

IN THE COURT OF APPEALS OF IOWA

No. 6-249 / 05-1217

Filed June 14, 2006

MELISSA HOLDEFER and TONY HOLDEFER,
Individually and as Next Best Friends of
BRITTANY HOLDEFER, ANTHONY HOLDEFER, JR,
And BROOKELYNN HOLDEFER,
Plaintiffs-Appellants,

vs.

STEVEN A. KELLER, M.D.,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom,
Judge.

The plaintiffs appeal the district court's order granting summary judgment
in favor of the defendant. **AFFIRMED.**

Alfredo Parrish and Tammy Westhoff Gentry of Parrish, Kruidenier, Moss,
Dunn, Boles & Gribble, L.L.P., Des Moines, for appellant.

Thomas J. Joensen and John Hilmes of Finley, Alt, Smith, Scharnberg,
Craig, Hilmes & Gaffney, P.C., Des Moines, for appellees.

Heard by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VOGEL, P.J.

Melissa and Tony Holdefer, individually and as next friends of two of their three minor children, appeal from the district court's grant of summary judgment in favor of Dr. Steven Keller resulting in dismissal of their medical malpractice claims.¹ We affirm the district court's finding that the statute of limitations bars the Holdefers' claims.

I. Background Facts and Proceedings.

The facts viewed most favorably to the plaintiff reveal the following events pertinent to our consideration of this appeal. Melissa experienced chronic and persistent abdominal pain, cramping, and bleeding beginning in late 1998 or early 1999. She subsequently saw three physicians, underwent several laparoscopic procedures for both diagnostic and treatment purposes, and received a full course of Depo-Lupron therapy after being diagnosed with endometriosis. In January 2000, Melissa's family physician Dr. Twyner referred her to a specialist in obstetrics and gynecology, Dr. Steven Keller, for further treatment of her continued abdominal pain and cramping. Testing at Dr. Keller's office revealed that Melissa was about five weeks pregnant. After discussing her history of endometriosis and treatment at the initial examination, Dr. Keller wrote a letter to Dr. Twyner for the referral. The letter stated in part:

As you know, Melissa has a long history of endometriosis for which she has had multiple laparoscopic procedures She presented today for a second opinion regarding her pain and desired a hysterectomy On examination, her abdomen is tender in the left lower quadrant where a tender ropey mass was

¹ All but Brookelynn's loss of parental consortium claim were dismissed as time-barred. Brookelynn's claim is governed by Iowa Code section 614.1(9)(b) (1999) and was therefore timely-filed before her tenth birthday.

felt, consistent with stool within the colon. . . . The bowels seem to be hyperactive at the time of her ultrasound as well. . . . On further questioning, she reports drinking two liters of pop per day and smoking one pack per day. She was obviously informed that she should stop these immediately due to the pregnancy, but also because these are likely contributing factors to her abdominal pain.

At this point, I believe Melissa's left lower quadrant pain is due largely to constipation/irritable bowel. She had a number of risk factors and has shown little response to the normal methods of dealing with endometriosis. She also currently is pregnant and this may be exacerbating her most recent symptoms.

I have scheduled Melissa back to our office in approximately four weeks time to initiate routine obstetric care, and again have counseled her to stop smoking and caffeine. She is to use Milk of Magnesia for the next few days to help relieve some of the constipation problems, as well. Finally, I have requested records from her prior surgeries and will review those in regard to her endometriosis, but will not be planning any further treatment at this time.

