

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001801-MR

DORIS STEWART;
BILL STEWART

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 99-CI-003191

GALEN OF KENTUCKY,
D/B/A COLUMBIA SUBURBAN HOSPITAL

APPELLEE

OPINION
REVERSING AND REMANDING
* * * * *

BEFORE: COMBS, McANULTY, AND MILLER¹, JUDGES.

MILLER, JUDGE: Doris Stewart brings this appeal from summary judgment entered by the Jefferson Circuit Court August 9, 2001. We reverse and remand.

On June 11, 1998, Stewart was admitted to Suburban Hospital, appellee herein. She was identified as a Afall risk@ and Afall safety protocol@ was initiated. It appears the protocol consisted of raising four bed rails on her hospital bed, and having a Acall light@ within Stewart's reach. On June 12,

¹This opinion was prepared and concurred in prior to Judge Miller's retirement effective January 1, 2003.

1998, Stewart was found by nursing personnel on the floor uninjured. Per her physician's orders, Stewart was allowed out of bed only with assistance, and a bed check alarm was placed in her bed. A bed check alarm consists of a strap placed under the patient that sounds an alarm in the room and at the nurses' station if the patient attempts to get out of bed.

Early in the morning of June 15, 1998, Stewart was again found on the floor. It appears she left her bed, urinated and defecated on the floor, then slipped in the waste, and fell. She suffered serious injury to her wrist. It is undisputed that the bed check alarm was partially unplugged and failed to sound in the nurses' station. Stewart filed the instant action June 1, 1999. She did not identify expert witnesses. On August 9, 2001, the Jefferson Circuit Court granted summary judgment in favor of Suburban Hospital, finding that absent expert testimony Stewart could not prove negligence. This appeal follows.

Stewart maintains the circuit court erred in granting summary judgment in favor of Suburban Hospital. Specifically, she argues expert medical testimony is not required to prove negligence. Summary judgment is proper where there exists no material issue of fact, and the movant is entitled to judgment as a matter of law. Ky. R. Civ. P. 56; Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991). The record must be viewed in a light most favorable to the party opposing the motion for summary judgment. Id. at 480.

In the case *sub judice*, the circuit court reasoned that the bed check alarm did not itself prevent a fall. The court thus concluded the issue was whether the *Afall safety protocol*[@] was adequate, and that resolution thereof would require expert medical testimony. As Stewart failed to provide expert testimony upon this issue, the circuit court entered summary judgment.² We must disagree.

Legal causation may be established by circumstantial evidence, and reasonable inferences drawn therefrom are permissible. Huffman v. SS. Mary & Elizabeth Hospital, Ky., 475 S.W.2d 631 (1972). Inferences to be drawn from proven basic facts are questions of fact. Elkhorn Coal Company v. Adams, Ky., 313 S.W.2d 421 (1958). There is expert testimony in the record indicating the purpose of the bed check alarm was to alert a nurse to a patient leaving the bed so the nurse could respond and prevent a fall. It is undisputed that the bed check alarm was not properly plugged at the time Stewart fell. Viewing the record most favorably to Stewart, we believe a juror could reasonably infer that had the bed check alarm functioned properly, Stewart's fall could have been prevented.

In sum, we are of the opinion that there exists a material issue of fact concerning the failure of the bed check alarm and Stewart's subsequent fall were the result of Suburban Hospital's negligence. Thus, we believe summary judgment was improperly entered in favor of Suburban Hospital.

²Of course, a medical negligence case may be established in some circumstances without expert medical testimony. See Perkins v. Hausladen, Ky., 828 S.W.2d 652 (1992).

For the foregoing reasons, the judgment of the Jefferson Circuit Court is reversed and the cause remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Jeffrey T. Sampson
Louisville, Kentucky

BRIEF FOR APPELLEE:

B. Todd Thompson
Julie A. Johnson
Louisville, Kentucky