

KRISTIN L. BECK and  
JAMES L. BECK, JR.,  
Plaintiffs

vs.

SUSQUEHANNA HEALTH SYSTEMS,  
THE WILLIAMSPORT HOSPITAL,  
LOYALSOCK FAMILY PRACTICE, and  
ELIZABETH E. ANDERSON,  
Defendants

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA

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: NO. 01-00,354

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: **MOTION FOR SUMMARY JUDGMENT**

*Date: April 11, 2003*

**OPINION and ORDER**

**Facts/Procedural Background**

Before the Court for determination is Defendants’ Susquehanna Health System, Williamsport Hospital, Loyalsock Family Practice, and Elizabeth E. Anderson, M.D. (hereafter Susquehanna) Motion for Summary Judgment filed February 5, 2003. Plaintiffs Kristin and James Beck (hereafter the Becks) did not file a response to the motion for summary judgment as required by Pa.R.C.P. 1035.3, but did file a brief in opposition to the motion on March 13, 2003. At argument on March 24, 2003, it became apparent that the Becks were relying upon the depositions of Dr. Elizabeth Anderson and Nurse Nicole Nardi to oppose the motion, as the brief partly quoted from both. This Court exercised its discretion under Pa.R.C.P. 1035.3(c) to allow the Becks to supplement the record by filing the relevant deposition transcripts as set forth in our order of March 25, 2003. Thereafter, on March 28, 2003, the Becks filed a supplemental brief and the relevant pages from the deposition.

The Becks claim for medical negligence against Defendants Susquehanna Health Systems and the Williamsport Hospital arises out of the insertion of the Foley catheter in Kristin Beck by defendants' employee Nurse Nardi. The Becks have also brought a claim for medical negligence against Dr. Anderson and Loyalsock Family Practice. The parties have agreed that summary judgment should be entered in favor of Dr. Anderson and Loyalsock Family Practice. Accordingly, the Court will enter summary judgment in favor of Dr. Anderson and Loyalsock Family Practice and dismiss the Becks' claim against them.

The following are the relevant and undisputed facts with regard to the motion for summary judgment. Plaintiff Kristin Beck was under the care of Dr. Elizabeth Anderson for her first pregnancy. Dr. Anderson was an employee of Defendant Loyalsock Family Practice. On March 9, 1999, Kristin Beck began to experience labor pains and was admitted to Williamsport Hospital. While at the hospital, Kristin Beck received an epidural anesthetic to alleviate some of the child birthing pain. Subsequent to the administration of the epidural, Nurse Nardi, an employee of Defendant Susquehanna Health Systems, the Williamsport hospital, inserted a Foley catheter through Kristin Beck's urethra. A Foley catheter is designed so that after proper insertion through the urethra and into the bladder, a balloon is expanded to retain the catheter in the bladder. On March 10, 1999, Kristin Beck gave birth to a daughter. On March 12, 1999, Dr. Anderson examined Kristin Beck and ascertained that the Foley catheter had made its way out of the bladder, the catheter balloon was visible at the urethral meatus, and the catheter had caused Kristen Beck pain necessitating its removal. Deposition of Dr. Anderson, at 37, 38, 43.

The Becks have alleged that the Foley catheter was not inserted into Kristin Beck's bladder. As such, the Becks assert that the balloon was inflated in Kristin's urethra. According to the Becks, this has caused Kristin Beck severe pain, a permanent urethral injury, urinary tract infections, incontinence, and hardships associated with incontinence. The Becks have instituted the present medical negligence action against the above captioned defendants arising out of the medical treatment Kristin received at the Williamsport Hospital from March 9 –10, 1999.

