

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 4-10-0620

Filed 6/27/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

MANDY NICOLE GERECKE-SCRIBNER,)	Appeal from
Administrator of the Estate of TYSON RILEY)	Circuit Court of
SCRIBNER, Deceased,)	Morgan County
Plaintiff-Appellant,)	No. 03L57
v.)	
MARK A. SAVAGE,)	Honorable
Defendant-Appellee.)	Richard T. Mitchell,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

Held: The appellate court affirmed the trial court's judgment, concluding that because the plaintiff failed to meet her burden of showing prejudice, the court did not abuse its discretion by granting defendant's motion *in limine*, which prohibited a registered nurse from testifying that certain symptoms were typical of a placental abruption.

In November 2004, plaintiff, Mandy Nicole Gerecke-Scribner, administrator of the estate of Tyson Riley Scribner, deceased, sued defendant, Mark A. Savage, alleging medical malpractice based on the death of her unborn son. Mandy claimed that Savage, her physician, failed to (1) make an early diagnosis of fetal distress, (2) order the appropriate medical treatment given the signs of fetal distress, and (3) perform an early cesarean-section surgery (hereinafter C-section).

In December 2008, Savage filed a motion *in limine*, seeking to bar Kathy Brockhouse, a registered nurse, from testifying that after initially paging Savage to inform him of

Mandy's condition, she told Savage that Mandy's symptoms were "typical of an abruption." Savage argued that (1) Brockhouse was not qualified to make such a medical diagnosis and (2) her statement was prejudicial in that it could have given the jury the mistaken impression that Mandy had already been diagnosed with a placental abruption at the time Savage initially spoke with Brockhouse. The trial court later granted Savage's motion *in limine*.

At a February 2010 trial, Mandy made an offer of proof --outside the presence of the jury--of the disputed testimony she would have elicited from Brockhouse at trial if she had been allowed to pursue such questioning. After considering that offer, the trial court again granted Savage's motion *in limine*. The jury later returned a verdict in Savage's favor.

Mandy appeals, arguing only that the trial court abused its discretion by granting Savage's motion *in limine*. We disagree and affirm.

I. BACKGROUND

In December 2008, Savage filed a motion *in limine*, seeking to bar Brockhouse from testifying that after initially paging Savage to inform him of Mandy's condition, she told Savage that Mandy's symptoms were "typical of an abruption." Savage argued in his written motion that (1) Brockhouse was not qualified to make such a medical diagnosis and (2) her statement was prejudicial in that it could have given the jury the mistaken impression that Mandy had already been medically diagnosed with a placental abruption at the time Savage initially spoke with Brockhouse.

Although Mandy's argument concerns only the propriety of the trial court's decision to grant Savage's December 2008 motion *in limine*, we nonetheless begin with a summary of the evidence presented at the February 2010 jury trial to place Savage's motion in its

proper context.

A. The Evidence Presented at Trial

1. *Mandy's Claim and Evidence*

In November 2004, Mandy filed an amended complaint, alleging medical malpractice, based on the death of her unborn son. Specifically, Mandy claimed that Savage, her physician, failed to (1) make an early diagnosis of fetal distress, (2) order the appropriate medical treatment given the signs of fetal distress, and (3) perform an early C-section.

At a February 2010 jury trial on her amended complaint, Mandy presented, in pertinent part, the following evidence.

On April 14, 2002, at approximately 10:45 a.m., Mandy, who was 32 weeks pregnant, was in bed when she felt a "pop." (The record shows that a full-term pregnancy is typically 40 weeks.) Mandy went to the bathroom and noticed the toilet filling up with blood clots. After changing her clothes, Mandy's fiancé drove her to the hospital emergency room, arriving sometime before 11 a.m. Mandy, who, by then, had bled through her pants to her knees, was taken to the obstetric ward, where Lori Coultas, a registered nurse, assisted Mandy with her hospital gown. Coultas then (1) applied fetal monitoring strips and (2) documented that at 11 a.m., Mandy's (a) pulse and temperature were normal and (b) blood pressure was slightly elevated. Coultas informed Mandy that the fetal heart rate, which she recorded at 130 beats per minute, was normal. Coultas then transferred Mandy's management to Brockhouse but continued to monitor Mandy's condition as required by hospital protocol.

