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Tort law – nursing homes

In a case involving allegations of negligent nursing home care, trial court did no err in denying a defendant's motion in limine to bar plaintiff's use at trial of defendant's numerous admissions of negligence in response to the plaintiff's requests to admit and did not err in awarding attorney fees to the plaintiff pursuant to the state Nursing Home Care Act.

The 5th District Appellate Court has affirmed a Jackson County Circuit Court jury verdict. Judge [William G. Schwartz](#) presided in the trial court.

On Oct. 14, 2000, Elizabeth Rath was placed in defendant Carbondale Nursing and Rehabilitation Center, a nursing home facility. She stayed in the facility until her son Michael Rath, the plaintiff in this case, requested her discharge on Nov. 24, 2000. The next day, she was taken to a hospital with dehydration, pressure sores and a urinary tract infection.

The plaintiff filed suit, alleging numerous negligent acts by the defendant, including a failure to employ and train sufficient personnel, a failure to properly examine and monitor, a failure to administer proper nutrition and medication, a failure to regularly move and reposition, a failure to properly treat pressure sores and clean the body, and a failure to bring in medical personnel.

In response to the plaintiff's requests to admit, the defendant admitted numerous negligent acts. The trial court entered partial summary judgment in favor of the plaintiff, finding that the defendant had allowed Elizabeth Rath to become dehydrated, failed to properly chart her bodily functions and dietary consumption and failed to notify a physician in a timely manner.

Before trial, the defendant filed a motion in limine asking the trial court to bar the plaintiff from discussing or presenting testimony on the negligent acts admitted by the defendant. The trial court denied the motion and the jury returned a verdict in favor of the plaintiff in the amount of \$200,000. The court also awarded the plaintiff attorney fees of \$90,018 and costs of \$10,869 pursuant to the state Nursing Home Act.

On appeal, the defendant argued that the trial court erred by allowing evidence on matters that had been admitted. The defendant contended that its responses constituted judicial admissions and made any discussion of the care rendered to Elizabeth Rath irrelevant and prejudicial.

The appeals court said that a trial court may exclude evidence on an issue which has been judicially admitted because (1) the evidence is no longer relevant to the issues remaining in the case, (2) the evidence may be superfluous and confusing, and (3) the other party may not necessarily be entitled to the additional dramatic force of the evidence.

However, the appeals court said, the rule is not absolute because a trial court has the discretion in evidentiary rulings and its decision will not be disturbed absent an abuse of that discretion. In this case, the appeals court said, a discussion of the care given to Elizabeth Rath was necessary to determine the merits of the plaintiff's claim.

In addition, the appeals court said, the defendant admitted that it carelessly and negligently failed to monitor for skin care, dehydration and nutrition but it limited this admission to the conduct in the "approximate last week" of Elizabeth Rath's stay. "In light of the time limitation, the contested testimony was still relevant," the appeals court said, because the plaintiff did not limit his claim of negligence to the last week of his mother's stay in the nursing home.

The appeals court said that even if the defendant had admitted negligent conduct for the entirety of Elizabeth Rath's stay, evidence of the care given to her would still be relevant. "A description of the course of care was necessary for an understanding of plaintiff's claim," the appeals court said.

The court also said that it would be difficult for the jury to assess damages without discussing the care rendered to a patient when a part of the alleged pain and suffering occurred during the ongoing treatment. The court also found that the contested evidence was relevant to causation because the defendant denied both direct and proximate cause.

The appeals court also rejected the defendant's claim that the trial court erred in awarding attorney fees because the plaintiff's attorney had a contingency fee agreement with the plaintiff. The appeals court said that the statute provides that a nursing home "shall pay the actual damages and costs and attorney fees" to a nursing facility resident whose rights are violated.