

FILED
SUPREME COURT
STATE OF WASHINGTON
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corrected petition for review

Supreme Court No. 1030860

No. 85539-5-I

SUPREME COURT
OF THE STATE OF WASHINGTON

LAFFON GLYMPH

Appellant,

v.

OMR R.A. SERVICES LLC,

OVERLAKE HOSPITAL MEDICAL CENTER,

Respondent,

PETITION FOR REVIEW

Laffon Glymph
Appellant Pro Se
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I. INTRODUCTION

BACKGROUND FACTS

Appellant Laffon Glymph was rushed to Overlake Hospital by paramedics on October 15th, 2018, for a medical emergency, Narrative by paramedic's states: Exhibit 1

Plaintiff was given a Schedule IV narcotic overdose. On October 15th, 2018, while being treated at Overlake ER I was awoken by 5 Bellevue police officers and 2 security guards who entered the medical room which I was being treated in. The officer who woke me up stated I have a warrant for my arrest, and I've been trespassed from the hospital property. I stated to the officers, you have the wrong person and I've done nothing wrong as I was handcuffed and escorted out of the building and later identified and driven to a nearby gas station to find my way home.

Material Facts

1. Transported to OVERLAKE HOSPITAL MEDICAL CENTER by EMT 10/15/2018 arrived at ER 20:25 Alert in sound mind.

Exhibit 1

2. Given Lorazepam 2mg at (Ativan) 10/15/2018 at 22:06 and another dose at 22:34 chart notes

3. Hospital Security called 911 at 00:56 Exhibit 2

4. Plaintiff filed a complaint with OVERLAKE HOSPITAL MEDICAL CENTER a few days after discharged, “Defendant” responded with acknowledgment of complaint on 10/23/2018 Exhibit 3

5. Defendant provided correspondence on 11/15/2018 stating; Dr. Gregory Bennett ordered Ativan for you to help with your neck pain. That was why you were sleepy. Ativan can cause amnesia. This may be why you are not able to recall what occurred during your visit. It may also disinhibit you so you would perhaps say or do things you normally wouldn't do. Exhibit 4

6. On 1/2/2019 another correspondence with the Defendant stating: You and I talked about the effects of Ativan which you received. It can make you sleepy and can cause amnesia. Exhibit 5

7. On 10/17/2018 followed up with my Doctor Steven Hall who was overseeing my care. Chart notes Exhibit 6

On April 28th 2023 Overlake moved for summary judgement, Judge Messitt granted Overlake Hospital summary judgement on 5/26/2023. In error

A. IDENTITY OF PETITIONER

Pursuant to WA RAP 13.4(b) (3) & (4),

Petitioner Laffon Glymph, hereby respectfully

requests review of a decision of the

Washington State Court of Appeals, Division 1.

B. COURT OF APPEALS DECISION TO BE REVIEWED

Petitioner seeks review of pages 1-8 of the Court of Appeals

decision in Laffon Glymph v. OMR R.A. Services LLC, Overlake

Hospital Medical Center,, No. 85539-5-I,

filed on April 15, 2024 (hereinafter "Decision"). A copy of the

Decision is attached hereto as Appendix A.

If Decision is Granted, a reverse and remand

C. ISSUES PRESENTED FOR REVIEW

1. Did the trial court err in granting summary judgment?

Assignment of Error: The plaintiff contends that the trial court incorrectly ruled in favor of the defendant by granting summary judgment. When there were genuine issues of material fact that should have been considered before rendering a final decision.

2. Did the appeals court err in dismissing the medical negligence claim?

Assignment of Error: The plaintiff contends that the appeals court made an error by not allowing the medical negligence claim to proceed. The court misapplied the law, overlooked crucial evidence related to the healthcare provider's actions.

