



Defense verdict reversed in med-mal case; retrial ordered

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POSTED July 26, 2019 12:27 PM



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A woman who filed a lawsuit against an orthopedic treatment facility after her husband died of a blood clot less than one month after he was placed in a cast for an Achilles tear will get a new trial on damages, an appellate court panel held.

The 3rd District Appellate Court unpublished order issued July 19 reversed Will County Associate Judge Theodore J. Jarz's April 2017 decision to deny plaintiff Susan Steed's post-trial motion for judgment notwithstanding the verdict.

"We recognize that the standard for entry of judgment n.o.v. is a high one and is not appropriate if, 'reasonable minds might differ as to inferences or conclusions to be drawn from the facts presented,'" Justice Tom M. Lytton wrote, citing the 2006 Illinois Supreme Court case *York v. Rush-Presbyterian-St. Luke's Medical Center*.

"However, in this case, the evidence and inferences, when viewed in a light most favorable to Rezin Orthopedics, so overwhelmingly favor Susan that no contrary verdict can stand," Lytton added.



Steed was treated at Rezin Orthopedics on Feb. 17, 2009, after he injured his right leg and ankle playing basketball. Treacy, who was employed by Rezin, diagnosed Steed with a partially torn Achilles tendon and placed his right leg in a cast two days later.

Steed was ordered to follow up in two weeks, but the receptionist did not schedule an appointment until March 13, 2009, according to court documents.

On Feb. 20, 2009, Steed told his wife the way his ankle was positioned in his cast was uncomfortable, and five days later he called the office to have his follow-up rescheduled.

The receptionist changed his appointment to March 12, 2009, but on March 8, 2009, he suffered a fatal blood clot that traveled to one of his lungs, court documents stated.

In November 2016, Will County jurors found in favor of both defendants.

After Jarz denied Steed's motion for judgment n.o.v. she appealed to the 3rd District Appellate Court, contending the judge should have entered a judgment against Rezin on the issue of liability.

In order to show negligence against a health-care provider, Susan Steed needed to show Rezin deviated from the standard of care and that deviation was the proximate cause of her husband's death.

The standard of care of a "reasonably careful" treating institution such as Rezin Orthopedics was to schedule follow-up appointments according to what it says on the accompanying patient paperwork, according to court documents.

Rezin Orthopedics breached the standard of care, Lytton wrote, when its receptionist did not schedule a two-week follow-up appointment as the paperwork requested for Glenn Steed. Those facts were not disputed, according to court documents.

The defense argued against a finding of judgment notwithstanding a verdict because there was sufficient evidence to show it was within the professional standard of care to schedule a follow-up appointment for an Achilles tear within four weeks, according to court records.

However, Lytton wrote the issue on appeal is not whether a directed verdict is appropriate against Treacy, rather, whether one is necessary against Rezin Orthopedics based on its breach of its general standard of care.

"Based on the standard of care applied to an orthopedic treatment facility, all the evidence as to Rezin Orthopedics' negligence so overwhelmingly favors plaintiff that no verdict for defendant could ever stand," Lytton wrote.



Steed was represented by Lauren Levin Budz and Martin J. Lucas of MDR Law LLC.

Budz said she and her colleagues are “thrilled” for the Steed family and felt strongly the judge should have granted their motion for a directed finding based on the evidence.

“The testimony from all of the [d]efendants’ employees was very clear that Mr. Steed’s doctor gave his office staff a specific follow-up order they were supposed to follow but failed to follow, which prevented the diagnosis and treatment of Mr. Steed’s DVT that resulted in a fatal pulmonary embolism,” she said in a statement.

Rezin is represented by Stephen A. Rehfeldt of Mulherin, Rehfeldt & Varchetto P.C. in Wheaton.

He could not be reached for comment.

The case is *Susan Steed v. Rezin Orthopedics and Sports Medicine S.C., et al.*, 2019 IL App 170299-U.

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