Dr. Keller did not discuss any possible diagnosis of irritable bowel syndrome (IBS) with Melissa at this time. Melissa continued obstetrics care with Dr. Keller through the course of her pregnancy until the birth of Brookelynn in September 2000. Although her abdominal pain persisted throughout the course of her pregnancy, it was somewhat less severe but resumed after Brookelynn's birth to the previous threshold or worse. Dr. Keller subsequently recommended a complete hysterectomy (removal of the uterus, ovaries and fallopian tubes) as the next course of treatment. Melissa consented to the surgery after discussing the benefits and risks of the procedure. As part of this counseling, Dr. Keller did inform Melissa that there was a possibility the hysterectomy may not alleviate her symptoms, but that the more conservative treatments for her endometriosis had not thus far been successful. Melissa underwent the surgery on March 25, 2001, without complication. However, her abdominal pain and cramping reappeared in the same nature and severity as prior to the hysterectomy. Melissa sought

further treatment of these symptoms from her family physician, Dr. Twyner, on May 17, August 9, and October 8, 2001. In particular, Dr. Twyner's notes from her August visit indicate Melissa's confusion over her symptoms in that she "doesn't understand why she had a complete hysterectomy in March 2001." Dr. Twyner also prescribed and refilled Bentyl, a medication for the treatment of IBS, at the August and October appointments. Upon a consultation with family practitioner and general surgery specialist, Dr. Angel Martin, in April 2002, Dr. Martin performed a colonoscopy on Melissa. He diagnosed her with IBS on April 24, 2002.

The petition for medical malpractice and loss of consortium claims against Dr. Keller were not filed until April 1, 2004. Following the assertion of the statute of limitations affirmative defense in his answer to the petition, Dr. Keller filed a motion for summary judgment in March 2005 on the grounds that the Holdefers' claims were time-barred. The district court agreed, finding the hysterectomy surgery was the triggering "injury" starting the two-year limitation period under Iowa Code section 614.1(9)(a) (1999) and Melissa was otherwise put on inquiry notice by her continuing symptoms after the surgery. All claims were then dismissed except Brookelynn's claim for loss of parental consortium. The Holdefers appeal this dismissal.

II. Scope of Review.

Summary judgment is appropriate,

[i]f the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Christy v. Miulli, 692 N.W.2d 694, 699 (Iowa 2005) (quoting Iowa R. Civ. P. 1.981(3)). We review the district court's ruling on a motion for summary judgment for correction of errors of law. *Schlote v. Dawson*, 676 N.W.2d 187, 188 (Iowa 2004).

III. Statute of Limitations.

In their appeal, the Holdefers allege that the district court erred when it determined the hysterectomy surgery was the triggering injury under the two-year medical malpractice statute of limitation. Section 614.1 reads in part:

MALPRACTICE—those founded on injuries to the person or wrongful death against any physician and surgeon . . . arising out of patient care, within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of, the injury or death for which damages are sought in the action.

Iowa Code § 614.1(9)(a).

In ruling on the motion for summary judgment, the district court relied on the interpretation of the term “injury” in this particular statute from *Schlote*, 676 N.W.2d at 190-194. The court held in *Schlote* the date of a surgery excessively and unnecessarily performed to remove the plaintiff's voice box was the date of “injury” for purposes of the two-year limitation. *Id.* at 194. The court further acknowledged that this rule eliminated the discovery rule in medical malpractice cases which had previously recognized the patient's discovery of (or by the exercise of reasonable care, should have discovered) the negligent act to trigger the limitation period. *Id.* At the latest the two-year period began when Melissa took medication for IBS as prescribed by her family physician beginning in

August 2001. Following her definitive diagnosis of IBS by Dr. Martin in April 2002, her claims would have still been viable for nearly one more year.

While we note that Melissa did exercise diligence in seeking the advice of several physicians to alleviate her medical problems, we cannot say that the district court erred when it applied the current state of the law regarding medical malpractice limitations periods in Iowa. As our Supreme Court stated in *Schlote*, “the statute [614.1(9)(a)] severely restricts the rights of unsuspecting patients who may be injured because of unnecessary and excessive surgery. However, it is up to the legislature and not this court to address this problem.” *Id.* at 194. Our case law and the Iowa Code are clear and compel this result. We affirm the grant of summary judgment in favor of Dr. Keller.

AFFIRMED.