

1964

Marion W. Malstrom v. Thebon C. Olsen : Brief of Respondent

Utah Supreme Court

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Recommended Citation

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IN THE SUPREME COURT
of the
STATE OF UTAH

AUG 12 1964

MARION W. MALMSTROM,
Plaintiff and Appellant

vs.

THERON C. OLSEN,
Defendant and Respondent.

Clerk, Supremo Court, Utah

Case No.
10110

BRIEF OF RESPONDENT
THERON C. OLSEN

Appeal From Judgment For The Respondent
Third Judicial District Court
Honorable Ray Van Cott, Jr., Judge

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UNIVERSITY OF UTAH

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MARION W. MALMSTROM,
Plaintiff and Appellant

vs.

THERON C. OLSEN,
Defendant and Respondent.

Case No.
10110

BRIEF OF RESPONDENT
THERON C. OLSEN

STATEMENT OF CASE

The appellant has appealed from the decision of the Honorable Ray Van Cott, Jr., Judge, Third Judicial District Court, dismissing the appellant's malpractice action against the respondent.

DISPOSITION IN LOWER COURT

The appellant brought the instant action against the respondent, a chiropractor, claiming she sustained injuries as a result of treatment negligently rendered by the respondent. After presentation of the appellant's case, the trial court granted the respondent's motion to dismiss ruling that appellant had failed to present a prima facie case.

RELIEF SOUGHT ON APPEAL

Respondent submits the trial court's action should be affirmed.

STATEMENT OF FACTS

The respondent submits the following statement of facts:

On January 31, 1962, the appellant filed suit against the respondent, a duly licensed chiropractor offering services in Salt Lake County, alleging that as a result of negligent treatment, she had received from the respondent, she has sustained injuries to her neck (R-1). After several amended complaints had been filed (R-12, 27), the matter came on for jury trial on February 25, 26, 1964, before Ray Van Cott, Jr., Judge, presiding. After presentation of the plaintiff's case, the trial court, upon motion of respondent, granted a dismissal, finding:

“* * * that there was no evidence that he [respondent] had failed to exercise the skill and care commensurate with accepted standards of chiropractic treatment in Salt Lake and vicinity.” (R-36)

The evidence disclosed that the appellant was a mature woman, 38 years old at the time of the treatment, was a surgical nurse at the L.D.S. Hospital in Salt Lake City, had been a nurse since 1945, and was a registered nurse with a bachelor of science degree in nursing education (R-43, 44, 80).

On June 11, 1961, the appellant went to the office of the respondent at his home in Salt Lake County after having been referred by a Dr. Poulter, another chiropractor from Ogden (R-45). The appellant had been suffering with low back pain since 1949 (R-45) and had previously consulted chiropractors concerning her condition (R-85, 91).

The appellant advised the respondent of her condition and the referral and indicated that Dr. Poulter had X-rays of her spine which were available (R-46). The respondent proceeded to treat the appellant by back manipulations. According to respondent, the following occurred (R-47):

“A Yes. He had me take off my outer garments and put on a gown that he had and went into this room and he had a couch of some kind, or table, whatever it was, that he had me lay down on my abdomen. And he ran his hands up and down the back and pressed some way. I was on my abdomen and couldn't see him, just what I was feeling, and pressed on my back and somehow and —

Q What part of your back?

A The lower back where I was having my difficulty. And then he had me on my abdomen with my face to the side and made a few motions with my head and took both hands and gave it a very rough jerk.

Q What feelings did you have at that time?

A Well, it certainly hurt.

Q Did you say anything to the Doctor about it hurting?

A Oh, I said, 'ouch.'

Q What else did he do?

A That was all. He was very brief.

Then when the treatment was over I got dressed and my husband paid him and we left."

The next day, the appellant went, with her husband, to the Main Street office of the respondent for another treatment (R-48). Her testimony in that respect was (R-49):

"A Well, I went into a room and removed my outer garments again and put on a gown. And I went into a room and he had quite a low couch with a head up by a door. And he again manipulated my spine. But before he did this my husband told him that he had injured my neck, or that he had hurt my neck the day before when he treated me and he said, 'Oh, I can fix that.' And he was in a big hurry and he said — just a moment. There were people around and went out the door for awhile and then he came back and he gave my neck another rough jerk adjustment and that was the extent of the treatment."

The respondent asked her to return again, however, the appellant did not do so (R-49, 50). Thereafter, the appellant went on vacation for nine days during which time she did not consult a physician and the pain she claimed to have sustained from the treatment subsided partially (R-92).

