

IN THE COURT OF APPEALS OF IOWA

No. 8-343 / 07-1791
Filed October 1, 2008

CARROLL WHEATCRAFT,
Plaintiff-Appellant,

vs.

**AKELLA CHENDRASEKHAR, M.D., and
THE IOWA CLINIC, P.C.**
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert,
Judge.

Plaintiff appeals the district court's grant of summary judgment on his
medical malpractice claim. **REVERSED AND REMANDED.**

R. Ronald Pogge, David S. Gorham, and Wendy D. Boka of Hopkins &
Huebner, P.C., Des Moines, for appellant.

Robert D. Houghton, Nancy J. Penner and Jennifer E. Rinden of
Shuttleworth & Ingersoll, P.L.C., Cedar Rapids, for appellees.

Heard by Huitink, P.J., and Vogel and Eisenhauer, JJ.

EISENHAUER, J.

Carroll Wheatcraft appeals from the trial court's summary judgment ruling dismissing his medical malpractice claim as not timely filed. We reverse and remand.

I. Background Facts and Proceedings.

Wheatcraft, a truck driver, weighed 335 pounds when Dr. Akella Chendrasekhar of the Iowa Clinic, P.C. (Dr. A.C. for both defendants) performed gastric bypass surgery on April 2, 2001. The purpose of the surgery was to reduce Wheatcraft's stomach size to a smaller pouch. Subsequently, his weight fluctuated with his lowest weight of 247 pounds occurring at his July 9, 2002 appointment. Wheatcraft weighed 279 pounds at his last appointment with Dr. A.C. on November 6, 2003. During Wheatcraft's numerous post-surgical appointments, Dr. A.C. consistently and repeatedly advised Wheatcraft that his weight gain was caused by his failure to comply with the doctor's post-surgery diet and exercise program, stating, "even though the surgery was successful, that is not a one-time deal, and his lifestyle changes are really what are needed."

Wheatcraft's deposition describes his state-of-mind before the summer of 2004:

Q. Okay. And you thought something maybe was wrong with your gastric bypass? A. At that point I had no clue. I had no clue. I wasn't feeling well. I was getting back to where I was tired all the time again. . . . I just didn't have any energy.

When asked what prompted Wheatcraft to quit seeing Dr. A.C., Wheatcraft described a pre-summer 2004 conversation concerning another bypass patient's need for a surgical revision. In July 2004, Wheatcraft arranged an August appointment with Dr. David Coster. At Wheatcraft's first appointment

he weighed 301 pounds and his chief complaint was “weight regain status post gastric bypass.” Similar to Dr. A.C.’s conclusions, Dr. Coster concluded dietary compliance could be the cause of Wheatcraft’s post-bypass weight gain. Dr. Coster stated: “It is not entirely clear to me what the problem here is but it appears that he perhaps has not been given adequate dietary instructions as well as support.” Dr. Coster noted truck drivers always needed specialized dietary plans. Additionally, Dr. Coster ordered GI testing “to make sure that his pouch is intact and the proper size.”

After receiving the test results, Dr. Coster saw Wheatcraft on September 2, 2004, and concluded:

His upper GI doesn't show anything wrong. He has kind of a slow transit and his gastric pouch is just a little bigger than I normally would make but it is not enough to by itself explain his weight regain. He did visit with the dietician and I think we have all concluded that dietary indiscretion is really the biggest problem here.

(Emphasis added.) Dr. Coster decided to prescribe medication “just for three months which will push his weight loss rate and make him see some results pretty quickly.” Additionally, “the main thing is . . . he can pick up the phone . . . and talk to the dietician any time.”

However, when Wheatcraft returned to Dr. Coster on October 6, 2004, he had only lost one pound despite taking the medication for ten days. For the first time, Dr. Coster recommended abdominal exploration with a possible surgical revision, stating, “I think we are just wasting our time trying to get weight off him again using nonsurgical means.”

Dr. Coster performed a second gastric bypass surgery on December 10, 2004, and discovered Dr. A.C. had placed the gastric bypass staples in a

“completely inappropriate” location making an “extremely large ‘pouch.’” Dr. Coster concluded, “[t]his extremely large ‘pouch’ was the cause of the failure of his bypass.”

Wheatcraft filed his medical malpractice petition on August 16, 2006, and approximately one year later, Dr. A.C. moved for summary judgment based on the statute of limitations. On October 11, 2007, the district court granted Dr. A.C.’s motion for summary judgment and Wheatcraft appeals.

II. Standard of Review.

When determining whether summary judgment is appropriate, we view the record in a light most favorable to the nonmoving party. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000). “We also indulge in every legitimate inference that the evidence will bear in an effort to ascertain the existence of a fact question.” *Id.* Summary judgment is proper only if the record made shows “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Garofalo v. Lambda Chi Alpha Fraternity*, 616 N.W.2d 647, 649-50 (Iowa 2000). “Our review, therefore, is for the correction of errors at law.” *Id.* at 650.

III. Statute of Limitations.

Wheatcraft argues the district court erred in granting summary judgment because a post-judgment Iowa Supreme Court case added a new factual causation requirement to the previous-utilized medical malpractice statute of limitations analysis. *See Rathje v. Mercy Hosp.*, 745 N.W.2d 443, 457 (Iowa 2008); *see also Murtha v. Cahalan*, 745 N.W.2d 711, 715 (Iowa 2008) (applying the new causation requirement in a simultaneously-filed opinion). Dr. A.C.

argues the newly-adopted causation requirement does not mandate a different result.

Relying on pre-*Rathje* precedent, the district court granted Dr. A.C.'s motion for summary judgment stating, “[t]he fact [Wheatcraft] ‘had no clue’ as to what was causing his weight gain and related symptoms is not relevant – the law only requires that he be aware of the existence of a problem, not its cause.” It ruled Wheatcraft knew or should have known of his injury prior to August 16, 2004.

However, after the district court’s ruling in this case, the Iowa Supreme Court departed “from the direction we have taken in our prior cases” because “our prior cases have failed to identify the role of factual causation as an element of the statutory discovery rule.” *Rathje* 745 N.W.2d at 463. The court instructed: “It is not important . . . to discover if the conduct was negligent, *only that the conduct of the physician was factually responsible for the injury.*” *Id.* at 460-61 (emphasis added).

In a medical malpractice statute of limitations decision filed simultaneously with *Rathje*, the Iowa Supreme Court explained the new analysis:

Today, we supplement [the *Schlote* injury] definition by including an additional requirement that the statute of limitations is only triggered upon knowledge, or imputed knowledge, of the cause in fact of the physical or mental injury. Thus, determining when the statute of limitations is triggered in a medical malpractice case requires two distinct steps. First, the plaintiff must have knowledge, or imputed knowledge, of an injury, i.e., physical or mental harm. Second, the plaintiff must have knowledge, or imputed knowledge, of the cause in fact of such injury.

Murtha, 745 N.W.2d at 715. Further, [t]hese inquiries – what constitutes the injury and its cause and when the plaintiff is charged with knowledge of such injury and its cause – are highly fact-specific.” *Id.* at 717.

We conclude the grant of summary judgment must be reversed and the case remanded to permit the trial court to utilize the newly-articulated standard. Accordingly, we reverse the judgment of the district court and remand for further proceedings.

REVERSED AND REMANDED.