Ohio Supreme Court Limits Application of Res ipsa in Medical Malpractice

Res ipsa loquitur is a Latin term, which literally translated means “the thing speaks for itself.” It is an evidentiary rule that permits, but does not require, a jury to draw an inference of negligent conduct from circumstantial evidence.

To successfully utilize the doctrine, a plaintiff at trial must establish two elements: (1) that the instrumentality causing the injury was, at the time of the injury, under the exclusive management or control of the party being sued; and (2) that the injury occurred under circumstances that, in the normal course of events, would not have occurred if ordinary care was observed.

Recently, the Ohio Supreme Court reviewed the case of Estate of Lurene Hall v. Akron General Medical Center. Lurene Hall had high blood pressure and chronic kidney disease. She required dialysis. Treatments were administered through a dialysis catheter into her jugular vein.

In the fall of 2003, Defendant Dr. Patterson, an interventional radiologist, was engaged to insert a new catheter into the other side of the patient’s neck, as the original site was possibly infected.

Testimony in the trial revealed the complicated, technical manner in which wires are inserted into the jugular vein, toward the superior vena cava. This is a very large vein which receives blood from the head, neck, arms, and thorax and delivers it to the heart.

In the course of inserting this new catheter, the patient experienced pain and lost consciousness. She died, and an autopsy revealed a laceration in the superior vena cava, causing blood to enter the sac around the heart, causing cardiac arrest and death.

Ms. Hall's estate filed suit against the hospital and Dr. Patterson, alleging negligence in the placement of the catheter, causing the laceration.

At trial, plaintiff presented expert witnesses who had specific opinions about what Dr. Patterson had allegedly done wrong. The defense also presented expert witnesses, offering testimony in support of Dr. Patterson. The medical experts who testified on behalf of Dr. Patterson made it clear that the perforation of a blood vessel is a known risk of the procedure, and can occur in the absence of any negligence.

After the jury returned a verdict in favor of the defense, the Court of Appeals reversed. The Court felt that the trial judge was wrong in refusing the plaintiff's request for an instruction on the doctrine of res ipsa loquitur.

The Ohio Supreme Court reviewed the history behind this doctrine, noting that it developed in England in the mid 1800’s. The first time the doctrine was used in Ohio was over 100 years ago, when a patron was injured getting on a trolley car, when a trolley pole struck the patient in the head. The Ohio court applied the doctrine, noting that a trolley pole does not usually break and hit a passerby, unless there is some negligence in the construction or management of it.

In the Estate of Hall, the Court noted that expert witnesses had been called by both sides to testify regarding specific allegations of negligence. The court noted a plaintiff's injury cannot be deemed to “speak for itself” when complex technical testimony is required to explain the result, and where evidence produced conflicting opinions as to the probable cause of the injury.
The Court concluded by citing language from an Ohio case of the late 1800’s, where a physician was sued for alleged negligence, as follows: “If the maxim ‘res ipsa loquitur’ were applicable to a case like this, and a failure to cure were held to be evidence, however slight, of negligence on the part of the physician causing the bad result, few would be courageous enough to practice the healing art, for they would have to assume financial liability for nearly all of the ‘ills that flesh is heir to’.”

The effect of this ruling will be that in future trials, defense counsel will be insistent in a case involving complicated medical procedures, that plaintiff’s attorney must prove a specific deviation from the standard of care, and not simply point to a bad outcome, in an attempt to obtain a finding of negligence under the res ipsa doctrine.

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