According to the Becks, the defendants' actions deviated from the standard of care in a number of ways. First, "[t]he administration of an epidural anesthetic prior to the insertion of the Foley catheter, which caused Plaintiff to be unable to report sensation or pain, ... may have indicated that the Foley catheter was not properly located." Plaintiffs' Complaint, *Beck v. Susquehanna Health System*, 01-00,354, ¶ XVIII.1. Secondly, "[t]he failure to ensure that the Foley catheter was fully inserted so that the expansion of its balloon took place within the bladder rather than within the urethra." *Id.* at ¶ XVIII.2. Thirdly, "[t]he failure to recognize the source of Plaintiff Kristin Beck's atypical pain following delivery, which allowed the improperly placed Foley catheter to remain in place for an additional period of nearly two days." *Id.* at ¶ XVIII.3. Fourthly, "[t]he failure to observe and monitor Plaintiff Kristin Beck's urine output after the insertion of the Foley catheter in order to detect signs of its misplacement." *Id.* at XVIII.4.

In their motion for summary judgment, Susquehanna argues that the Becks have failed to establish their *prima facie* case for medical negligence. Susquehanna contends that the Becks have failed to produce expert testimony as to the standard of care regarding the proper

insertion of a Foley catheter and whether the defendants' conduct deviated from that standard. Susquehanna argues if the doctrine of *res ipsa loquitor* applies the plaintiff is still not relieved of the necessity to provide an expert opinion to establish a *prima facie* case of medical negligence. Susquehanna argues that an expert opinion is needed to demonstrate that the event which occurred was not of the kind that would ordinarily occur in the absence of negligence and to eliminate other responsible causes. Susquehanna argues that "the proper placement of a foley catheter, the inherent risks of its use, as well as the existence of many other potential causes of its dislodgement in the course of a lengthy labor and delivery are not matters within the common understanding of jury members." Defendants' Supplemental Brief in Support of Motion for Summary Judgment, *Beck v. Susquehanna Health System*, 01-00,354, at 3. According to Susquehanna, the Becks have failed to provide an expert opinion that establishes a Foley catheter would either not be found in the position it was in the absence of negligence or that eliminates other possible causes for why the catheter was found positioned in the urethra. Therefore, Susquehanna argues that the Becks have failed to meet the *res ipsa loquitor* standard that would permit an inference of negligence to be made. As such, Susquehanna argues that the Becks have failed to establish a *prima facie* case of medical negligence.

In response, the Becks contend that they have presented sufficient evidence to establish a *prima facie* case of medical negligence. The Becks argue that this is a situation where the doctrine of *res ipsa loquitor* applies. The Becks argue that an inference of negligence can be made because a properly inserted Foley catheter would not work its way out of the bladder and down the urethra to the point of the balloon being visible to an examining physician. The Becks argue that such an occurrence was so out of the ordinary that it "shocked" Dr. Elizabeth

Anderson, an experienced obstetrician. The Becks assert that the insertion of a Foley catheter is a straightforward, simple procedure that a jury could easily understand without the aid of an expert. The Becks argue that the strange position of the Foley catheter balloon and simplistic insertion procedure allow the lay jury to rely on their own understanding to make an inference of negligence. As such, the Becks assert that an opinion of an expert would not “add to a jury’s understanding of this case.” Plaintiffs’ Supplemental Brief in Opposition to Defendants’ Motion for Summary Judgment, *Beck v. Susquehanna Health System*, 01-00,354, at 5.

### Discussion

The issue before the Court is whether the Becks have presented sufficient evidence to permit an inference of negligence to be made concerning the conduct of Susquehanna. The Court holds that the Becks have not. The Becks have failed to produce evidence that a Foley catheter balloon would not be found in the urethra of a patient absent negligence. The Becks have also failed to present evidence that eliminates other responsible causes as to why the Foley catheter balloon might have been in the urethra other than the negligence of Susquehanna. As such, the Becks have failed to establish a *prima facie* case of medical negligence against Susquehanna making entry of summary judgment against the Becks appropriate.

