Not Reported in N.W.2d, 2002 WL 1842402 (Iowa App.)
UNPUBLISHED OPINION. CHECK RULES BEFORE CITING.

Court of Appeals of Iowa.
Boyd E. RAMSEY, Administrator of the Estate of Ethel Helen Reha Ramsey, and on behalf of Boyd E. Ramsey, Individually, Plaintiff-Appellant,
v.
Richard COATNEY, Elaine K. Berry, and Cass County Memorial Hospital, Defendants-Appellees.
No. 01-1085.
Aug. 14, 2002.

Patient's son, individually and as administrator of the estate of patient, appealed from decision of the District Court for Cass County, James S. Heckerman, J., granting summary judgment in favor of doctors on son's medical negligence action arising from the death of patient. The Court of Appeals, Miller, J., held that material issue of fact as to whether patient was in a terminal condition at the time life-sustaining procedures were withdrawn or withheld by doctors precluded grant of summary judgment to doctors. Reversed and remanded.

Appeal from the Iowa District Court for Cass County, James S. Heckerman, Judge.
Plaintiff, individually and as administrator of the estate of his mother, appeals from the district court ruling granting summary judgment in favor of defendants in the plaintiff's medical negligence action arising from the death of his mother. REVERSED AND REMANDED.
Gregory W. Landry and Gary G. Mattson of LaMarca & Landry, P.C., West Des Moines, for appellant.

Kermit B. Anderson of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, for appellees.

Considered by MAHAN, P.J., and MILLER and HECHT, JJ.

MILLER, J.

***1** Plaintiff Boyd E. Ramsey, individually and as administrator of the estate of his mother Ethel Helen Reha Ramsey, appeals from the district court ruling granting summary judgment in favor of defendants, Drs. Richard Coatney and Elaine K. Berry, in the plaintiff's medical negligence action arising from the death of Ethel Ramsey. The plaintiff contends the court erred in granting summary judgment because genuine issues of material fact exist as to whether Ethel Ramsey was in a terminal condition when life-sustaining procedures were withdrawn or withheld. We reverse and remand.

I. BACKGROUND FACTS AND PROCEEDINGS

On July 3, 2000 Ethel Ramsey (Ethel) was admitted to the Cass County Memorial Hospital for treatment of pneumonia. Her treating physician was Dr. Richard Coatney, D.O. At the time Ethel was admitted she was ninety-two years old and had a long history of physical impairments and medical conditions. She had been the victim of a stroke leaving her with slight paralysis on one side (hemiparesis). She also suffered from progressive dementia and her swallowing mechanism was impaired. For the last year Ethel had only communicated by opening her eyes periodically and had no other self-movement beyond that. She could not feed herself and had to be fed by her son Boyd Ramsey (Boyd). The records of the nursing home where Ethel was living indicate she was refusing to eat until

Boyd began feeding her. Due to her impaired swallowing ability Ethel often aspirated food causing recurrent aspiration pneumonias which had intensified in the last few years requiring her to be hospitalized for treatment because the pneumonia no longer responded to oral outpatient antibiotics.

Ethel had four adult children, the plaintiff Boyd Ramsey, Bill Ramsey, Joan Donnelly, and Carol Schoop. At the time of her admission to the hospital on July 3, 2000 Ethel had not prepared a declaration concerning life-sustaining procedures. On August 15, 2000 Dr. Coatney's progress notes on Ethel indicated that her lungs were "clear at this time." Boyd wanted intravenous (IV) hydrations continued and tubal feeding commenced at that time but Ethel's other three children wanted the IV stopped and no feeding tube to be introduced. Coatney's notes indicate he discontinued IV hydration on August 15, 2000 "at the request of Bill and his two sisters." Bill, Joan, and Carol all signed notarized statements on August 18, 2000, which were sent to the hospital and Coatney by their attorney. The letters stated, "We, as the majority of adult children of Ethel H. Ramsey, agree to the withholding of life-sustaining procedures, i.e., intravenous feedings or tube feedings, after consultation with the attending physician, Richard F. Coatney, D.O."

Dr. Coatney's progress notes dated August 22, 2000, indicate that faced with the continued disagreement on treatment between Bill, Carol, and Joan on one side and Boyd on the other Dr. Coatney had sought a second opinion from Dr. Elaine K. Berry, M.D. In these notes Coatney also discusses a phone call he received from Boyd's attorney who read him Iowa Code section 144A.7 (1999). [FN1] Dr. Coatney's notes of August 22, seven days after IV hydration had been discontinued, include the following: "Who was the other doctor who stated she was terminal? I did not state Ethel was terminal. I did not state it.... This patient was never declared terminal by me."

FN1. Although Dr. Coatney's notes state he was read Iowa Code section "144-7" we assume it was actually section 144A.7 dealing with life sustaining procedures in the absence of a declaration. Section 144.7 was repealed by 1988 Iowa Acts, ch. 1158, § 102.

***2** Dr. Berry examined Ethel on August 21, 2000, at which point Ethel had been without food and hydration for six days. Dr. Berry found in her written report that Ethel's progress was "poor and guarded". In Dr. Berry's opinion it was "ethically appropriate that active nutritional supplementation, and recurrent treatment with antibiotics, be discontinued."

