

SUPREME COURT OF ILLINOIS

Johnson v. Armstrong

2022 IL 127942 (Ill. 2022) · No. Nos. 127942, 127944 cons. · Decided June 24, 2022

SUMMARY

The Illinois Supreme Court addresses the applicability of res ipsa loquitur in a medical negligence action involving femoral nerve damage following hip replacement surgery. The court holds that the Rule 304(a) appeal concerning the surgeon was not properly before the appellate court because res ipsa loquitur is an evidentiary doctrine rather than a separate claim. The court exercises supervisory authority to review the summary judgment involving a surgical technician and analyzes the probability and control elements of res ipsa loquitur.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Garman; Chief Justice Anne M. Burke; Justice Theis; Justice Neville; Justice Michael J. Burke; Justice Overstreet; Justice Carter
JURISDICTION	Illinois
DECIDED	June 24, 2022
DOCKET	Nos. 127942, 127944 cons.
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed under Illinois Supreme Court Rule 304(a) from summary judgments dismissing res ipsa loquitur claims against a surgeon and surgical technician and related vicarious-liability claims. The Supreme Court accepted and consolidated the defendants' Rule 315 appeals after the appellate court reversed the circuit court.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Whether res ipsa loquitur applies is initially a question of law for the trial court. Appellate jurisdiction under Rule 304(a) was reviewed independently, and the Supreme Court invoked supervisory authority to review the Harden judgment as of the date it was orally pronounced.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Lucas Armstrong, Sarah Harden, Advocate Health and Hospitals Corporation, doing business as Advocate BroMenn Medical Center v. William “Wes” Johnson

TOPICS

medical malpractice

summary judgment

evidence

appellate jurisdiction

interlocutory appeal

PRACTICE AREAS

medical malpractice

civil procedure

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether a Rule 304(a) appeal may be taken from summary judgment on a res ipsa loquitur count against a defendant when a specific-negligence count against the same defendant remains pending.
2. Whether Johnson presented sufficient evidence of the probability and control elements of res ipsa loquitur to withstand summary judgment against Harden.
3. Whether a plaintiff pursuing res ipsa loquitur in a medical professional negligence case must present additional expert testimony establishing the individual standard of care for a surgical technician.
4. Whether the Supreme Court should exercise supervisory authority to review Harden's summary judgment as of the date it was orally pronounced because of the timing mismatch between the written judgments.

HOLDINGS

1. No. Res ipsa loquitur is an evidentiary doctrine and not a separate claim or theory of recovery; therefore, summary judgment on the res ipsa loquitur count disposed of only an issue relating to the surviving negligence claim and was not a final judgment appealable under Rule 304(a).
2. Yes. Johnson presented sufficient evidence that the severe and permanent femoral nerve injury ordinarily does not occur absent negligence and that the injury-causing instrumentalities were under the control of Armstrong and Harden. The control element is flexible and did not require Johnson to identify the precise instrumentality or individual actor responsible.
3. No. Once Johnson established both res ipsa loquitur elements under these circumstances, no additional expert testimony concerning Harden's individual standard of care was necessary.

KEY QUOTATIONS

“When a thing which caused the injury is shown to be under the control or management of the party charged with negligence and the occurrence is such as in the ordinary course of things would not have happened if the person so charged had used proper care, the accident itself affords reasonable evidence, in the absence of an explanation by the party charged, that it arose from want of proper care.” (¶ 33)

“For res ipsa loquitur to apply, the plaintiff must plead and prove that he was injured (1) in an occurrence that ordinarily does not happen in the absence of negligence (the probability element) (2) by an agency or instrumentality within the defendant’s exclusive control (the control element).” (¶ 35)

“Res ipsa loquitur (“the thing speaks for itself”), on the other hand, is not an alternate theory of liability in Illinois—the theory of liability remains “negligence” in the first sense of the word—rather, it is a species of

circumstantial evidence that allows the trier of fact to draw an inference of “negligence” in the second sense of the word.” (¶ 55)

“Consequently, no additional testimony related to Harden’s standard of care was necessary here.” (¶ 58)

FACTUAL BACKGROUND

Johnson suffered severe and permanent femoral nerve damage after a total left hip arthroplasty performed by Dr. Armstrong with surgical technicians Harden and Rolf assisting. Electromyography showed severe left femoral neuropathy, and Johnson's expert testified that the type of complete nerve injury suffered ordinarily does not occur absent negligence, although the precise cause was uncertain. Armstrong was authorized to place and move instruments, while Harden held instruments such as the retractor when directed and could have handled other instruments during the procedure. Johnson voluntarily dismissed Rolf and proceeded against Armstrong and Harden under *res ipsa loquitur*.