3. Did the appeals court err in dismissing the Res Ipsa Loquitur claim?

Assignment of Error: The appeals court wrongly dismissed the Res Ipsa Loquitur claim. Res Ipsa Loquitur means "the thing speaks for itself." The Appellant contends that the circumstances surrounding the injury (e.g., the overdose of medication, false arrest, trespass and Overlake Hospital correspondence acknowledgment of the narcotic they ordered and what it causes. The 30 minute window of each dose imply negligence without direct evidence, it causes amnesia (memory loss) and disinhibit behavior and the court should have allowed this doctrine to apply.

4. Did the appeals court err in dismissing the Informed Consent claim?

Assignment of Error: The Appellant contends that the appeals court made a mistake by dismissing the Informed Consent claim. The defendant failed to adequately inform the patient about the risks and alternative option

5. What is an erroneous summary judgment?

6. Did the trial court correctly determine that Glymph failed to establish material facts sufficient to survive summary judgment?

II. Assignments of Error

1. The trial court erred in granting defendant Overlake Hospital summary judgment entered on May 26, 2023
2. The appeals court erred on dismissing medical negligence claim
3. The appeals court erred on dismissing Res Ipsa Loquitur claim.
4. The appeals court erred on dismissing Informed Consent claim.
5. Appeals court De Novo review.

III. Statement of the Case:

A. Procedural History:

1. On October 12, 2022, Glymph filed a handwritten Complaint with the trial court for “medical malpractice” and “medical negligence: negligent discharge.”

CP 1–7

2. March 3, 2023 responded to Defendants Answers and Affirmative Defenses. CP 8-33

3. April 21, 2023 Plaintiff opposed summary judgement CP 34-41

4. May 26, 2023 Summary Judgement granted to Defendant Overlake Hospital.

5. June 21, 2023 Filed Appeal with the Court of Appeals

B. Background

On the evening of October 15, 2018 I was taken to Overlake ER for a medical emergency by the paramedics for preexisting medical condition. I was not taken to Overlake Hospital Emergency room to be overdosed, obtain memory loss, handcuffed, falsely arrested, trespassed, and driven to a nearby gas station to find my way home.

C.

Legal Issues

1. Summary Judgement

Under Rule 56, in order to succeed in a motion for summary judgment, a movant must show 1) that there is no genuine dispute as to any material fact, and 2) that the movant is entitled to judgment as a matter of law. "Material fact" refers to any facts that could allow a fact-finder to decide against the movant. Summary **Judgment Error**: On April 28th, 2023, Overlake moved for summary judgment, which Judge Messitt granted on May 26th, 2023. However, this decision appears to be in error. A genuine issue of material facts precludes summary judgment. (Defendant failed to show absence of material fact).

Nicholson v. Deal, 52 Wn. App. 814, 820-21, 764 P.2d 1007 (1988) CP 38-40

Appellant BR

2. Res Ipsa Loquitur claim

In tort law, a principle that allows plaintiffs to meet their burden of proof with what is, in effect, circumstantial evidence. The plaintiff can create a rebuttable presumption of negligence by the defendant by proving that the harm would not ordinarily have occurred without negligence, that the object that caused the harm was under the defendant's control, and that there are no other plausible explanations.

Prima Facie Case

To prove *res ipsa loquitur* negligence, the plaintiff must prove 3 things:

1. The incident was of a type that does not generally happen without negligence
2. It was caused by an instrumentality solely in defendant's control
3. The plaintiff did not contribute to the cause

3. Medical Negligence

Often, you will need expert witnesses to help you establish what the standard of care was and to show why the care you received meets the medical negligence definition. In some cases, the mistake is so clear that no additional evidence of negligence is required beyond showing that it occurred. RCW 7.70

4. Lack of Informed Consent

General Rule. As a general rule, a health care provider must obtain the informed consent of a patient prior to treatment. A physician has a fiduciary duty to the patient to obtain consent. *Stewart-Graves v. Vaughn*, 162 Wn.2d 115, 122, 170 P.3d 1151 (2007); *Miller v. Kennedy*, 11 Wn. App. 272, 286, 522 P.2d 852 (1974), *aff'd and adopted*, 85 Wn.2d 151 (1975). The patient has a right to know and to "chart his own destiny." *Miller v. Kennedy*, 11 Wn. App. 272, 282, 522 P.2d 85