Subsequently, the appellant consulted Dr. Ar-gyle, an M.D. and general practitioner, who gave her heat, dithermy treatments (R-51-52). Therafter, on July 12, 1961, she consulted Dr. Thomas E. Bauman, an orthopedic surgeon who prescribed sleeping in traction and finally hospitalization for traction (R-52-55). The appellant thereafter was referred to Dr. D. C. Bernson, who diagnosed a ruptured or herniated disc in the upper back and neck area (R-128, 129). A spinal fusion of this area was performed. Prior to the spinal fusion appellant gave the following statement concerning her medical history to a Dr. Dawkins (R-87, 88):

“* * * ‘... This 38 year old female who is employed in surgery at this hospital states that she knows of no incidence of twisting her neck, although she has had several incidents of moderate trauma to the neck approximately one or two months ago, she has pain in the neck which since has been associated with pain and a feeling of pins and needles in the whole arm and occasional areas of numbness which involve only the right fifth finger and fourth finger . . .’ * * *”

In another medical report, the following appears (R-88):

“* * * ‘*PRESENT ILLNESS*: Approximately 7 to 8 weeks prior to admission, the patient was experiencing a recurrent attack of her lumbosacral and sciatic pain and while attempting to obtain some relief from these symptoms *she made a careless slip which resulted in an accute neck strain.*’ * * *”

The first operation was only partially successful, and a second fusion became necessary which was done on March 12, 1962 (R-62). On July 23, 1962, the appellant returned to work (R-64).

At the time of trial, the appellant testified that during her treatment by other chiropractors, she had had a similar form of treatment to that given by the respondent (R-91). This was confirmed by the appellant's husband who testified (R-113, 114):

“Q Had you seen manipulations like that before?

“A I had seen similar ones.

“Q By other chiropractors, I suppose?

“A Yes.”

The appellant primarily relied upon the testimony of two medical doctors. Both doctors were the treating physicians. The trial court refused to allow Dr. D. C. Bernson to testify as to the standard of care in this case, as to whether the treatment in this case was bad practice. The doctor had no knowledge as to whether the treatment rendered was in accordance with proper chiropractic standards. He testified (R-144):

“A No sir. What I said is referring to their knowledge. I said I don't have the same knowledge, because I think I have a great deal more knowledge than chiropractors. I am not an authority on chiropractic treatment, sir.

“THE COURT: And the methods they use?

"A No, I am not.

"Q And whether or not the one method used by one would be good or not, is that correct?

"A That would be correct.

"THE COURT: In other words, if Dr. Olsen did one thing you wouldn't know from the standpoint of chiropractics and procedure whether or not it was correct or incorrect?

"A Not on their standards, sir."

Doctor Bernson did testify that it was "possible" that discs could be ruptured by a sharp movement of the neck (R-130), and that from his analysis, the rupture was "recent", but did not say how recent. Doctor Bauman also testified that a chiropractic neck manipulation "could cause the condition" (R-158). Doctor Bauman also unfamiliar with proper chiropractic standards in the community (R-161). He further testified that the herniation could be caused by some trauma in everyday activity (R-165). No evidence that the treatment given here was contrary to accepted chiropractic standards was offered.

The trial court dismissed, and commented in part (R-200):

"So that there is no evidence here that this Doctor did use excessive force and if he did use excessive force there is no evidence that the kind of treatment that he gave her on that occasion was not the kind of treatment that

was standard by chiropractors in this community and may have had a bad result with any other chiropractor.

“So that, as I say, there is nothing here in the way of expert medical testimony to show that the thing that Dr. Olsen did was not standard and he is to be judged as a chiropractor, not as a neurosurgeon or an orthopedic surgeon. They concedingly have greater skill or greater knowledge than the chiropractors. But chiropractors are lawfully practicing their profession and manipulation of the spine and of the back as a part of their lawful practice and which they have a right to do.

“There is no evidence that he wasn’t doing that except that he had a bad result and we do not say there is negligence because an accident happened. I go out here on the street and have an accident in an automobile, but it is no sign that I was negligent because I had an accident, nor would it be a sign if you did.”

Based on the above facts, it is submitted the trial court ruled correctly.

ARGUMENT

POINT I

THE TRIAL COURT DID NOT ERR IN HOLDING THE TESTIMONY OF DOCTORS BAUMAN AND BERNSON WOULD NOT SUFFICE TO SHOW THE APPROPRIATE STANDARD OF CARE.