PROCEDURAL HISTORY

Johnson sued Dr. Lucas Armstrong, surgical technicians Sarah Harden and Pamela Rolf, and their alleged employers for professional medical negligence arising from femoral nerve damage following hip-replacement surgery. The circuit court granted summary judgment to Harden and Advocate BroMenn and later granted summary judgment to Armstrong on the *res ipsa loquitur* count, entering Rule 304(a) findings. The appellate court reversed, holding that *res ipsa loquitur* applied and that no additional expert testimony concerning Harden's standard of care was required. The Illinois Supreme Court dismissed the appeal from Armstrong's order for lack of Rule 304(a) jurisdiction, vacated the portions of the appellate opinion addressing that order, exercised supervisory authority to review the Harden judgment as of its oral pronouncement, affirmed the appellate court in reversing the Harden judgment, reversed the circuit court judgment, and remanded with directions concerning Armstrong's order.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The appeal from Armstrong's December 22, 2020, order is dismissed for lack of Rule 304(a) jurisdiction, and the portions of the appellate opinion addressing that order are vacated. The circuit court judgment granting summary judgment to Harden and Advocate BroMenn is reversed, and the case is remanded. The circuit court is directed to reconsider the December 22, 2020, order granting summary judgment to Armstrong in light of the opinion.

CASES CITED

- Vasquez Gonzalez v. Union Health Service, Inc., Vasquez Gonzalez v. Union Health Service, Inc., 2018 IL 123025, ¶¶ 8, 16
- Clemons v. Mechanical Devices Co., 202 Ill. 2d 344, 349 (2002)
- Armstead v. National Freight, Inc., 2021 IL 126730, ¶¶ 20, 24-25

- Blumenthal v. Brewer, 2016 IL 118781, ¶¶ 22, 24-25
- In re Marriage of Leopando, 96 Ill. 2d 114, 119-20 (1983)
- Heastie v. Roberts, 226 Ill. 2d 515, 531-42 (2007)
- Imig v. Beck, 115 Ill. 2d 18, 25-28 (1986)
- Russell v. Good Shepherd Hospital, 222 Ill. App. 3d 140, 144-45 (1991)
- Prado, 72 Ill. App. 3d 622, 625 (1979)
- Drewick v. Interstate Terminals, Inc., 42 Ill. 2d 345, 348 (1969)
- City of Urbana v. Andrew N.B., 211 Ill. 2d 456, 470 (2004)
- People v. Heddins, 66 Ill. 2d 404, 406-07 (1977)
- Williams v. BNSF Ry. Co., 2015 IL 117444, ¶ 37
- Metz v. Central Illinois Electric & Gas Co., 32 Ill. 2d 446, 448-49 (1965)
- Gatlin v. Ruder, 137 Ill. 2d 284, 296-99 (1990)
- Spidle v. Steward, 79 Ill. 2d 1, 7-9 (1980)
- Kolakowski v. Voris, 83 Ill. 2d 388, 396-97 (1980)
- Napoli v. Hinsdale Hospital, 213 Ill. App. 3d 382, 388 (1991)
- Collins v. Superior Air-Ground Ambulance Service, Inc., 338 Ill. App. 3d 812, 822-23 (2003)
- Smith v. Eli Lilly & Co., 137 Ill. 2d 222, 257 (1990)
- Taylor v. City of Beardstown, 142 Ill. App. 3d 584 (1986)
- Sullivan v. Edward Hospital, 209 Ill. 2d 100, 112 (2004)
- Jones v. Chicago HMO Ltd. of Illinois, 191 Ill. 2d 278, 294-95 (2000)
- Cunis v. Brennan, 56 Ill. 2d 372, 374, 376 (1974)
- Advincula v. United Blood Services, 176 Ill. 2d 1, 23 (1996)
- Purtill v. Hess, 111 Ill. 2d 229, 241-42 (1986)
- Walski v. Tiesenga, 72 Ill. 2d 249, 255-56 (1978)
- Jahn v. Troy Fire Protection District, 163 Ill. 2d 275, 280 (1994)
- Edgar County Bank & Trust Co. v. Paris Hospital, Inc., 57 Ill. 2d 298, 304 (1974)
- Gilbert v. Sycamore Municipal Hospital, 156 Ill. 2d 511 (1993)