5. De Novo

De novo is a Latin term that means "anew," "from the beginning," or "afresh." When a **court** hears a case "de novo," it is deciding the issues without reference to any legal conclusion or assumption made by the previous court to hear the case. An appellate court hearing a case "de novo" may refer to the lower court's record to determine the **facts**, but will rule on the **evidence** and matters of law without deferring to that court's **findings**. The appeals court states: There was no evidence CP 14-33 If the court of appeals reviewed this case "De novo" how did all the material facts and evidence get over looked to support Ms. Glymph's claims? There are exhibits, correspondence with the defendants, administered medication dosage and time each dose was given to Ms. Glymph? How did they miss this information?

V. ARGUMENT

1. Summary Judgement

Genuine issue of material fact prevents summary judgment, as it indicates that there are factual disputes that require further examination.

Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co.,

2. Res ipsa loquitur

On 10/15/2018, Dr Gregory Bennett administered Ativan at Overlake Hospital for neck pain. Within a 30 minute window he gave 2mg at 20:06 and another 2mg at 20:34 I

wasn't cognitive at all until I was awoken by 5 police and 2 security officers. I was handcuffed, falsely arrested, and trespassed then identified and driven to a nearby gas station to find my way home.

I wasn't aware of anything in that hospital. I had subsequent memory loss and inability to recall events. "Res ipsa loquitur is a legal doctrine allowing a presumption of negligence based on the circumstances. An Ativan (lorazepam) overdose is not ordinary

or typical, does not occur without negligence for the following reasons: Ativan is a sedative and anxiolytic medication. An overdose can lead to excessive sedation, respiratory, depression, impaired coordination, and memory loss. The overdose speaks for itself in terms of negligence and the unusual nature of the incident: "An overdose resulting in memory loss is highly indicative of negligence." Plaintiff Laffon Glymph, opposed "Overlake" or "Defendant") request for summary judgment on the basis this medical malpractice claim has merit on the fact rule called "res ipsa loquitur" (Latin for "the thing speaks for itself") the defendants' negligence caused an unusual event that subsequently caused injury to the plaintiff. (1) the patient Laffon Glymph suffered an injury that is not an expected complication of medical care; (2) the injury does not normally occur unless someone has been negligent; (3) the defendant was responsible for the patient Laffon Glymph's well-being at the time of the injury. and (4) I, Laffon Glymph did not contribute to the injury or occurrence. Res Ipsa Loquitur: Inference of

Negligence. Certain circumstances allow the finder of fact to make an inference of negligence even in the absence of expert testimony or other evidence of negligence. E.g., Curtis v. Lien, ___ Wn.2d ___, 239 P.2d 1078 (2010); Pacheco v. Ames, 149 Wn.2d 431, 436, 69 P.3d 324 (2003); Miller v. Jacoby, 145 Wn.2d 65, 74, 33 P.3d 68 (2001); Douglas v. Bussabarger, 73 Wn.2d 476, 482, 428 P.2d 829 (1968); Ripley v. Lanzer, 152

Wn. App. 296, 315, 215 P.3d 1020 (2009) (plaintiff not required to present expert testimony where elements of res ipsa are met)

The purpose of the res ipsa doctrine is to require the defendant to produce evidence explaining the cause of an injury that the plaintiff cannot explain, exclusive control by the defendant of the injury-producing event is an essential element of liability. Pacheco v. Ames, 149 Wn.2d 431, 437, 69 P.3d 324 (2003). Plaintiff had to file a complaint with Overlake Hospital to find out what transpired for the incident to occur, with me having no memory of events. Exhibit 3,4,5 CP-24-27

3. “De novo”

From the appeals court analysis, all three of the panel judges appear bias.