A party may move for summary judgment after the pleadings are closed. Pa. R.C.P. 1035.2. Summary judgment may be properly granted “when the uncontraverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law.” *Rauch v. Mike-Mayer*, 783 A.2d 815,

821 (Pa. Super. 2001); *Godlewski v. Pars Mfg. Co.*, 597 A.2d 106, 107 (Pa. Super. 1991). The party making the motion has the burden of proving that there are no genuine issues of material fact. *Rauch*, 783 A.2d at 821. In determining a motion for summary judgment, the court must examine the record “ ‘in the light most favorable to the non-moving party accepting as true all well pleaded facts in its pleading and giving that party the benefit of all reasonable inferences.’ ” *Godlewski*, 597 A.2d at 107 (quoting *Hower v. Whitmak Assoc.*, 538 A.2d 524 (Pa. Super. 1988)). Summary judgment will only be entered in cases that “are free and clear from doubt” and any “doubt must be resolved against the moving party.” *Garcia v. Savage*, 586 A.2d 1375, 1377 (Pa. Super. 1991).

Summary judgment may be properly entered if the evidentiary record “either (1) shows that the material facts are undisputed or (2) contains insufficient evidence of facts to make out a *prima facie* cause of action or defense.” *Rauch*, 783 A.2d at 823-24. If the defendant is the moving party bringing the motion for summary judgment under Pa.R.C.P. 1035.2(2), “he may make the showing necessary to support the entrance of summary judgment by pointing to material which indicates that the plaintiff is unable to satisfy an element of his cause of action.” *Id.* at 824. “Conversely, the [plaintiff] must adduce sufficient evidence on an issue essential to [his] case and on which [he] bears the burden of proof such that a jury could retain a verdict favorable to the [plaintiff].” *Ibid.* If the plaintiff fails to establish a *prima facie* case, then summary judgment is proper as a matter of law. *Ack. v. Carrol Township*, 661 A.2d 514, 516 (Pa. Cmwlth. 1995).

In order to establish a medical negligence claim, a plaintiff must prove (1) that the defendant owed the plaintiff a duty; (2) the defendant breached that duty; (3) the breach of duty

was the proximate cause in bringing about the harm suffered; and (4) the damages suffered by the plaintiff resulted directly from that harm. *Mitzelfelt v. Hamrin*, 584 A.2d 888, 891 (Pa. 1990); *Rauch*, 783 A.2d at 824; *Gregorio v. Zeluck*, 678 A.2d 810, 813 (Pa. Super. 1996). In a medical malpractice case, a plaintiff is generally required to provide expert testimony to “establish, to a reasonable degree of medical certainty, that the acts of [the defendant] deviated from acceptable medical standards and such deviation was a proximate cause of the harm suffered.” *Mitzelfelt*, 584 A.2d at 891; *Yacoub v. Lehigh Valley Med. Assocs., P.C.*, 805 A.2d 579, 591 (Pa. Super. 2002). However, expert medical testimony is not required where the “matter is so simple or the lack of skill or care is so obvious as to be within a lay person’s range of experience and comprehension.” *Hightower-Warren v. Silk*, 698 A.2d 52, 54 n.1 (Pa. 1997); *Rauch*, 783 A.2d at 824 n. 8.

The doctrine of *res ipsa loquitor* can be applied in a medical malpractice action. *Starr v. Allegheny General Hospital*, 451 A.2d 499, 504 (Pa. Super. 1982). However, it is only appropriate in the “most clear-cut cases” and “may not be used in a medical malpractice action to abrogate the need for expert testimony. ...” *Grandelli v. Methodist Hospital*, 777 A.2d 1138, 1147 (Pa. Super. 2001). *Res ipsa loquitor* is an evidentiary doctrine that is designed to help the plaintiff establish a *prima facie* case of negligence. *Ibid.* *Res ipsa loquitor* “allows an inference of negligence to arise from competent evidence, on the theory that in the ordinary course of events, the injury complained of would not have occurred in the absence of negligence.” *Ibid.*

To establish *res ipsa loquitor*, a plaintiff must show that :

- (a) the event is of the kind which ordinarily does not occur in the absence of negligence;

(b) other responsible causes, including conduct of the plaintiff and third persons, are sufficiently eliminated by the evidence; and

(c) the indicated negligence is within the scope of the defendant's duty to plaintiff.

