

NEBRASKA SUPREME COURT

Ewers v. Saunders County

298 Neb. 944 (2018) · No. No. S-17-251 · Decided February 9, 2018

SUMMARY

The Nebraska Supreme Court affirmed the district court’s denial of discovery-related motions and grant of summary judgment in a wrongful death medical malpractice action arising from an inmate’s death from a pulmonary embolism. The court held that the plaintiff did not establish the foundational requirements for deeming requests for admission admitted and that the expert evidence failed to establish proximate causation between the alleged breach of the standard of care and the death.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Kelch, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	February 9, 2018
DOCKET	No. S-17-251
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from orders of the Saunders County District Court denying discovery-related motions and granting appellees' motion for summary judgment in a wrongful death medical malpractice action.
STANDARD OF REVIEW	Discovery rulings are reviewed for abuse of discretion, and the party asserting error bears the burden of showing an abuse of discretion. Summary judgment is reviewed by viewing the evidence in the light most favorable to the nonmoving party and giving that party the benefit of all reasonable inferences.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	T. Louise Ewers, personally and as Personal Representative of the Estate of Mickley (Michael) Lynn Ellis v. Saunders County, Nebraska, Advanced Correctional Health Care, Inc., Mallory Reeves, Mary Scherling, other appellees

TOPICS

discovery dispute

summary judgment

medical malpractice

proximate cause

expert testimony

PRACTICE AREAS

civil procedure

medical malpractice

wrongful death

professional negligence

evidence

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by declining to deem Ewers' requests for admission admitted and by declining to impose discovery sanctions or dismiss appellees' answers.
2. Whether summary judgment was proper because Ewers lacked expert testimony establishing that appellees' alleged breach of the medical standard of care proximately caused Ellis' fatal pulmonary embolism or related injuries.
3. Whether evidence of Ellis' pain and suffering established that Reeves' conduct was a proximate cause of those damages.

HOLDINGS

1. A party seeking to enforce admissions allegedly resulting from an opponent's failure to respond must establish service of the requests, the failure to answer or object, and must offer the requests as evidence. Because Ewers failed to provide the necessary foundation and did not comply with the district court's ordered format for presenting discovery disputes, the district court did not abuse its discretion in declining to deem the requests admitted.
2. The district court did not abuse its discretion by declining to impose discovery sanctions or dismiss appellees' answers.
3. Summary judgment for appellees was proper because Ewers presented no expert testimony establishing that any breach of the standard of care by Reeves or Scherling proximately caused or contributed to Ellis' fatal pulmonary embolism.
4. Evidence describing Ellis' pain and suffering did not establish that Reeves' conduct proximately caused those injuries.

KEY QUOTATIONS

“Thus, a party that seeks to claim another party’s admission, as a result of that party’s failure to respond properly to a request for admission, must prove service of the request for admission and the served party’s failure to answer or object to the request and must also offer the request for admission as evidence.” (955)

“In the absence of expert testimony on causation, the finder of fact would be left to resort to guess, speculation, or conjecture as to the issue.” (959)

“Evidence of the pain Ellis suffered on June 25 would apply to damages, not causation.” (960)

FACTUAL BACKGROUND

Mickley (Michael) Lynn Ellis was incarcerated in the Saunders County jail when he reported nightmares, chest pain, and difficulty breathing on June 22, 2010. A nurse did not conduct an in-person assessment, and Ellis made no further complaints until June 25, when he reported breathing difficulty, back pain, and chest pain; he was then taken to a hospital. Ellis was treated for a heart attack but died from a bilateral pulmonary embolism. Ewers' experts identified a possible breach of the standard of care but did not causally connect the June 22 conduct to the fatal embolism.

PROCEDURAL HISTORY

Ewers sued Advanced Correctional Health Care, Inc., and its agents, alleging that negligence in treating Ellis while he was incarcerated caused his death and related injuries. The district court denied Ewers' motions to compel discovery, deem requests for admission admitted, dismiss appellees' answers, and impose sanctions. The court then granted summary judgment for appellees, finding no expert evidence establishing proximate causation, and later denied Ewers' renewed discovery motion and awarded \$500 in attorney fees. Ewers appealed, and the Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- *Moreno v. City of Gering*, 293 Neb. 320, 878 N.W.2d 529 (2016)
- *White v. Busboom*, 297 Neb. 717, 901 N.W.2d 294 (2017)
- *Tymar v. Two Men and a Truck*, 282 Neb. 692, 805 N.W.2d 648 (2011)
- *Barnes v. American Standard Ins. Co. of Wis.*, 297 Neb. 331, 900 N.W.2d 22 (2017)
- *Cohan v. Medical Imaging Consultants*, 297 Neb. 111, 900 N.W.2d 732 (2017)
- *Hamilton v. Bares*, 267 Neb. 816, 678 N.W.2d 74 (2004)
- *Radiology Servs. v. Hall*, 279 Neb. 553, 780 N.W.2d 17 (2010)
- *Worth v. Kolbeck*, 273 Neb. 163, 728 N.W.2d 282 (2007)
- *Richardson v. Children's Hosp.*, 280 Neb. 396, 787 N.W.2d 235 (2010)
- *Thone v. Regional West Med. Ctr.*, 275 Neb. 238, 745 N.W.2d 898 (2008)
- *Snyder v. Contemporary Obstetrics & Gyn.*, 258 Neb. 643, 605 N.W.2d 782 (2000)
- *Paulsen v. State*, 249 Neb. 112, 541 N.W.2d 636 (1996)

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