IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

FILED

November 29, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

BERDELLA VAUGHN SEAVERS and EDDIE THOMAS SEAVERS,	)	
Plaintiffs/Appellants,	)	
v.	)	NO. E1997-00044-SC-R11-CV
METHODIST MEDICAL CENTER OF OAK RIDGE,	)	
Defendant/Appellee.	)	

DISSENTING OPINION

I write separately to dissent because I believe that the doctrine of res ipsa loquitur should be applied in professional malpractice cases only when the nature of the injury is so obvious that common lay knowledge and experience could infer that the injury would not have occurred in the absence of negligence. The nature of the injury should be so simple and clear as not to require a layman to speculate or analyze how the injury might have occurred.

A juror generally does not possess the knowledge necessary to assess whether a physician has been negligent. Some procedures may be so inherently risky that an injury may occur even when the physician is exceedingly careful and does not deviate from the standard of professional care. Our medical malpractice statute, therefore, generally requires expert testimony to explain the standard of care and to opine whether the treating physician has breached that standard of care.

The logical underpinnings for the requirement of expert testimony and for establishing a res ipsa loquitur case are inconsistent. The doctrine of res ipsa loquitur, as the majority has translated, means "the thing speaks for itself." Under the majority's decision, however, the injury or "the thing" no longer needs

to speak for itself under a theory of res ipsa loquitur. The injury now speaks for itself through the assistance of medical testimony. This formation of a hybrid res ipsa/expert testimony case allows a jury to speculate as to the *manner* in which an injury may have occurred without the assistance of medical testimony. I, therefore, believe that the two strategies for establishing a medical malpractice case should remain mutually exclusive and that a jury should not be allowed to infer a proposition that generally demands expert proof.

Lastly, the majority's decision has too broad an application. The majority would seemingly permit this hybrid res ipsa strategy whenever a patient was sedated, anesthetized, or unconscious "and the injury involved a complex medical procedure or otherwise required the exposition of expert testimony." Moreover, the hybrid strategy may be invoked in cases such as the case now before us where: an expert is unavailable to explain the manner in which the injury occurred; and the defendant's expert opines that the injury could have occurred in the absence of negligence.

A plaintiff now need only procure an expert willing to opine that the injury should not have occurred. Such testimony may permit a case to go to the jury even though the expert is unable to testify to a specific standard of care or the manner in which the injury occurred. Thus, the jury is free to speculate as to how the injury may have occurred. A broad invocation of the hybrid res ipsa/expert testimony strategy could potentially make professionals insurers of "good results." I, therefore, dissent.

I am authorized to state that Justice Drowota joins in this dissenting opinion.

JANICE M. HOLDER, JUSTICE