Summary Judgement “De novo” they state: We consider the evidence and all reasonable inferences therefrom in the light most favorable to the nonmoving party. Summary judgment is appropriate when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). A genuine

issue of material fact exists “if reasonable minds could differ on facts which control the outcome of the proceeding.”

The court of appeals state “The medication improved Glymph’s condition, how would they come to that conclusion?

The court state Glymph had not provided facts sufficient to survive summary judgment. The court further noted that Glymph failed to provide any evidence of damages to support her claims. These statements here are absolutely false. CP 1-41 Evidence is on record. On each claim the court of appeals denied from Summary Judgement, Medical Negligence, Res Ipsa Loquitur, and Informed Consent, the appeals court states Ms. Glymph provided no evidence to support her claims. This is completely false with all the material facts and evidence which reflects on the records to the court filings, and exhibits. If the court of appeals reviewed this case “De novo” how did all the material facts and evidence get over looked to support Ms. Glymph’s claims? There are exhibits, correspondence with the defendants, administered medication dosage and time each dose was given to Ms. Glymph? How did they miss this information? Patient had to reach out to defendant to find out what took place for the police to be called, why I was handcuffed, falsely arrested, trespassed, and driven to a nearby gas station to find my way home. Patient had no recollection of events.

My question is if this was reviewed “De novo” how did the appeals court miss evidence on the record and each filing by Ms. Glymph? She states a list of exhibits on every filing.

VI. CONCLUSION

Healthcare facilities follow safety protocols to prevent medication errors. An overdose suggests a breach in these protocols, raising concerns about negligence. In summary, an Ativan overdose is an unusual occurrence that warrants scrutiny, and negligence may be involved when it happens. “Given the circumstances, *res ipsa loquitur* should apply, and negligence on the part of Overlake Hospital is evident.” Genuine issue of material fact prevents summary judgment, as it indicates that there are factual disputes that require further examination. Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co., 151 Fed 2nd 240; Pucket v. Cox, 456 2nd 233 Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers. Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938) "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment.

RELIEF SOUGHT

1. A reverse and remand on summary judgment

2. Injuries and Damages:

Seek compensation for physical harm resulting from the Ativan overdose (e.g., respiratory depression, impaired coordination) Psychological distress, loss of autonomy,

3. Additional Claims:

Mental and emotional distress, humiliation, loss of wages, and pain and suffering. These aspects contribute to the overall impact of the incident.

RESPECTFULLY, SUBMITTED this 23rd day of May, 2024

This document contains 2,516 words, excluding the parts of the document exempted from the word count by RAP 18.17. (by Microsoft Word)

By /s/ Laffon Glymph
Appellant Pro Se

Appendix

Court of Appeals Decision is attached hereto as Appendix A.

LAFFON GLYMPH - FILING PRO SE

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LAFFON GLYMPH,

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v.

OMR R.A. SERVICES LLC,
OVERLAKE HOSPITAL MEDICAL
CENTER,

Respondent.

No. 85539-5-I

DIVISION ONE

UNPUBLISHED OPINION

SMITH, C.J. — Laffon Glymph was admitted to Overlake Hospital for a tooth infection but after being discharged, she refused to leave the hospital and was eventually arrested. Glymph later initiated a lawsuit against Overlake alleging medical malpractice, medical negligence, and a lack of informed consent, because of the pain medication administered and her eventual arrest. Overlake moved for summary judgment, pointing to Glymph's lack of expert testimony. Following oral argument, the court granted Overlake's summary judgment motion.

On appeal, Glymph asserts that she provided facts sufficient to survive summary judgment and alleges that *res ipsa loquitur* negates the need for expert testimony. We disagree and affirm.