Ethel died intestate on August 26, 2000, eleven days after IV hydration was discontinued. Boyd was appointed the administrator of Ethel's estate. On January 5, 2001 Boyd filed this medical negligence, wrongful death action against Drs. Coatney and Berry.[FN2] The parties filed cross motions for summary judgment and a hearing was held on the motions. An affidavit from Dr. Coatney was attached to the defendants' motion for summary judgment. In it he stated, "Prior to her death, I believed Ethel Ramsey's condition was terminal." The district court issued an order filed June 21, 2001, granting the defendants' motion for summary judgment and denying Boyd's motion for summary judgment.

FN2. Boyd also sued the Cass County Memorial Hospital, but dismissed his claim against that defendant on April 13, 2001.

Boyd appeals, contending there are genuine issues of material fact as to whether Ethel was in a "terminal condition" under Iowa Code chapter 144A at the time life-sustaining procedures were withdrawn or withheld by the defendants.

II. STANDARD OF REVIEW

We review a district court's ruling on a motion for summary judgment for correction of errors at law. Iowa R.App. P. 6.4; *Wright v. Am. Cyanamid Co.,* 599 N.W.2d 668, 670 (Iowa 1999).

A district court properly grants summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. A factual issue is "material" only if "the dispute is over facts that might affect the outcome of the suit." The burden is on the party moving for summary judgment to prove the facts are undisputed....

In ruling on a summary judgment motion, the court must look at the facts in a light most favorable to the party resisting the motion. The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record. An inference is legitimate if it is "rational, reasonable, and otherwise permissible under the governing substantive law." On the other hand, an inference is not legitimate if it is "based upon speculation or conjecture." If reasonable minds may differ on the resolution of an issue, a genuine issue of material fact exists.

Phillips v. Covenant Clinic, 625 N.W.2d 714, 717-18 (Iowa 2001) (citations omitted).

III. MERITS

Iowa Code chapter 144A (1999), titled "Life-Sustaining Procedures Act," sets forth rules to be followed by healthcare providers concerning life-sustaining procedures when treating a patient both when the patient has, and when the patient does not have, a declaration relating to life-sustaining procedures. Ethel did not have such a declaration and therefore section 144A.7 governs here. Section 144A.7 provides in relevant part:

***3** 1. Life-sustaining procedures may be withheld or withdrawn from a patient who is in a *terminal condition* and who is comatose, incompetent, or otherwise physically or mentally incapable of communication and has not made a declaration in accordance with this chapter *if there is consultation and written agreement* for the withholding or the withdrawal of life-sustaining procedures between the attending physician and any of the following individuals.... [FN3]

FN3. It appears undisputed that Ethel met the second of the two criteria set forth in the statute in that she was incompetent or otherwise incapable of communication. It is the "terminal condition" requirement that is the focus of our attention.

...

d. An adult child of the patient or, if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation.

Iowa Code § 144A.7(1)(d) (1999) (emphasis added). "Terminal condition" is defined in this chapter as,

an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, *in the opinion of the attending physician,* result in death within a relatively short period of time or a state of permanent unconsciousness from which, to a reasonable degree of medical certainty, there can be no recovery.

Iowa Code § 144A.2(8) (emphasis added).

Boyd contends on appeal that the contradiction between the defendants' affidavits in support of their motion for summary judgment and their statements in the medical records creates a genuine issue of material fact. More specifically, Boyd argues Dr. Coatney's progress notes on August 22, 2000, stating Ethel was "never declared terminal by me" and that he "did not state Ethel was terminal" are in direct contradiction to his affidavit stating that prior to Ethel's death he believed her condition was terminal.

Whether as of August 15 when life-sustaining procedures were withheld or withdrawn the defendants held the required opinion is material to the outcome of this case. For two somewhat related but nevertheless separate and independent reasons we conclude the summary judgment record does not establish as undisputed fact that the defendants held such an opinion as of that date.

First, in relevant part Dr. Coatney's affidavit asserts only that "prior to her death" (which occurred August 26) he believed her condition was terminal. Notably, it does not assert he held such a belief as of August 15. Dr. Berry's affidavit, although worded somewhat differently, also speaks of an opinion formed well after August 15, apparently on August 21 when Dr. Berry examined Ethel. The affidavits thus cannot be seen as establishing as uncontested fact that the defendants held the required opinion as of August 15. Second, with respect to Dr. Coatney only, it appears from his August 22 progress notes that when someone, apparently Boyd, asked what second doctor had stated Ethel was terminal Dr. Coatney adamantly insisted that he had "not state[d]" she was terminal, and that he had "never declared" her to be terminal. These statements are at least arguably inconsistent with him having held an opinion as of August 15 that Ethel was then in a terminal condition.

***4** Viewing the facts in a light most favorable to the party resisting the motion for summary judgment, here Boyd Ramsey, and considering on his behalf every legitimate inference that can be reasonably deduced from the record, we conclude the defendants failed to meet their burden to prove there is no genuine issue of material fact. Accordingly, the district court's ruling granting summary judgment to the defendants is reversed and the case is remanded for further proceedings.[FN4]

FN4. Both in the trial court and on appeal the parties have not drawn or attempted to draw any distinctions between the acts or omissions of Dr. Coatney and those of Dr. Berry, nor have they in any manner suggested that their respective relationships to the facts and the plaintiff's claim differ in any way. Nor did the trial court in ruling on the summary judgment motion draw any distinctions between the two defendants. Although we have followed the pattern established by the parties and the trial court and dealt with the issue as presented, by doing so we do not intend to suggest that we do or do not view the relationships of the two defendants to the facts and claims as being indistinguishable.

REVERSED AND REMANDED.