*Jones v. Harrisburg Polyclinic Hosp.*, 437 A.2d 1134, 1136-37 (Pa. 1981) (quoting Restatement (Second) of Torts § 328(D) (1965); *Grandelli*, 777 A.2d at 1147; *Sedlitsky v. Pareso*, 582 A.2d 1314, 1315 (Pa. Super. 1990)). In a medical malpractice action, the doctrine of *res ipsa loquitor* can be used to avoid producing direct medical evidence in order to establish liability in two ways: “one being the reliance upon common lay knowledge that the event would not have occurred without negligence, and the second, the reliance upon medical knowledge that the event would not have occurred without negligence.” *Jones*, 437 A.2d at 1138. “Expert medical testimony only becomes necessary when there is no fund of common knowledge from which laymen can reasonably draw the inference or conclusion of negligence.” *Ibid*; *Bearfield v. Hauch*, 595 A.2d 1320,1322 (Pa. Super. 1991) (Expert medical testimony was required because “a jury does not have within their common knowledge the resources to determine whether a nerve entrapment of a tenth intercostal nerve during a gallbladder operation would not occur in the absence of negligence.). With regard to the requirement that other responsible causes be sufficiently eliminated, the plaintiff is not required to “exclude all other possibilities.” *Sedlitsky*, 582 A.2d at 1317. “Rather, the evidence must reasonably permit a jury to conclude that ‘negligence was, more probably than not, that of the defendant.’” *Ibid*. (quoting *Carney v. Otis Elevator*, 536 A.2d 804, 806 (Pa. Super. 1988)).



The evidence presented by the Becks does not allow an inference of negligence to be made under the doctrine of *res ipsa loquitur*. In a typical medical malpractice case, a plaintiff will proffer expert medical testimony to establish his *prima facie* case of negligence. The expert medical testimony will be used to establish negligence by stating what the appropriate standard of care is and that, to a reasonable degree of medical certainty, the defendant's actions or inactions breached that standard of care. In the case *sub judice*, the Becks have tried to use the doctrine of *res ipsa loquitur* to establish their *prima facie* case by raising an inference of negligence. The Becks have failed to meet their burden so that such an inference can be made.

The Becks have not produced sufficient evidence to establish that a Foley catheter balloon would be found in the urethra instead of the bladder absent negligence. The proper method of inserting a Foley catheter and the risks and complications associated with it would not be within the knowledge of a layperson. The procedure is described in the deposition of Nurse Nardi (the Becks' supplemental brief filed March 28, 2003, Exhibit B, at 20-28) and was summarized by the Becks in their supplemental brief as follows:

1. Push the catheter tube through the urethra into the bladder with the balloon end deflated.
2. Look for urine return.
3. Inflate the balloon by injecting a saline solution into the end of the device which is sticking out of the urethral meatus. The saline solution transverses the tube and swells the far end of the catheter where the "balloon" is located.

Plaintiffs' Supplemental Brief in Opposition to Defendants' Motion for Summary Judgment, *Beck v. Susquehanna Health System*, 01-00,354, at 1-2.

While the insertion of a Foley catheter may be a simple medical procedure, it is a medical procedure nonetheless that requires a certain level of skill and knowledge to perform. A layperson does not possess such knowledge and skill. This is not a situation where a sponge or surgical instrument was left in the patient after surgery. In that situation, a lay jury could rely on its common knowledge to determine that a sponge does not get left in a patient absent negligence on someone's part. However, a jury would need guidance from an expert to reach the conclusion that a Foley catheter balloon would not be found in the urethra absent negligence.