In the instant case, the appellant contends that the testimony of Doctors Bauman and Bernson should be sufficient to establish the negligence of

the respondent. This contention simply will not stand. Neither Doctor Bauman nor Doctor Bernson indicated they were familiar with the standards of practice of chiropractics (R-144, 178). Therefore, neither Doctor could say whether the actions of the respondent were contrary to accepted standards of chiropractic practice in the community. There is no evidence in this case that the respondent in anyway sought to treat the appellant other than as a chiropractor. Therefor, can the testimony of the Doctors establish the standard of care where by their own admissions they were unfamiliar with the appropriate standards of chiropractic treatment? Obviously not. The trial court refused to allow the doctors to testify as to whether the treatment given was bad practice. It is submitted that appellant's contention that the testimony of Doctors Bernson and Bauman establishes the appropriate standard and shows negligence fails on two bases: (1) There is no testimony of record of abandonment of proper standards, and (2) since the Doctors were unfamiliar with proper standards, their testimony could not establish negligence.

In *Forrest v. Eason*, 123 Utah 610, 261 P.2d 178 (1953), the plaintiff sued a naturopathic physician for malpractice. The trial court granted a directed verdict. On appeal, this Court affirmed noting:

“Whether defendant was licensed to practice minor surgery is not clear, but immaterial

here. The record does not indicate the plaintiff sustained the burden of proving defendant negligent. A plaintiff, unable to rely on any *res ipsa loquitur* theory, must prove negligence in a case allegedly involving malpractice. Civil liability does not depend necessarily on lack of statutory licensing qualification, but rather upon failure to exercise that degree of care and skill considered proper by correct and accepted standards of the profession involved, or, stated otherwise, failure to use that care exercised by skilled professional men doing like work in the vicinity.”

The Court, therefore, recognized that there must be some evidence of the required standards of care before a plaintiff may recover. In this instance, no evidence of the required standards was received by the trial court. The substance of the testimony of the two medical doctors was as to their treatment and diagnosis of the appellant. They were not allowed to testify as to whether the actions in this case constituted a departure from accepted practice of the chiropractic school. Indeed one of the Doctors indicated he would be unable to testify as to whether the treatment was proper because he could not divorce himself from his more specialized learning (R-178). The appellant does not, by this appeal, contest the evidentiary ruling of the Court.¹

¹ In *Walkenhorst v. Kesler*, 92 Utah 312, 332, 67 P.2d 654 (1937), this Court, citing *Martin v. Courtney*, 75 Minn. 255, 77 NW 813, implied the matter of admitting such testimony is exclusively for the trial court.

Therefore, the testimony of the two Doctors factually fails to show a departure from proper standards.

Secondly, where the Doctors were in fact unfamiliar with accepted standards of chiropractic treatment, it would be ludicrous to contend their testimony could show negligence. It is, of course, recognized that a medical doctor must pass examinations "generally required of candidates for the degree of doctor of medicine by reputable medical colleges in the United States." 58-12-12, U.C.A., 1953, and that for those who practice without drugs or surgery, a similar exam must be passed excepting "materia medica, therapeutics, surgery, obstetrics and theory and practice." 58-12-13, U.C.A. 1953. However, this does not mean that the law does not recognize the fact that various schools of medicine do differ. A chiropractor in fact does practice a varying form of treatment than an osteopath or allopathic physician. This being so, the standard of care to be applied is that of the chiropractor, or other school of practice. *Forrest v. Eason*, 123 Utah 610, 261 P.2d 178 (1953); *Abos v. Martyn*, 31 Cal. App. 2d 705, 88 P.2d 797 (1939); *Howe v. McCoy*, 113 Cal. App. 468, 298 Pac. 530 (1931). Thus, in 19 A.L.R. 2d 1198, It is stated:

"Generally, a drugless practitioner or healer is entitled to have his treatment of his patient tested by the rules and principles of the school or system to which he belongs."

Some courts have refused to allow physicians to testify as to the standard of care applicable to a chiropractor. *Sheppard v. Firth*, 215 Ore. 268, 334 P.2d 190 (1959); *Janssen v. Mulder*, 232 Mich. 183, 205 N.W. 159 (1925). In *Bryant v. Biggs*, 331 Mich. 64, 49 N.W. 2d 63 (1951), The Michigan Supreme Court noted as to a physician's testimony against an osteopath:

"In view of the repeated statements that he had no knowledge of osteopathy or the methods or standards of practice generally of osteopathic practitioners, the conclusion necessarily follows that he was not competent to testify whether the defendant exercised due and proper care . . ."