FACTS

In October 2018, paramedics took Laffon Glymph to the Overlake Hospital (Overlake) emergency department after she complained of shortness of breath

because of a tooth infection. Once there, a physician administered lorazepam,¹ a pain medication and sedative. The medication improved Glymph's condition and she was discharged. Once discharged, however, Glymph refused to leave without a doctor's note permitting her to take a week off from work. She was told that her treating doctor would order only one day off and would not write a note for a week. After about three hours, Overlake called Bellevue Police, who arrested Glymph for trespass and removed her from the hospital. Glymph told officers that she did not know why she was being arrested and asserted that she did not consent to receiving medication from hospital staff.

In October 2022, Glymph filed a lawsuit with the trial court against Overlake alleging medical malpractice, medical negligence, and a lack of informed consent. She claimed that she suffered a schedule IV narcotic overdose and that she was falsely arrested and wrongfully trespassed from Overlake. In response, Overlake moved for summary judgment, arguing that Glymph failed to provide competent expert testimony to support her claims. Glymph then asserted *res ipsa loquitur*, contending that it negated her need for expert testimony. Following oral argument, the trial court granted Overlake's motion for summary judgment. The court noted that Glymph had not provided facts sufficient to survive summary judgment nor expert testimony to support her claims. The court further noted that Glymph failed to provide any evidence of damages to support her claims.

Glymph appeals.

¹ Lorazepam is the generic name for Ativan.

ANALYSIS

Summary Judgment

We review a trial court's grant of summary judgment de novo, engaging in the same inquiry as the trial court. Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). We consider the evidence and all reasonable inferences therefrom in the light most favorable to the nonmoving party. Keck, 184 Wn.2d at 370. Summary judgment is appropriate when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). A genuine issue of material fact exists "if reasonable minds could differ on facts which control the outcome of the proceeding." Ghodsee v. City of Kent, 21 Wn. App. 2d 762, 768, 508 P.3d 193 (2022). A party opposing summary judgment cannot rely simply on allegations, denials, opinions, or conclusory statements, but instead must provide specific facts establishing a genuine issue for trial. Allen v. Asbestos Corp., Ltd., 138 Wn. App. 564, 570, 157 P.3d 406 (2007). We hold pro se litigants to the same standards as attorneys. Winter v. Dep't of Soc. & Health Servs., 12 Wn. App. 2d 815, 844, 460 P.3d 667 (2020).

Medical Negligence

Glymph alleges that Overlake committed medical negligence by administering lorazepam and in allowing her arrest on hospital property. But because Glymph fails to explain how the hospital's administration of medication violated the standard of care, we disagree.

To prevail on a claim of medical negligence based on a breach of the standard of care, a plaintiff must demonstrate that (1) “the health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he or she belongs, in the state of Washington, acting in the same or similar circumstances,” and that (2) “such failure was a proximate cause of the injury complained of.” RCW 7.70.040(1)(a), (2)(a)(ii). Importantly, the plaintiff must establish actual injury. RCW 7.70.040. Expert testimony is generally required to establish the standard of care and to prove causation. Behr v. Anderson, 18 Wn. App. 2d 341, 363, 491 P.3d 189 (2021).

Glymph contends that an Overlake doctor administered a schedule IV narcotic to her, resulting in an overdose and her eventual arrest. But Glymph does not provide any specific evidence supporting her assertion that she suffered a narcotic overdose and does not explain how the doses of lorazepam she received constitute an overdose. Without additional evidence or facts, this bare assertion is not sufficient to show that Overlake breached the standard of care.

As to her arrest, Glymph provides documentation that she was arrested but does not provide any evidence as to how her arrest demonstrates that Overlake breached its standard of care. Glymph provides no expert testimony or other evidence that the arrest was improper and she does not explain how any health care provider’s alleged failure to exercise the requisite degree of care relates to her arrest. This is again insufficient to establish a genuine issue able to survive summary judgment.

Because Glymph failed to prove that Overlake breached its standard of care, the trial court did not err in dismissing Glymph's medical negligence claim.