As such, the Becks needed to provide expert testimony establishing that a Foley catheter balloon would not be found inflated in the urethra absent negligence. The Becks have not provided an expert who testifies that such an event would not occur without negligence. The Becks have presented the deposition testimony of Dr. Elizabeth Anderson, an obstetrician, and medical records of Dr. Rockoff. Dr. Anderson testified that she was "shocked at seeing the balloon making its way out of her [(Kristin Beck)] body." Deposition of Dr. Anderson, at 44. Dr. Anderson characterized the position of the balloon as "unusual," and that she had never encountered a situation where the balloon of the Foley catheter was visible in the urethra. *Id.* at 43, 44. In his records, Dr. Rockoff has stated that Kristin Beck suffered a "traumatic urethral injury from a misplaced Foley catheter." Plaintiffs' Supplemental Brief in Opposition to Defendants' Motion for Summary Judgment, *Beck v. Susquehanna Health System*, 01-00,354, at 3. While the location of the catheter may be evidence of negligence, it does not allow this Court to conclude that it is more likely than not that a Foley catheter balloon would be found inflated in the urethra of a patient absent negligence. The fact that it may be unusual does not

lead to the conclusion that the location of the Foley catheter in the urethra was the result of negligence. *See, Watkins v Hosp. of the Univ. of Pennsylvania*, 737 A.2d 263, 265 (Pa. Super. 1999) (The mere occurrence of an injury does not prove negligence.).

The Becks have also failed to produce sufficient evidence to eliminate other non-negligent responsible causes as to why a Foley catheter balloon would be found in the urethra instead of the bladder. Again, because the proper method of inserting a Foley catheter and the associated complications are beyond the scope of a layperson's knowledge, the Becks needed to proffer expert medical testimony that would have eliminated other causes for the Foley catheter balloon being in the urethra. Nothing in the medical testimony and records the Becks have presented speaks to other possible causes and demonstrates how the other possibilities can be discounted. There are possible non-negligent causes for the location of the catheter balloon that the Becks have not eliminated. It is unclear what impact the pregnancy may have had on the placement of the Foley catheter, and that it may have caused the Foley catheter to become dislodged from the bladder. It is unclear if any physiological characteristics of Kristin Beck could have allowed for a properly placed Foley catheter to become dislodged. Unanswered questions like this would prevent a jury from concluding that it was more probable than not the negligence of Susquehanna caused the Foley catheter balloon to be located in the urethra.

The Becks have failed to establish *res ipsa loquitur*. The Becks have failed to provide evidence to establish that the location of a Foley catheter in the urethra would not have occurred absent negligence. The Becks have failed to present evidence that would eliminate other responsible causes as to why a Foley catheter balloon would be located in the urethra. As such, the Becks have failed to raise an inference that negligence occurred.

**Conclusion**

Susquehanna's motion for summary judgment must be granted. The Becks have failed to establish *res ipsa loquitur* so that an inference of negligence can be made. Consequently, the Becks have failed to proffer sufficient evidence that would establish a *prima facie* case of medical negligence against Susquehanna.

**ORDER**

It is hereby ORDERED that Defendants' Susquehanna Health System, Williamsport Hospital, Loyalsock Family Practice, and Elizabeth E. Anderson, M.D. (hereafter Susquehanna) Motion for Summary Judgment filed February 5, 2003.

The Plaintiffs' medical negligence claim against Defendants Susquehanna Health System and Williamsport Hospital is dismissed.

The Plaintiffs' medical negligence claim against Dr. Elizabeth Anderson and Loyalsock Family Practice is dismissed as the parties have agreed to have summary judgment entered in favor of Dr. Anderson and Loyalsock Family Practice.

BY THE COURT:

William S. Kieser, Judge

cc: David B. Lingenfelter, Esquire  
Terry Light, Esquire  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)