See Anno. 85 A.L.R. 2d 1022.

However, in this case, the record is completely absent of evidence as to the proper standard of care because of lack of knowledge and an inability of one doctor to divorce himself from his specialized training. The trial court was, therefore, clearly correct in its determination that there was no evidence from the testimony of the physicians to show respondent departed from the proper standard of care. The Doctors simply did not know anything about medicine by spine manipulation.

Walkenhorst v. Kesler, supra, cited by appellant, does not assist on this question since there the testimony of the physician was admitted, and secondly, the Court noted:

“* * * The evidence submitted to the jury was sufficient to show appellant stepped out of the ‘chiropractic’ field when limited to palpation, and the testimony in the light of the statute was admissible because appellant was charged with having diagnosed and treated human ailments.”

This is not the case in the instant appeal, nor did the Walkenhorst case involve a situation where the doctor, although unknowledgeable in chiropractics, indicated he could not testify as to the standard because he could not divorce himself from his more specialized knowledge not required of chiropractors.² Therefore, the case is inapropos in this instance.

It follows, therefore, the appellant cannot argue with any success that the testimony of Doctors Bauman and Bernson established the standard of this case and a departure therefrom.

POINT II

THE EVIDENCE DOES NOT SHOW NEGLIGENCE ON THE PART OF THE RESPONDENT.

The appellant, in Point I of her brief, argues that the evidence received by the Court establishes negligence on the part of the respondent. In order

² Three defects in Justice Moffat's opinion and the reason why the opinion of Justices Wolfe and Folland may be more persuasive in the future is (1) the majority never determined what was encompassed by "materia medica, therapeutics, surgery, obstetrics and theory and practice" so that standards where applicable were never defined, (2) that a person is legally qualified is substantially different than actual knowledge, and (3) the legislature never intended the registration law to determine tort liability (see *Forrest v. Eason*, supra).

for the plaintiff to recover in a malpractice action, it is necessary for the proof to show (1) the appropriate standard of medical treatment for the school of practice involved, and (2) a departure from these standards.

There mere fact of injury or an unsuccessful result will not support a finding of negligence. In *Ritter v. Sivils*, 206 Ore. 410, 293 P.2d 211 (1956), a malpractice action was brought against a chiropractor. The Court stated:

“A chiropractor is not a warrantor of cure, and if a good result does not ensue from his efforts the doctrine of *res ipsa loquitur* is not available to his erst while patient.”

The Utah Supreme Court has followed this standard in medical practitioner cases in the past. The concept of *res ipsa loquitur* is not applicable to medical malpractice cases in Utah. *Forrest v. Eason*, 123 Utah 610, 261 P.2d 178 (1953); *Walkenhorst v. Kesler*, 92 Utah 312, 67 P.2d 654 (1937); *Baxter v. Snow*, 78 Utah 217, 2 P.2d 257 (1931). Affirmative evidence must be offered by showing (1) what the recognized medical standards are in the community; (2) a departure from those standards due to neglect; (3) damage as the proximate result of such departure. Utah has adopted the position that proof of medical standards, and neglect in not maintaining those standards, as well as proximate cause must be shown by expert testimony.

Thus, in *Anderson v. Nixon*, 104 Utah 262, 139 P.2d 216 (1943), the Utah Supreme Court stated:

“* * * What is the ordinary care and skill required of a doctor in the community in which he serves must necessarily depend upon expert testimony.”

In *Marsh v. Pemberton*, 10 U. 2d 40, 347 P.2d 1108 (1959), the Utah Supreme Court stated:

“A physician or surgeon is not an insurer of a successful result and therefore no presumption of negligence is to be indulged from the fact of an adverse result of his treatment or operation on a patient. This court held in *Edwards v. Clark*:

‘In order to recover in such case the plaintiff must show that in treatment of the patient the defendant physician did not exercise such care and diligence as is ordinarily exercised by skilled physicians doing the same type of work in the vicinity, and that the want or failure of the required skill and care was the cause of the injury complained of. That there might have been neglect or lack of skill is not enough. To permit a cause to go to the jury on testimony showing only possibility, or what might or could have happened, is to permit a jury to base a verdict upon conjecture, speculation or suspicion.’

“See also *Baker v. Wycoff*, 95 Utah 199, 79 P. 2d 77;

“*Baxter v. Snow*, 78 Utah 217, 2 P.2d 257.