Brockhouse checked Mandy's fetal monitoring strips and observed that Mandy was having "effective contractions." At 11:14 a.m., Brockhouse paged Savage, Mandy's

physician. Three minutes later, Savage responded. Brockhouse briefed Savage on Mandy's condition, noting that Mandy (1) had bled at home and (2) arrived at the ward with a "good amount" of bleeding. Brockhouse also informed Savage about Mandy's contractions, vital signs, and the "decreased variability" of the fetal heart rate. In response, Savage ordered a sonogram. Shortly thereafter, Savage lost phone contact with Brockhouse. Brockhouse then (1) returned to monitor Mandy's condition, (2) ordered the sonogram, and (3) noticed that Mark Ruff, a nurse anesthetist, had started an intravenous line.

At 11:24 a.m., Brockhouse paged Savage and, four minutes later, Savage responded. Brockhouse updated Savage on Mandy's condition, noting that Mandy's contractions were mild and that she had "relaxed" resting tones, which Brockhouse explained was a description of the uterus' condition between contractions. Thereafter, Brockhouse complied with Savage's order to administer medication to slow Mandy's contractions.

At 11:45 a.m., sonographer Kimberly Tenhouse attempted to transport Mandy to her sonogram. Brockhouse asked Tenhouse to bring back a portable sonogram rather than move Mandy because (1) Mandy began complaining about back and stomach pain and (2) Brockhouse wanted to continue assessing the baby's condition. Tenhouse left to retrieve the machine. At 11:48 a.m., Mandy vomited and expelled "a gush of blood and fluids" from her vagina.

Tenhouse later returned with an on-call radiologist, Dr. Robert Nordstrom, to perform Mandy's sonogram. After Brockhouse removed Mandy's fetal monitoring strips, Tenhouse began the sonogram at 11:55 a.m. At that time, Brockhouse, Coultas, Ruff, and Mandy's fiancé were present in the room. Shortly before 12:05 p.m.--while Tenhouse was performing the sonogram--Savage arrived and ordered Brockhouse to administer medication to

alleviate Mandy's pain. While performing the sonogram, Tenhouse determined the fetal heart rate on three separate occasions, noting that although the separate rates varied, they were within the normal range. During this time, Brockhouse and Coultas heard Nordstrom say that "there was no abruption on the sonogram" or in other words, that no evidence showed that the wall of the placenta separated from the uterus. At 12:16 p.m., Tenhouse concluded the evaluation and removed the portable sonogram to the hallway.

At 12:17 p.m., Savage ordered Brockhouse to reapply the fetal monitoring strips. Brockhouse did so, but by 12:20 p.m., she could not detect a fetal heart rate. One minute later, Brockhouse found a heart rate but noted that it was Mandy's. Savage, who had been in the room conferring with Nordstrom and Tenhouse regarding the results of the sonogram, attempted to find the fetal heart rate with a handheld "doppler." At 12:24 p.m., Brockhouse documented that Savage was unable to find a fetal heart rate. Thereafter, Savage retrieved the portable sonogram from the hallway and attempted to find a fetal heart rate but was unsuccessful. After conferring with another obstetrician, Savage concluded that (1) Mandy's baby had died and (2) performing a C-section would (a) be futile and (b) only put Mandy at risk of injury or infection. Later, Mandy was induced into labor and gave birth naturally to Tyson.

Savage later testified that there was "no doubt" that Tyson had died as a result of a placental abruption. The following exchange then occurred between Mandy's counsel and Savage concerning what Savage knew and his actions based on that knowledge:

"[MANDY'S COUNSEL:] Doctor, when you first talked with *** Brockhouse by telephone, can you tell the jury what *** she told you?

[SAVAGE:] She told me that Mandy had arrived and had some bleeding at home. She had some blood on her pants, on her legs, [and] that she was actively contracting. I asked about good fetal heart tones, and she assured me that [Mandy] had good fetal heart tones. And then we lost connection for a short time, and I ordered [intravenous fluids] and a stat sonogram.

* * *

[MANDY'S COUNSEL:] *** And since you knew that you were at least 35 minutes away from the hospital, why didn't you direct *** Brockhouse to have another doctor examine Mandy, given the information [Brockhouse] gave you?

[SAVAGE:] I had no reason to.

[MANDY'S COUNSEL:] *** You knew that there was a possibility of Mandy requiring a C-section didn't you, due to the heavy bleeding and [her] 32 week[pregnancy]?

[SAVAGE:] No.

[MANDY'S COUNSEL:] You knew that you weren't able to perform a C-section due to your lack of either qualifications or experience?

[SAVAGE:] Yes.

[MANDY'S COUNSEL:] And you also could not [perform C-section surgery] under hospital privileges agreement?

[SAVAGE:] Correct. I don't [perform] C-sections."

Fred Duboe, a board-certified physician in obstetrics and gynecology, testified that although Savage was a family practitioner, he was held to the medical standard of an obstetrician because he performed in that capacity as Mandy's physician.

Duboe concluded that after reviewing the medical record, charts, and depositions in Mandy's case, Savage acted below the standard of care for obstetricians in two respects. First, Savage failed to order the appropriate interventions based on the circumstances as described by Brockhouse. Specifically, based on Brockhouse's descriptions of Mandy's symptoms, the possible differential diagnoses included (1) "abruptio placentae" --an abruption of the placenta-- or (2) "placenta previa"--when the placenta sits at the cervix--which Duboe noted were both obstetrical emergencies. Under such a scenario, Savage should have mobilized a C-section team so that when he arrived at the hospital to evaluate Mandy's condition, he could have "put things into motion much quicker." Second, Savage should have relied on the clinical signs that Mandy exhibited to diagnose an abruption, instead of relying on the sonogram because about 85% of sonograms do not reveal abruptions.

On cross-examination, Duboe confirmed that his direct testimony was not that Savage should have ordered a C-section at the time he received Brockhouse's initial call. Instead, Duboe reiterated that his opinion was that Savage should have had a C-section team in place so that if he did later determine--after examining Mandy--that a C-section was appropriate, the team would be readily available. Duboe expressed the following rationale for his opinion that the circumstances as presented to Savage by Brockhouse warranted the mobilization of a C-section team:

"[SAVAGE'S COUNSEL]: *** [A]re you telling me that every time a doctor gets a call that there is some bleeding, mild contractions, no reference to pain, resting tone good, blood pressure good, every time a doctor gets that call, he's supposed to call the C-section team in based on that?

[DUBOE]: No. This is a special case of a 32-weeker [*sic*] with a doctor who's unable to do a C-section should the situation require it done in an emergency. That's the difference in this case."

In addition, Duboe also noted that (1) Tyson expired between 12:17 p.m. and 12:24 p.m. and (2) he could not conclude beyond a reasonable degree of medical certainty that if Tyson were born after 12:17 p.m.--the first opportunity Savage had to deliver Tyson--he would have been alive.

2. Savage's Evidence

Savage testified that after he returned Brockhouse's initial page on April 14, 2002, she informed him that Mandy had (1) frequent, mild contractions; (2) a good fetal heart rate; (3) stable vital signs; (4) experienced bleeding at home; and (5) arrived at the hospital with blood on the inside of her legs. Savage explained that he was primarily concerned about the bleeding but noted that bleeding was common in the third trimester of pregnancy and could have been caused by a variety of different issues, including a fetus pushing down on the cervix. Savage stated that because all other indications were normal, he ordered a sonogram to ascertain the origin of Mandy's bleeding. Savage also ordered medication to slow Mandy's contractions in an effort to prevent Mandy from delivering the baby prematurely.