Res Ipsa Loquitur

In response to Overlake's motion for summary judgment, Glymph argued that she is exempt from providing expert testimony because of the doctrine of res ipsa loquitur. We disagree.

Res ipsa loquitur "spares the plaintiff the requirement of proving specific acts of negligence in cases where a plaintiff asserts that [they] suffered injury, the cause of which cannot be fully explained, and the injury is of a type that would not ordinarily result if the defendant were not negligent." Pacheco v. Ames, 149 Wn.2d 431, 436, 69 P.3d 324 (2003). Res ipsa loquitur is applicable only when the evidence shows that (1) the incident producing the injury is of a kind which ordinarily does not happen without negligence, (2) the injuries are caused by an agency or instrumentality within the exclusive control of the defendant; and (3) the plaintiff did not contribute to the injury or accident-causing occurrence. Ripley v. Lanzer, 152 Wn. App. 296, 307, 215 P.3d 1020 (2009). The doctrine is disfavored and only sparingly applied by courts, in "exceptional cases[,] where the facts and demands of justice make its application essential." Jackass Mt. Ranch, Inc., v. S. Columbia Basin Irrig. Dist., 175 Wn. App. 374, 400, 305 P.3d 1108 (2013).

Although Glymph contends that she satisfied all three requirements of her res ipsa loquitur claim, she does not, in fact, offer any evidence to support her claim.

As to the first element, Glymph cannot establish that her alleged injuries are of a kind which ordinarily do not happen without negligence. Glymph asserts two injuries: a narcotic overdose and her arrest.

She provides no evidence that she suffered a narcotic overdose. Glymph appears to assert that her doctor administered too much lorazepam, causing the behavior that prompted her arrest and limiting her memory of the incident. But she fails to establish that the amount of medication she was given caused an overdose or is sufficient to do so. The side effects of an appropriately administered medication cannot be considered an injury which ordinarily does not happen without negligence.

Glymph also fails to provide evidence proving that her arrest was an injury resulting from negligence. Glymph acknowledges that she does not remember the behavior that prompted her arrest. The patient advocate nurse clarified that she was arrested for trespassing because, despite being discharged, she would not leave the hospital without a note indicating that she was to take a week off work. But Glymph provides no evidence that the arrest was improper, much less that it was an injury resulting from medical negligence.

Because Glymph cannot meet the first *res ipsa loquitur* factor, her claim fails and the trial court did not err in dismissing it on summary judgment.²

² In support of its assertion that Glymph fails to meet the third *res ipsa loquitur* factor, Overlake repeatedly refers to a lawsuit that Glymph brought against the City of Bellevue and the Bellevue Police Department. That case is not at issue here.

Informed Consent

Lastly, Glymph asserts that the lorazepam was administered without her informed consent. Because she provides no evidence to support this claim, we conclude that the court did not err in dismissing Glymph's claim at summary judgment.

To succeed on an informed consent claim, a plaintiff must establish "(a) [t]hat the healthcare provider failed to inform the patient of material fact or facts relating to the treatment; (b) [t]hat the patient consented to the treatment without being aware of or fully informed of such material fact or facts; (c) [t]hat a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of such material fact or facts; [and] (d) [t]hat the treatment in question proximately caused injury to the patient." RCW 7.70.050.

Glymph does not address any of these factors. Rather, Glymph's opening brief states that "[t]his is a claim for Medical Malpractice, the cause of this claim is Schedule IV narcotic overdose, lack of informed consent," but this is the only detail she provides. Glymph did not identify an employee or agent who failed to obtain informed consent or state the information they failed to provide. And, once again, Glymph did not offer any expert testimony. Without that expert testimony on the issue, or truly any evidence regarding facts relating to treatment that she was not informed of, Overlake clearly establishes a lack of genuine issue of material fact. Glymph's informed consent claim cannot survive summary judgment.

We affirm.

Smith, C.G.

WE CONCUR:

Cohen, J.

Bauer, J.

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