“The ordinary care and skill required of a

doctor in the community in which he serves must necessarily be established by expert testimony. This court has held that expert testimony is unnecessary to establish liability in malpractice cases only where the question of propriety of treatment of a patient by a physician is a matter of common knowledge of laymen or when a physician shows a gross neglect or want of care and skill such as leaving medical supplies in the incision of a patient.

“This case does not fit any of the above exceptions. It is certainly not within the common knowledge of a layman as to how tight a cast should be applied to a foot following a ‘triple arthrodesis’ operation. Evidence was introduced to the effect that the swelling accompanying such an operation could be different with every individual; therefore the tightness of the cast and the amount of padding necessary is a matter of judgment exercised by the physician. A physician is generally liable for misjudgment only when he arrived at such judgment through failure to use ordinary care and skill or was guilty of misattention or neglect.

“In the absence of a standard of care established by expert medical testimony and some evidence showing a deviation from this standard it must be presumed that the physician skillfully operated on and treated the plaintiff. To allow the question of negligence to be submitted to the jury without first establishing a standard of care would allow a jury to indulge in a type of speculation not generally allowed.

“This is neither the type of case that is within the common knowledge of laymen nor can it be said that a standard was established by the testimony of the defendant physician. Counsel for the plaintiff in attempting to establish a standard of care by the defendant’s testimony posed several hypothetical questions to the defendant asking him to assume facts that were never proved. To submit the question of liability to the jury under such circumstances would be to base a verdict upon a mere possibility of negligence. It is seldom that a doctor’s standard of care, because it is so specialized, is known or is within the knowledge of a layman. We believe this case to be the type that required expert testimony as to a standard of care and that the failure of the plaintiff to call an expert medical witness and establish such a standard was fatal to his recovery.”

See also Annotation 81 A.L.R. 2d 597.

The appellant, however, contends that even though there is no testimony showing a departure from acceptable standards of chiropractic treatment that this case is one where the circumstances surrounding the claimed injury establish negligence in the absence of expert testimony. The trial court carefully considered this allegation as against the situation in *Baxter v. Snow*, 78 Utah 217, 2 P.2d 257 (1931), and determined that this case, like the facts of *Baxter*, will not support such a contention. This Court, in *Fredrickson v. Maw*, 119 Utah 385, 227 P.2d 772 (1951), did recognize that where the

facts are such that ordinary laymen may find a departure from proper treatment, the case may go to the jury in the absence of expert testimony. That case, however, involved the leaving of a surgical sponge in the wound after a tonsillectomy. The sponge cases, however, are a unique departure from the general rule requiring expert testimony. McCoid, *Liability of Medical Practitioners*, Professional Negligence, p. 74 (1960). The appellant has cited a few cases supporting a case of negligence against chiropractors and other healing practitioners apparently on the basis of injury. However, the facts of those cases are substantially more aggravated than those now before the court. In *Farrah v. Patton*, 99 Colo. 41, 59 P.2d 76 (1936), the facts showed a terrific snap form of manipulation of the patient's neck by the osteopath followed by the onset of intense pain and vomiting. The doctor himself admitted at the time that he had been "a little rough". The patient was unable to swallow, and paralysis on the right side of the patient's body occurred immediately. This is a substantially different situation that is involved here. The appellant noticed only slight pain, which subsided subsequently while on her vacation. The treatment of her spine and neck was not coupled with intense injury thereafter, nor was there the "terrific" jerk, etc. which was involved in *Farrah*. In a more recent case, the Colorado Supreme Court noted that a "terrific yank"

is not enough to show negligent treatment. In *Klimkiewicz v. Karnick*, 372 P.2d 736 (Colo., 1962), the Court stated:

“The plaintiff does not claim improper diagnosis; she expressly admits that the technique that defendant alleges he used as proper chiropractic treatment and that the method which demonstrated as that used was proper. Thus we find that plaintiff’s complaint is confined to the fact that defendant gave her arm a ‘tremendous yank’. This was part of the admitted ‘proper chiropractic treatment’. In giving this ‘tremendous yank’ as related by plaintiff, or in applying ‘a mild firm extention . . . to the arm’, as related by defendant — no matter which version is correct — the defendant’s actions were those of a doctor under contractual obligations, and the propriety of the same must be measured by the rules governing one in his position.”

