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DISTRICT IV

September 10, 2013

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You are hereby notified that the Court has entered the following opinion and order:

2012AP2336 Norman D. Stapleton v. Candace Warner (L.C. # 2011CV314)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

Norman Stapleton appeals a summary judgment dismissing his negligence action against two prison nurses and their supervisor. Upon our review of the parties' briefs and the record, we conclude at conference that summary disposition is appropriate in this appeal. Because Stapleton provides no evidence to establish causation, we summarily affirm the summary judgment.

According to the complaint, Stapleton, a prisoner at the New Lisbon Correctional Institution, had an off-site colonoscopy. Upon returning to the prison, he was escorted by staff to the health services unit for the nurses to provide after-care information. After waiting ten minutes, Stapleton left the area to use a restroom and did not return. The next day, he

experienced discomfort and bleeding and went to the health services unit. He was transferred to a hospital emergency room where he received a blood transfusion and the problem was resolved.

Stapleton brought this negligence action against the prison nurses and their supervisor alleging a violation of the Wisconsin Department of Correction Health Services Policy and Procedure No. 300.02. That regulation requires the health services staff to review the recommendations and the plan of care with the inmate upon his return to the prison. Stapleton alleges that the nurses negligently failed to comply with that regulation and their breach of that duty caused him to lose two pints of blood, to require a blood transfusion, and to experience pain, suffering, and mental anguish.

Although the parties' briefs address numerous issues, we conclude that one issue is dispositive. Following summary judgment methodology, we assume as true all facts pleaded by Stapleton and all inferences in his favor that can be reasonably derived from these facts. This includes the allegation that the nurses failed to provide after-care information to Stapleton. However, even assuming without deciding that this failure violated the regulation, there is no material factual issue that the failure to provide after-care information caused any injury. Nothing in the record suggests that warning Stapleton about the potential for bleeding problems would have prevented the bleeding from occurring or would have led to earlier treatment. Stapleton alleges that he would have been aware of the symptoms of internal bleeding had he received the after-care information. However, the record does not establish how this knowledge would have prevented the internal bleeding or would have led to a more prompt or less painful resolution.

Stapleton opines that his receipt of the after-care information would have "clearly" prevented the bleeding and need for a transfusion. However, he provides no foundation for such an opinion. Expert testimony would be required to establish the causal relationship between the failure to provide after-care information and Stapleton's subsequent bleeding. ***Estate of Hegarty v. Beauchaine***, 2006 WI App 248, ¶154, 297 Wis. 2d 70, 727 N.W.2d 857.

Whether expert testimony is required in a given situation must be answered on a case-by-case basis, ***Robinson v. City of West Allis***, 2000 WI 126, ¶33, 239 Wis. 2d 595, 619 N.W.2d 692, and is a question of law that we decide without deference to the circuit court. ***Grace v. Grace***, 195 Wis. 2d 153, 159, 536 N.W.2d 109 (Ct. App. 1995). The lack of expert testimony on the question of causation results in an insufficiency of proof where the issue involves technical, scientific, or medical matters that are beyond the common knowledge or experience of jurors so that a jury could only speculate as to what inferences to draw. ***Ollman v. Wisconsin Health Care Liab. Ins. Plan***, 178 Wis. 2d 648, 667, 505 N.W.2d 399 (Ct. App. 1993). Contrary to Stapleton's argument on appeal, whether the bleeding problem would have occurred if he had received the after-care information is not a matter within the common knowledge of jurors.

Finally, Stapleton argues that the circuit court erroneously exercised its discretion by not appointing counsel for him. Absent a threat of loss of physical freedom, there is no absolute right to appointment of counsel in a civil case. ***Joni B. v. State***, 202 Wis. 2d 1, 18, 549 N.W.2d 411 (1996). Appointment of counsel is not required when a party has a meaningful opportunity to be heard. ***Piper v. Popp***, 167 Wis. 2d 633, 638, 482 N.W.2d 353 (1992).

IT IS ORDERED that the judgment is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals