

IN THE COURT OF APPEALS OF IOWA

No. 8-603 / 07-1585
Filed August 27, 2008

JAMES SCOTT EDWARDS AND LESLIE EDWARDS,
Individually and as parents and next friends of
JACE EDWARDS AND CLAY EDWARDS, Minors,
Plaintiffs-Appellants,

vs.

NORMAN SMITH, D.O., AND
GREAT RIVER MEDICAL CENTER, a Corporation,
Defendants-Appellees.

Appeal from the Iowa District Court for Des Moines County, Michael J. Schilling, Judge.

Plaintiffs appeal the judgment for defendants in this medical malpractice action. **AFFIRMED.**

Andrew B. Howie of Hudson, Mallaney & Shindler, P.C., West Des Moines, for appellants.

Richard A. Stefani of Gray, Stefani & Mitvalsky, P.L.C., Cedar Rapids, for appellee Smith.

Connie Alt and Diane Kutzko of Shuttleworth & Ingersoll, P.L.C., Cedar Rapids, for appellee Medical Center.

Considered by Sackett, C.J., and Miller, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

ROBINSON, S.J.**I. Background Facts & Proceedings**

On September 20, 2004, Dr. Norman Smith performed a lumbar puncture on James Edwards at the Great River Medical Center in West Burlington, Iowa. Edwards and his family filed an action against Smith and the Medical Center on August 30, 2005, alleging Edwards sustained severe and permanent injuries as a result of the procedure. The defendants raised the affirmative defense that Edwards failed to mitigate damages.

The case proceeded to trial. Edwards objected to the jury instructions on comparative fault/failure to mitigate. The district court overruled the objections. The jury answered in the negative to the first question on the verdict form, “Was Norman Smith, D.O., at fault?” Following the directions on the verdict form, the jury did not answer any other questions. The court then dismissed the action.

Edwards filed a motion for new trial, raising several issues. The district court denied the motion, stating “[t]he jury rendered a true and fair verdict based upon substantial evidence. Both parties received a fair trial from an attentive jury who listened carefully to all the testimony.” Edwards appeals the decision of the district court, claiming he is entitled to a new trial because the district court improperly instructed the jury on comparative fault.

II. Standard of Review

The scope of our review of a district court’s ruling on a motion for new trial depends upon the grounds raised in the motion. *Olson v. Sumpter*, 728 N.W.2d 844, 848 (Iowa 2007). We review a claim that the district court gave a jury

instruction that was not supported by the evidence for the corrections of errors of law. *Rowling v. Sims*, 732 N.W.2d 882, 885 (Iowa 2007).

III. Merits

Generally, the district court's error in giving or refusing to give a particular instruction does not warrant reversal unless the error is prejudicial. *Sonnek v. Warren*, 522 N.W.2d 45, 47 (Iowa 1994). If the court's instruction on comparative fault had no effect on the verdict, any error in giving the instruction was not prejudicial. See *DeMoss v. Hamilton*, 644 N.W.2d 302, 307 (Iowa 2002); *Spahr v. Kriegel*, 617 N.W.2d 914, 917 (Iowa 2000).

A similar situation to that in the present case was discussed in *Ladeburg v. Ray*, 508 N.W.2d 694, 696 (Iowa 1993), as follows:

Likewise, in the present case, plaintiff could not have been prejudiced by the instructions on her comparative fault. This case was submitted to the jury on special interrogatories. The jury found that defendants were not at fault in response to the first question on the verdict form. Consequently, the jury did not answer the interrogatories concerning plaintiff's fault. Therefore, because there could be no prejudice to plaintiff, we need not address her objection to the submission of instructions on her comparative fault.

Edwards claims his case is distinguishable because the definition of comparative fault came before the marshalling instruction on the negligence of Dr. Smith. We are not persuaded by this argument.

We conclude Edwards was not prejudiced by the jury instructions on comparative fault. We affirm the decision of the district court.

AFFIRMED.