

SUPREME COURT OF NEBRASKA

Evans v. Freedom Healthcare, LLC

311 Neb. 336 (2022) · No. No. S-21-494 · Decided April 8, 2022

SUMMARY

The Nebraska Supreme Court reviewed a medical malpractice action arising from a polymicrobial knee infection following platelet-rich plasma injections. The court held that the plaintiff’s expert testimony was sufficient to create a genuine issue of material fact and that res ipsa loquitur could be considered at the summary judgment stage despite the pleading of specific negligence theories. The court reversed the grant of summary judgment for Freedom Healthcare and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	April 8, 2022
DOCKET	No. S-21-494
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Evans appealed the Lancaster County District Court's grant of summary judgment to Freedom Healthcare in a medical malpractice action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The appellate court determines whether the pleadings and admitted evidence show no genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law, viewing the evidence and reasonable inferences in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published precedential opinion of the Nebraska Supreme Court
PARTIES	Warren Evans v. Freedom Healthcare, LLC

TOPICS

- medical malpractice
- negligence
- summary judgment
- expert testimony
- standard of review

PRACTICE AREAS

medical malpractice

professional negligence

civil procedure

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether the district court erred by concluding that Evans could not invoke *res ipsa loquitur* because he also pleaded specific negligence theories.
2. Whether Evans presented sufficient expert testimony to create a genuine issue of material fact regarding breach of the medical standard of care.
3. Whether the evidence was sufficient at the summary judgment stage to permit an inference of negligence under *res ipsa loquitur*.

HOLDINGS

1. A plaintiff may plead both specific acts of negligence and *res ipsa loquitur* under Nebraska's notice-pleading system. *Res ipsa loquitur* is a rule of evidence and is not barred at the pleading stage merely because specific negligence allegations are also pleaded.
2. Evans's expert testimony was sufficient to create a genuine issue of material fact concerning whether Freedom Healthcare breached the applicable standard of care. The district court improperly disregarded the testimony as inconsistent and granted summary judgment.
3. The evidence was sufficient to create an inference of negligence under *res ipsa loquitur* and a material factual question for the fact finder. Summary judgment was therefore improper.
4. Summary judgment was improper because the record presented genuine issues of material fact concerning breach of the standard of care and the applicability of *res ipsa loquitur*.

KEY QUOTATIONS

“Res ipsa loquitur is a procedural tool that, if applicable, allows an inference of a defendant’s negligence to be submitted to the fact finder, where it may be accepted or rejected.” (at 342)

*“To the extent our cases could be understood to prohibit pleading both specific acts of negligence and *res ipsa loquitur* after the adoption of notice pleading, they are disapproved.”* (at 343)

*“The court should not weigh the evidence to determine whether *res ipsa loquitur* applies.”* (at 348)

FACTUAL BACKGROUND

Freedom Healthcare administered platelet-rich-plasma injections to Warren Evans's knees, with a physician assistant performing the procedure. Within a day, Evans developed severe pain and was hospitalized with a polymicrobial septic infection in his right knee, requiring prolonged hospitalization and multiple surgeries. Evans's expert opined that the infection could not have occurred absent a significant breach of sterile technique, while Freedom Healthcare's expert testified that infection was a rare but recognized risk of joint injections.

PROCEDURAL HISTORY

Evans sued Freedom Healthcare for negligence after developing a polymicrobial infection in his right knee following platelet-rich-plasma injections. The district court granted Freedom Healthcare summary judgment, concluding that Evans lacked competent expert testimony establishing breach of the standard of care and that *res ipsa loquitur* did not apply. The Nebraska Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the district court for further proceedings consistent with the opinion.

CASES CITED

- Rodriguez v. Lasting Hope Recovery Ctr., 308 Neb. 538, 955 N.W.2d 707 (2021)
- Lombardi v. Sedlacek, 299 Neb. 400, 908 N.W.2d 630 (2018)
- Anderson v. Union Pacific RR. Co., 295 Neb. 785, 890 N.W.2d 791 (2017)
- Ramsouer v. Midland Valley R. Co., 135 F.2d 101 (8th Cir. 1943)
- Bargmann v. Soll Oil Co., 253 Neb. 1018, 574 N.W.2d 478 (1998)
- Finley v. Brickman, 186 Neb. 747, 186 N.W.2d 111 (1971)
- Tryon v. City of North Platte, 295 Neb. 706, 890 N.W.2d 784 (2017)
- Hemsley v. Langdon, 299 Neb. 464, 909 N.W.2d 59 (2018)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993)
- Schafersman v. Agland Coop, 262 Neb. 215, 631 N.W.2d 862 (2001)
- Keys v. Guthmann, 267 Neb. 649, 676 N.W.2d 354 (2004)
- Roberts v. Weber & Sons, Co., 248 Neb. 243, 533 N.W.2d 664 (1995)
- Long v. Hacker, 246 Neb. 547, 520 N.W.2d 195 (1994)
- McLaughlin Freight Lines v. Gentrup, 281 Neb. 725, 798 N.W.2d 386 (2011)

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