockerton*, 490 N.W.2d at 859 (transporting and handling patient during x-ray examination), and *Landes*, 504 N.W.2d at 141-42 (taking patient to the bathroom). We conclude the trial court was correct on this issue.

2. Whether the district court properly precluded the Hospital from presenting expert testimony

The trial court ruled that the Hospital could not present evidence by its expert, apparently based on the notion that if expert testimony was not required from the plaintiff under the *Kastler* line of cases, then the defendant could not present expert testimony.

Generally, expert testimony is permitted if it will "assist the trier of fact to understand the evidence or to determine a fact in issue." Iowa R. Evid. 5.702. Our appellate courts are "committed to a liberal view on the admissibility of expert testimony, and we have been quite deferential to the district court in the exercise of its discretion in that area." *Mensink v. American Grain*, 564 N.W.2d 376, 380 (Iowa 1997). As to opinion evidence, "We will not reverse the trial

court's receipt [of lay or expert opinion evidence] absent a manifest abuse of [the court's] discretion to the prejudice of the complaining party." *Id.* (citation omitted).

We conclude the district court's reliance on the *Kastler* line of cases in determining the Hospital was precluded from presenting expert testimony was misplaced. These cases do not *preclude* either party from presenting expert testimony in cases where non-medical, administrative, ministerial, or routine care is at issue. The cases simply do not *require* a plaintiff to present expert testimony in such cases. *See Landes*, 504 N.W.2d at 142 ("We make no findings as to whether Landes may still designate an expert under the rules of civil procedure. We have only determined the designation of an expert is not essential to his case."). These cases are silent on the issue of whether a defendant may present expert testimony, even if a plaintiff is not required to do so and chooses not to do so. Thus, the proposed testimony should not have been rejected based solely on *Kastler, Cockerton* and *Landes*.

The Hospital argues it should have been allowed to present testimony through its designated expert as to whether CNA Findley acted reasonably under the circumstances. Assuming without deciding that the Hospital is correct and the exclusion of the proposed testimony was error, we conclude any such error was harmless.

Any error in the court's exclusion of the Hospital's expert does not require reversal unless the Hospital was prejudiced. Iowa R. Evid. 5.103(*a*) ("Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected...."). The Hospital claims it was

prejudiced by this exclusion because its defense was based primarily on the testimony of its expert who would substantiate the reasonableness of the action taken by CNA Findley, and without that testimony it was left without any witness to rebut the plaintiffs' claims.[4]

The plaintiffs argue that the Hospital's expert's testimony would not have assisted the jury because the case was a credibility contest between CNA Findley and plaintiff Davis as to how the incident occurred. This contest, plaintiffs urge, was lost by the Hospital. Testimony from the Hospital's expert that Findley's actions were reasonable under the circumstances would have required the expert to make a determination that Findley's testimony was more credible than Davis's. Such credibility determinations are matters for the jury. *Oak Leaf Country Club, Inc. v. Wilson*, 257 N.W.2d 739, 747 (Iowa 1977).

Only two people were directly involved in Davis's fall and they both testified. The jury accepted the plaintiff's version of the fall, which was its prerogative. Therefore, under these circumstances, we agree there was no prejudice in excluding the proffered expert testimony.

AFFIRMED.

[4] Although plaintiffs called CNA Findley as a witness, her testimony was contrary to plaintiff Davis's version of events and she was essentially a defense witness.