Savage stated that he arrived at the hospital at 11:57 a.m. and entered Mandy's room just before 12:05 p.m., when he ordered Brockhouse to administer pain medication to Mandy. As he entered the room, Savage saw Mandy behind a sonogram machine. He then asked if there were any problems and "was reassured that there was no evidence of any abruption." As the sonographer was finishing, Savage asked about the amniotic fluid index--that is, the amount of fluid surrounding the fetus--and was again reassured that the index was normal.

Thereafter, Savage asked Brockhouse to reapply the fetal monitoring strips, but noticed that the monitor was not recording a fetal heart rate. Savage then attempted to locate a fetal heart rate, initially with a doppler and then with a portable sonogram machine to no avail. After consulting with another obstetrician, Savage concluded that performing a C-section could put Mandy's life at risk.

Larry Paul Griffin, a board-certified physician in obstetrics and gynecology, testified that after reviewing the records pertaining to Mandy's pregnancy, Savage met the standard of care of not only a family practitioner but also an obstetrician. Griffin specifically noted that Brockhouse's initial description that Mandy had mild contractions and a good resting tone is inconsistent with an abruption and is not indicative of fetal distress.

Griffin stated that faced with the symptoms Brockhouse described to Savage, the differential diagnoses Savage could have contemplated included the following: (1) "vasa previa," which is the marginal insertion of the umbilical cord; (2) a marginal sinus rupture at the edge of the placenta, which with the onset of uterine contractions, can result in heavy bleeding; (3) an "excessive bloody show," which in Mandy's case could have been caused by "nothing more than a bleeding vessel" that increases the blood flow as the cervix dilates; (4) placenta previa, as

Duboe had identified; or (5) a placental abruption, which Griffin noted is what occurred in Mandy's case.

Griffin opined that faced with these possible differential diagnoses, it was within an obstetrician's standard of care to order a sonogram because it would have allowed Savage to garner additional information to identify the source of Mandy's bleeding. Griffin also opined that given Mandy's condition, he could state to a reasonable degree of medical certainty, that no reasonable physician would have attempted to perform a C-section after losing the fetal heart rate because (1) the chances of saving the fetus were "essentially zero" and (2) it would put Mandy at significant risk, given that (a) she was unstable and (b) an abruption was possible.

On cross-examination, Griffin acknowledged that increased uterine tone, a tender uterus on palpation, longer than usual contractions, an irritable uterus, and fetal heart rate abnormalities are all symptoms that indicate an abruption. Griffin noted, however, that overall, Mandy's symptoms were not indicative of a rupture.

3. The Jury's Verdict

After considering the parties' respective evidence and argument, the jury returned a verdict in Savage's favor.

B. The Procedural Posture of Savage's Motion in Limine

As previously explained, in December 2008, Savage filed a motion *in limine*, seeking to bar Brockhouse from testifying that after initially paging Savage to inform him of Mandy's condition, she told Savage that Mandy's symptoms were "typical of an abruption." Savage argued in his written motion that (1) Brockhouse was not qualified to make such a medical diagnosis and (2) her statement was prejudicial in that it could have given the jury the

mistaken impression that Mandy had already been medically diagnosed with a placental abruption at the time Savage initially spoke with Brockhouse. Following a February 11, 2010, pretrial hearing, the trial court granted Savage's motion *in limine*.

Prior to calling Brockhouse to testify at the February 2010 jury trial on her amended complaint, Mandy made the following offer of proof--outside the presence of the jury--of the pertinent testimony she would have elicited from Brockhouse if she had been allowed to pursue such questioning:

"[MANDY'S COUNSEL:] I want to show you a blow up of your patient's narrative notes ***. Is this a record that you made entries on?

[BROCKHOUSE:] Yes.

