

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000201-MR

LINDA WEISS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MARY M. SHAW, JUDGE
ACTION NO. 05-CI-006110

JEWISH HOSPITAL HEALTHCARE
SERVICES, INC.

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; STUMBO, JUDGE; LAMBERT,¹ CHIEF SENIOR JUDGE.

STUMBO, JUDGE: This is a medical negligence action involving an operating room fire in which Linda Weiss was injured. Weiss is appealing an order of the Jefferson Circuit Court granting summary judgment in favor of Jewish Hospital.

The trial court found that Jewish Hospital did not have any duty to Weiss in this

¹ Chief Senior Judge Joseph E. Lambert, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

instance to provide ways to minimize the risk of or prevent operating room fires. Weiss argues that the trial court erred and that Jewish Hospital had a duty to implement procedures and protocols to help minimize the risk of operating room fires. We agree with Weiss and reverse and remand this case for further proceedings.

On December 17, 2004, Weiss was admitted to Jewish Hospital to undergo an upper lid blepharoplasty, a cosmetic procedure. Dr. Richard Dobou performed the procedure with his assistant Deborah Redus, RN. Carla Hobbs, CRNA, was the nurse anesthetist during the procedure and Dr. Emmanuel Rafla was the supervising anesthesiologist. Dr. Rafla was not in the room once the procedure began. Sometime during the procedure a fire occurred, resulting in burns to Weiss' face, nose, and airway.

Weiss then brought the underlying action against the anesthesia team, Dr. Rafla and Nurse Hobbs, and Jewish Hospital. Jewish Hospital eventually moved for summary judgment arguing that the medical personnel in the operating room were independent contractors and it was therefore not liable for any negligent acts, including the fire. Weiss argued that Jewish Hospital fell below the standard of care of hospitals and that it should have provided training to all persons authorized to use its operating rooms on how to avoid operating room fires and should have established procedures to minimize the risks of operating room fires. The trial court granted summary judgment in favor of Jewish Hospital finding that,

as a matter of law, the hospital did not have a duty to establish training or other procedures to minimize the risk of operating room fires. This appeal followed.

The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03 “The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, Ky., 807 S.W.2d 476, 480 (1991). Summary “judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances.” *Steelvest*, 807 S.W.2d at 480, citing *Paintsville Hospital Co. v. Rose*, Ky., 683 S.W.2d 255 (1985). Consequently, summary judgment must be granted “[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor” *Huddleston v. Hughes*, Ky. App., 843 S.W.2d 901, 903 (1992).

Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996).

To maintain a negligence action, Weiss must show “(1) a duty on the part of the defendant; (2) a breach of that duty; and (3) consequent injury.”

Mullins v. Commonwealth Life Ins. Co., 839 S.W.2d 245, 247 (Ky. 1992).

Whether the defendant owed a duty is a question of law for the court to decide. *Id.* at 248. In the case at bar, the trial court found Jewish Hospital owed no duty to Weiss and granted summary judgment as a matter of law. We disagree.

The duty a hospital owes to its patients is that “degree of care and skill ordinarily expected of reasonable and prudent hospitals under similar circumstances.” *Rogers v. Kasdan*, 612 S.W.2d 133, 136 (Ky. 1981). Weiss argues that this degree of care includes providing fire prevention training to

hospital staff and to anyone who uses operating rooms or to establish some other fire prevention procedure. Jewish Hospital argues that it has no duty to educate medical providers about fire prevention.

We agree with Weiss that Jewish Hospital did have a duty to provide medical personnel with some degree of training or guidance in relation to operating room fires, or at least implement some other procedure or protocol concerning the issue. “The most important factor in determining whether a duty exists is foreseeability.” *Pathways, Inc. v. Hammons*, 113 S.W.3d 85, 89 (Ky. 2003) (citation omitted). Prior to Weiss’ operation, Jewish Hospital had experienced another operating room fire in which the patient did not survive. Also, in the modern realm of medicine where electronic devices, such as cauterizing instruments, are used in oxygen rich environments, even most lay persons realize there is a risk of fire.

Did Jewish Hospital owe a duty to minimize the risk of operating room fires to Weiss? We answer this question of law in the affirmative. What steps Jewish Hospital should have taken to satisfy this duty and whether that duty was breached are questions for the jury.

We therefore reverse and remand this case back to the Jefferson Circuit Court for further proceedings.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Ronald M. Wilt
Liz J. Shepherd
D. Tysen Smith II
Louisville, Kentucky

BRIEF FOR APPELLEE:

Karen L. Keith
Janice M. Rogers
Louisville, Kentucky