



Alerts

Res Ipsa Loquitur in Practice

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Health Care Alert

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Issue

Was a trial court's order barring all evidence related to plaintiff's *res ipsa loquitur* claim was improper?

Alma Willis v. Sisters of St. Francis Health Services, Inc., d/b/a St. James Hospital and Health Centers, et al., Case No. 2020 IL App (1st) 180718

Case Summary

Plaintiff alleged that due to the negligence of a surgeon, anesthesiologists, and nurse anesthetists, she sustained injury to her bilateral median nerves during surgery. Plaintiff pled multiple theories of negligence, including *res ipsa loquitur*, which permits an inference of negligence from otherwise inexplicable facts. The trial court granted a motion *in limine* barring plaintiff's experts from testifying that the injury to the median nerves would not have occurred without negligence. The jury returned a verdict for defendants.

On appeal, the appellate court considered whether the trial court erred in granting the motion *in limine* barring all evidence related to plaintiff's claim based on *res ipsa loquitur*. The court explained that a plaintiff seeking to rely on *res ipsa loquitur* must "plead and prove that he or she was injured (1) in an occurrence that ordinarily does not happen in the absence of negligence, (2) by an agency or instrumentality within the defendant's exclusive control."

The appellate court found that plaintiff could rely on circumstantial evidence to establish her claim, even though her experts could not conclusively establish the cause of plaintiff's injury during surgery. Because plaintiff was not conscious at the time the injury occurred, and was then under defendants' control, she adequately proved the control element for *res ipsa loquitur* sufficient to create a question of fact. As such, the court held that the trial court erred in precluding plaintiff's experts from testifying that the injury to plaintiff's median nerve would not have occurred absent negligence. The case was remanded for a new trial.

Notably, the dissenting justice commented that *res ipsa loquitur* does not apply when (i) possible alternative causes exist and the plaintiff is unable to establish that the defendant's actions specifically caused the injury, (ii) an injury could have a non-negligent cause, or (iii) the plaintiff failed to name all persons or entities who might have caused the injuries." He found that *res ipsa loquitur* was inapplicable because defendant had presented evidence that the injury to plaintiff's arms could have occurred during a subsequent hospital admission.

Takeaways

To refute a plaintiff's claims of *res ipsa loquitur*, defendants should consider presenting evidence of (1) possible alternative causes of the injury, (2) that the injury could have a non-negligent cause, or (3) that the plaintiff failed to name all persons who might have caused the injuries.



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