[MANDY'S COUNSEL:] And for instance, what I am getting at is time, 11:14, *** Savage paged?

[BROCKHOUSE:] I read that.

* * *

[MANDY'S COUNSEL:] *** [D]id you reach *** Savage at that time?

[BROCKHOUSE:] He called me back a few minutes later.

* * *

[MANDY'S COUNSEL:] *** [Y]ou had an initial conversation with him?

[BROCKHOUSE:] Yes.

[MANDY'S COUNSEL:] *** [T]ell the Court exactly what you said and what *** Savage's reply was, if you remember?

[BROCKHOUSE:] Just that she had been bleeding at home, she came in, her contractions were frequent. Baby's heart-beat, that it was decreased variability.

[MANDY'S COUNSEL:] That is what you told him?

[BROCKHOUSE:] Yes. And that it was *typical of an abruption*, and that *** Mandy had been on a bed pan and *** there was blood in the bed pan.

[MANDY'S COUNSEL:] Okay. And then what was said or done?

[BROCKHOUSE:] Shows ordered [*sic*] for a sonogram at that time.

* * *

[MANDY'S COUNSEL:] Okay. Is that at 11:17?

[BROCKHOUSE:] Yes, that would have been *** when he called back in." (Emphasis added.)

On cross-examination, Brockhouse acknowledged that she (1) does not read sonograms and (2) did not medically diagnose Mandy with (a) placenta previa, (b) ancillary low placenta, or (c) blood vessels in the vagina, but merely noted that Mandy's condition was typical of an abruption. The following exchange then took place:

"[SAVAGE'S COUNSEL:] *** [I]n your mind for some

reason thought there might have been an abruption, but you don't make--

[BROCKHOUSE:] I just said it was typical.

[SAVAGE'S COUNSEL:] *** You didn't make a distinction whether it was placenta previa, lots of blood vessels in the vagina, ancillary low placenta. *** [Y]our diagnosis was it was an abruption, right?

[BROCKHOUSE:] I said typical of.

[SAVAGE'S COUNSEL:] But you didn't decide it was any of the other things that we just talked about.

[BROCKHOUSE:] No.

[SAVAGE'S COUNSEL:] You just come [*sic*] to one diagnosis, well, it's an abruption?

[BROCKHOUSE:] *** I just said typical of.

[SAVAGE'S COUNSEL:] *** I don't know what else I can say. It's the same argument that I've made five times before.

THE COURT: And you're objecting to her comment that it's a typical abruption[?]

[SAVAGE'S COUNSEL:] Right.

[MANDY'S COUNSEL:] *** That's not what she said.

The symptoms were typical *** of an abruption.

[SAVAGE'S COUNSEL:] And that's exactly the same

thing I put in my motion *in limine* that we--

THE COURT: Again, [the court is] going to grant, as [the court] did before, *** the motion *in limine*. So when [Brockhouse] testifies, she can testify to everything else except that it's typical of an abruption."

This appeal followed.

II. THE TRIAL COURT'S GRANT OF SAVAGE'S MOTION *IN LIMINE*

Mandy argues that the trial court abused its discretion by granting Savage's motion *in limine*. Specifically, Mandy contends that the court deprived her of a fair trial when it barred her from soliciting testimony that on April 14, 2002, Brockhouse informed Savage that Mandy's symptoms were "typical of an abruption." We disagree.

" 'Generally, a party is not entitled to reversal based upon evidentiary rulings unless the error was substantially prejudicial and affected the outcome of the case.' " *Bosco v. Janowitz*, 388 Ill. App. 3d 450, 462-63, 903 N.E.2d 756, 767 (2009), quoting *Taluzek v. Illinois Central Gulf R.R. Co.*, 255 Ill. App. 3d 72, 83, 626 N.E.2d 1367, 1376 (1993). The party seeking reversal bears the burden of establishing prejudice. *Bosco*, 388 Ill. App. 3d at 463, 903 N.E.2d at 767.

