

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0658

CATHY H. HEBERT AND THOMAS HEBERT

VS.

DR. HOWARD W. RUSSELL, RUSSELL OB-GYN CENTER FOR
WOMEN, INC. AND LOUISIANA MEDICAL MUTUAL INSURANCE
COMPANY

JUDGMENT RENDERED: DECEMBER 21, 2007

ON APPEAL FROM THE
THIRTY-SECOND JUDICIAL DISTRICT COURT
DOCKET NUMBER 144,158
PARISH OF TERREBONNE, STATE OF LOUISIANA

HONORABLE JOHN R. WALKER, JUDGE

STEPHEN S. STIPELCOVICH
MICHAEL J. SAMANIE
HOUMA, LA

ATTORNEYS FOR PLAINTIFFS/APPELLANTS
CATHY HEBERT AND THOMAS HEBERT

JOSEPH A. REILLY, JR.
HOUMA, LA

ATTORNEYS FOR DEFENDANTS/APPELLEES
DR. HOWARD RUSSELL, RUSSELL OB-GYN
CENTER FOR WOMEN, INC., AND LOUISIANA
MEDICAL MUTUAL INSURANCE COMPANY

BEFORE: GAIDRY, MCDONALD AND MCCLENDON, JJ.

Handwritten signatures and initials in black ink on the left margin. The top signature appears to be 'JRM'. Below it is a large, stylized signature that looks like 'JRM' with a flourish. At the bottom is another signature that looks like 'JRM'.

MCDONALD, J.

This is an appeal of a medical malpractice case wherein the jury found that the doctor did not violate the standard of care. We affirm.

Cathy H. Hebert was referred to Dr. Howard Russell for complaints of pelvic pain. She had undergone several previous abdominal surgeries. A series of ultrasounds revealed that the pain was likely caused by a remnant of her right ovary. Dr. Russell recommended surgical removal of the remnant.

Initially, Dr. Russell spoke to Ms. Hebert about doing a laparoscopic procedure, using several small incisions into the abdomen to visualize and remove the remnant. He told her that stents would be used. However, upon further reflection, Dr. Russell determined that in light of her prior abdominal surgeries, the laparoscopic procedure could be problematic, and he elected to perform a full abdominal incision approach (laparotomy).

Dr. Russell met with Ms. Hebert on December 27, 2002, and informed her of his recommendation of a laparotomy. He obtained an informed consent for the laparotomy. He testified that he told her that since it would entail a large incision, with much better visualization, he would only use stents if necessary.

During the surgery, Dr. Russell did not find the extensive scarring or adhesions often caused by previous surgeries and thus did not use stents. However, the ovary was adhered to the pelvic wall, and during the surgery, Dr. Russell transected Ms. Hebert's ureter. A urologist, Dr. Robert Alexander, repaired the ureter before Ms. Hebert came out of anesthesia.

Thereafter, Ms. Hebert filed a complaint with the Medical Review Panel, which ultimately found that Dr. Russell did not breach the standard of care. The Medical Review Panel gave the following reasons for its decision:

ureteral transection is a well-defined complication of gynecological surgery; the patient was informed of the risks of the surgery, including ureteral transection, pre-operatively; the ureteral transection was identified quickly and corrected in a timely fashion; and stent placement may not have prevented ureteral transection.

Ms. Hebert and her husband, Thomas Hebert, then filed suit. After a trial on the merits, the jury found that Dr. Russell did not breach the standard of care and that he obtained the proper informed consent. Thereafter, the trial court dismissed the suit. Ms. Hebert is appealing that judgment and asserts that the jury manifestly erred in finding that Dr. Russell did not breach the applicable standard of care.

On appeal, Ms. Hebert does not contend that the mere occurrence of the ureteral transection is the evidence of malpractice, rather, she asserts that the real issue is whether a physician has a duty to place pre-operative stents after telling the patient he would do so.

Ms. Hebert testified that Dr. Russell promised pre-operatively to have Dr. Alexander place stents in the ureter, and he broke his promise. Dr. Russell testified that he told Ms. Hebert that stents would be used only if necessary, and his handwritten clinical notes corroborate his testimony.

The jury had two versions of the evidence to choose from and accepted Dr. Russell's version, ruling in his favor. We find no manifest error in this determination.

For the foregoing reasons, the trial court judgment is affirmed. This memorandum opinion is issued in compliance with the Uniform Rules, Louisiana Courts of Appeal, Rule 2-16.1.B. Costs are assessed against the plaintiffs.

AFFIRMED.