In *Nelson v. Dahl*, 174 Minn. 574, 219 N.W. 941 (1928), a chiropractor under spinal adjustments on a patient and during the course of treatment died. The Minnesota Supreme Court stated:

“ ‘When a doctor accepts professional employment, he is only required to exercise such reasonable care and skill as is usually exercised by doctors in good standing of the same school of practice. When a patient selects one of the several recognized schools of treatment, he thereby adopts and accepts the kind of treatment common to that school; and the care, skill, and diligence with which he is treated, when that becomes a question in the courts of this state, must be tested by the evidence of those who are trained and skilled in

that particular school of treatment. In actions of this character the plaintiff must show that the result concerning which complaint is made was due to negligence or unskilful treatment. In this case no negligence is shown. The fact that the patient died soon after the adjustment is not significant. Negligence is not presumed from results. Appellant stresses the failure to diagnose, to recognize the presence of diseases by their symptoms, but the school of the chiropractors seems to limit its field of operation to the spine and to making the abnormal normal. It would seem that such could seldom have harmful consequences. Those engaged in chiropractic treatments must, of course, have regard to the presence of such ailments as might be aggravated by adjustments of the spine — if such adjustments do in fact aggravate any ailments. Plaintiff sought a new trial upon the ground of newly discovered evidence which is directed to the duty of a chiropractor to make a general examination of his patient before giving a treatment . . . Such evidence was apparently not produced because counsel expected to prove this issue by an allopathic doctor, which was not permissible. The motion was also addressed to the discretion of the trial court.' ”

In the instant case, the facts show none of the circumstances that would bring this case under the exception to the rule requiring expert evidence. This case is not different from *Baxter v. Snow*, supra, where this Court rejected such a contention.³ The

3 For the same reason, as well as the fact that expert testimony as to standard was offered, *Hinthorn v. Garrison*, 108 Kan. 510, 196 Pac. 439 (1921) does not support the appellant.

appellant went to the respondent suffering from low back pain. She was a mature woman, familiar with medicine and chiropractics and educated as a nurse. The treatment given her by the respondent based on the testimony of her husband and herself was similar to that given by other chiropractors. The respondent did not purport to diagnose or go outside the field of chiropractics. Although she noticed pain during the treatments, it was not by her own admission intense or excruciating. After the treatments, she went on vacation, and the discomfort subsided to some extent. Although the subsequent diagnoses by the testifying physicians was of ruptured or herniated discs, it was admitted that other activities may cause such a problem. The practice of chiropractics involves manipulation of the spine; *Board of Medical Examiners v. Freenor*, 47 Utah 430, 154 Pac. 941 (1916); consequently, the mere fact that the respondent made such manipulations cannot be evidence of negligence. The amount of force and propriety of treatment, in the absence of clear evidence of unprofessional conduct, is a matter of judgment and expertise in the school and expert evidence must define the area where judgment ends and negligence begins. *Coon v. Shields*, 88 Utah 76, 39 P.2d 348 (1934). The appellant contends that since the doctors testified a ruptured disc could occur or was possible during chiropractic manipulation, that such when coupled with the evidence makes out negligence. In *Moore v. D. & R. G. W.*

R. R. Co., 4 Utah 2d 255, 292 P.2d 849 (1956), an expert testified that "it was possible" that the accident caused a ruptured inter-vertebral disc. The Court hld that plaintiff had failed to meet his burden. The Court stated:

"... the plaintiff retains his burden of proving his damages by competent evidence to an extent where the trier of fact might discover that which is probably true, having regard for the certainty or uncertainty which is more or less inherent in every issue of fact."

Certainly where the evidence shows no departure from standards of reasonable practice, where the apellant herself in reciting her medical history discounts the very claim she sues on, the evidence will not in any event support an award. The trial court painstakingly considered the issue and reviewed the evidence against the precedents after viewing and hearing the testimony. An analysis of the trial court's action, the evidence and the law discloses no basis for reversal.

CONCLUSION

The appellant was given every reasonable latitude by the trial court to make right a case demonstrating the respondent's negligence. The simplest and easiest way to have done so would have been to call a witness from the same discipline as the respondent to testify relating to the appropriate standard

of care and the claimed departure from reasonable treatment. The appellant instead attempted to rely upon allopathic physicians whose personal and professional prejudices against chiropractors and drugless physicians are obvious. Further, the appellant sought to rely upon the fact of injury itself to support her claims. Both of these tactics are unsupportable in law, and the evidence afforded the appellant no basis for relief against the respondent. The trial court correctly dismissed appellant's cause of action. This Court should affirm.

Respectfully submitted,

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