A trial court maintains broad discretion in both the admission of evidence and in ruling upon a motion *in limine*, which will not be disturbed absent an abuse of that discretion. *Colella v. JMS Trucking Co. of Illinois, Inc.*, 403 Ill. App. 3d 82, 92-93, 932 N.E.2d 1163, 1174 (2010). A trial court abuses its discretion when no reasonable person would take the view adopted by the court. *Ford v. Grizzle*, 398 Ill. App. 3d 639, 646, 924 N.E.2d 531, 539 (2010).

Mandy asserts that a new trial is warranted because the trial court's exclusion of Brockhouse's testimony "completely undermined" her theory of the case. In this regard, Mandy claims that the court prevented her from "offering the testimony of [her] expert concerning the standard of care [when] a physician is informed by a registered nurse that the patient's symptoms are typical of a [placental] abruption." Relying on *People v. Eiskant*, 253 Ill. App. 3d 773, 776, 625 N.E.2d 1018, 1021 (1993), Mandy posits that Brockhouse's report that Mandy's symptoms were "consistent" with a particular condition, "has been recognized as something less than a medical diagnosis."

In *Eiskant*, 253 Ill. App. 3d at 774, 625 N.E.2d at 1020, the trial court excluded the proposed testimony of the State's expert witness on rape-trauma syndrome, finding that the expert (1) would only testify that the victim's actions were consistent with posttraumatic stress syndrome (PTSS), instead of providing a definitive diagnosis and (2) did not have a reasonable basis for her opinion. The appellate court first agreed with the court that the State's witness was a PTSS expert and, thus, qualified to render an expert opinion pursuant to section 115-7.2 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.2 (West 1992)). *Eiskant*, 253 Ill. App. 3d at 775, 625 N.E.2d at 1020-21. However, the appellate court reversed, (1) noting that in a prior decision, it had concluded that (a) in general, it is medically improper to diagnose the existence of a syndrome and (b) the preferred expert testimony "is whether or not the victim exhibited symptoms, behaviors, or characteristics consistent with the syndrome in question" and (2) concluding that the expert's personal interview of the victim provided a reasonable basis for that opinion. *Eiskant*, 253 Ill. App. 3d at 776-77, 625 N.E.2d at 1021-22.

In this case, Mandy concedes that section 50-10 of the Nursing Practice Act (225

ILCS 65/50-10 (West 2008)), specifically prohibits a registered nurse--such as Brockhouse--from rendering a medical diagnosis. Indeed, in *Iaccino v. Anderson*, 406 Ill. App. 3d 397, 411, 940 N.E.2d 742, 754-55 (2010), the First District, in affirming the trial court's judgment, concluded that although a nurse could provide testimony regarding a description and her interpretation of what she observed concerning fetal monitoring strips, she was prohibited from offering any opinions as to whether the strips indicated that the baby should have been delivered earlier due to fetal distress or fetal intolerance to labor. The court noted that because such issues were outside the nurse's area of expertise, they should have been determined by a physician. *Iaccino*, 406 Ill. App. 3d at 411, 940 N.E.2d at 755. Thus, *Eiskant* does not provide Mandy any support.

We reject Mandy's claim that barring Brockhouse's testimony prevented Duboe--her obstetrics expert--from testifying that Savage acted below the standard of care. In fact, Duboe did so testify, explaining that Savage's actions fell below the standard of care for an obstetrician, in part, because he failed to mobilize a C-section team when faced with possible differential diagnoses that included the abruption of Mandy's placenta, among others. Thus, the jury heard and considered testimony from Mandy's obstetrics expert that after Brockhouse informed him of Mandy's condition, a differential diagnosis could have included an abruption of Mandy's placenta. Indeed, Savage's own expert also identified that same possible differential diagnosis. Thus, Mandy has failed to show how she was prejudiced by the trial court's decision to grant Savage's motion *in limine*. Accordingly, we conclude that the court did not abuse its discretion.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.