



Diminishing the Requirement for Causation Experts

By Tammera Banasek on November 21, 2023
Posted in Medical & Dental Malpractice

The Takeaway

The recent First District Appellate Court decision in *Thompson v. Laspisa* 2203 App (1st) 211448 clarifies and in part overrides prior case law regarding the need for expert proximate cause testimony for some elements of a Plaintiff's damage claim. This continues to dilute the necessity for expert witnesses in professional negligence cases.

Summary of Courts' Decisions

Plaintiff, Nicole Thompson, appealed summary judgment in favor of the Defendant, oral surgeon Dr. Joseph Laspisa, on her dental negligence claims. The Circuit Court granted summary judgment on the basis that Plaintiff did not offer expert testimony on proximate cause. The Appellate Court reversed in part, holding that some elements of damages require expert testimony on proximate cause, while others do not.

Case Background

Plaintiff was referred from her general dentist to Defendant for extractions of several teeth. After the procedure, she was given standard medications (including antibiotics, pain medication, and an oral rinse). She developed pain and swelling the following day and called Defendant's office. She spoke with Defendant's office manager, relaying her symptoms. There was a factual disparity between Plaintiff's testimony and that of Defendant's staff as to whether Plaintiff complained of breathing problems at that time. Those symptoms would have prompted a recommendation for emergency room treatment, unlike swelling, pain, and bruising, which are typical post extraction complaints that typically resolve with time and medication.

The office manager testified that she called the Defendant and relayed to him the information Plaintiff had provided to her (which was contained in a contemporaneous written note). Defendant testified he did not speak with his staff that day and was unaware of Plaintiff's complaints.

Plaintiff's condition worsened the next day, including "unbearable pain." She again called the Defendant's office and left a voicemail, with no return call. She then went to the emergency room.

Plaintiff was initially seen by a nurse, who felt she had an abscess and discharged her without treatment. Plaintiff then went to see her general dentist that same day, who diagnosed a postoperative infection and told her to return to the emergency room for IV antibiotic treatment. Ultimately, she was diagnosed with facial cellulitis and was hospitalized for several days. She recovered over time.

Plaintiff filed suit. Neither how the procedure itself was performed nor the informed consent was at issue. Rather, Plaintiff claimed Defendant failed to respond to her call or provide follow-up, thus negligently abandoning her.

Defendant argued that Plaintiff could not establish a refusal of treatment or meet her burden of proximate cause of an injury as he would have given the same advice as was given by his office manager. The Circuit Court found that Plaintiff did not provide *any* proximate cause expert testimony (emphasis added). The Court held that pursuant to established cases, “a party cannot maintain medical negligence action without expert testimony on proximate cause.” (citing *Snelson*, 2003; *Wiedenbeck*, 2008; *Ayala*, 2006 and *Ruffin*, 2006).

Analysis of Appellate Decision

It was undisputed that Plaintiff did not present an expert to support the fact that any delay in treatment proximately caused damages. In reviewing the case de novo, the Appellate Court went to great lengths to provide a history about the need for expert testimony. The Court stated very clearly that it was incorrect, as a bright line rule, that expert testimony is necessary to prove the elements of a medical malpractice action. The Court stated that it is “usually” required because in a typical case, that proof requires specialized medical knowledge beyond the understanding of an ordinary juror (court citing to the recent decision in *Johnson v. Armstrong*, 2022 IL 127942, expert testimony not required in a res ipsa case). However, the Court clarified that while the Supreme Court has established that as a general rule, expert testimony is necessary in professional negligence cases, there are very simple cases where the proof of standard of care proximate cause is *not* required as no specialized knowledge is necessary (e. g., when a surgeon leaves sponges or medical instruments inside a patient’s body).

Regarding the element of proximate cause, the Appellate Court found that some conditions are obvious to a juror that can result from the breach of the standard of care, including, as at issue here, pain and suffering. The Court explained that while negligent tooth removal that resulted in an infection might need an expert to determine the damage caused, no expert was needed to explain that the condition might hurt. Plaintiff’s testimony of the pain’s severity and duration would be sufficient.

The Appellate Court did not criticize the Circuit Court for relying on past law that had stated the hard-and-fast rule that expert testimony was required. It did, however, clarify that those decisions had overstated the requirement of expert testimony and therefore should not be followed for that reason.

The Appellate Court found that expert testimony is not automatically required to prove the element of medical negligence. Instead, it found that expert testimony is only required when specialized knowledge beyond the ken of the average juror is necessary.

In the immediate case, the Court found that Plaintiff's pain and suffering from her oral and facial infections did not require expert testimony. Thus, the Appellate Court reversed the summary judgment finding—but only in that regard. Whether or not Plaintiff would have had a more significant infection despite the delay did require expert testimony, and summary judgment in that regard was affirmed.

Conclusion

Following the *Johnson* decision and adding the appellate decision in *Thompson*, it certainly appears as if Plaintiffs may have an easier and less expensive burden in prosecuting their cases without expert testimony. The Court was clear that the necessity for expert testimony must be individualized, and in this case, the element of pain and suffering was common to all. Considering that pain and suffering is an element in nearly every medical or dental negligence case, this court's "clarification" regarding the necessity for expert witness testimony will provide plaintiffs greater latitude to pursue often complex cases without the need for expert testimony on causation for some damage claims.

Tags: Causation Experts, Expert Witnesses, Illinois Appellate Court