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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0670**

Lynda Jo Blom,
Appellant,

vs.

Douglas County Hospital, et al.,
Respondents.

**Filed June 3, 2019
Affirmed
Ross, Judge**

Douglas County District Court
File No. 21-CV-16-314

Lisa L. Beane, Teresa Fariss McClain, Katherine S. Barrett Wiik, Robins Kaplan LLP,
Minneapolis, Minnesota (for appellant)

Matt A. Paulson, Randall S. Hanson, Megan J. Flom, Camrud, Maddock, Olson & Larson,
Ltd., Grand Forks, North Dakota (for respondents)

Considered and decided by Jesson, Presiding Judge; Ross, Judge; and Peterson,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

ROSS, Judge

Lynda Blom suffered a heart attack and stroke six months after emergency room physicians at Douglas County Hospital treated her for reported chest pain and shortness of breath. Blom sued the hospital and physicians, claiming medical malpractice for having failed to admit her or order cardiac testing. After a trial during which the physicians introduced evidence that Blom was not experiencing an acute coronary event when she visited the emergency room and that she then failed to follow doctors' instructions after she left, the jury returned a verdict rejecting Blom's malpractice claims. Blom argues on appeal that the district court erred by allowing evidence of her comparative negligence, that the evidence was insufficient to prove she was negligent, and that the district court should have allowed her to amend her complaint to add a claim of negligent nondisclosure. We conclude that, because the jury found none of the physicians negligent and Blom has not challenged that finding, the instructions and findings about her own negligence are irrelevant and no error concerning the issue can lead to reversal. We also conclude that Blom identified no facts on which a negligent-nondisclosure claim can rest. We therefore affirm.

FACTS

Lynda Blom visited Douglas County Hospital's emergency room in April 2012 reporting chest pain and shortness of breath. Dr. Donald Odland used the "chest pain protocol" to determine if Blom was experiencing acute coronary syndrome. He immediately ordered an electrocardiogram, followed by a series of troponin tests over an

extended period, and a chest x-ray. Dr. Donald Odland consulted with Dr. Thomas Edwards, who took over Blom's care. The two agreed from the protocol that Blom was not experiencing an acute condition, but they believed that the electrocardiogram results showed abnormalities. They believed that she was most likely suffering musculoskeletal pain unrelated to her heart. Dr. Edwards discharged Blom after a third troponin test confirmed a normal troponin level. Before discharging Blom, Dr. Edwards advised her that it was "very important" that she schedule an appointment to follow up with her primary care provider.

The next day Blom returned to the emergency room reporting severe pain. Dr. Donald Odland's brother, Dr. David Odland, treated her. He observed that Blom underwent the cardiac protocol the previous day with no significant indication of concern. After a period of observation he discharged Blom, concluding that she most likely was suffering from musculoskeletal pain. Blom's discharge instructions stated that the diagnosis of noncardiac chest pain was "not caused by a heart problem," and they directed her to consult with her primary care physician to establish the cause of her pain. The instructions directed her to return to the emergency room if she experienced chest pain and shortness of breath.

Blom saw her primary care physician two days later. Her physician reviewed Dr. Edwards' notes from the first emergency-room visit and saw the diagnosis. Blom's physician instructed Blom to schedule a complete physical examination soon. Blom never scheduled the physical.

Six months later, Blom began experiencing pain and shortness of breath. She did not immediately check herself into the hospital, call her physician, or visit an emergency

room. After she experienced these symptoms for five days, she then checked herself into the emergency room at Douglas County Hospital, where physicians quickly diagnosed her with having suffered a heart attack and sent her by ambulance to St. Cloud Hospital for a cardiology examination and evaluation. The examination revealed that Blom's heart was failing due to low blood flow, and after treatment for three days, St. Cloud Hospital discharged her.

A day after the discharge, Blom suffered cardiac arrest. She was flown to Abbott Northwestern Hospital and underwent heart surgery. She suffered a stroke while in the hospital. Blom has significant health problems and may need a heart transplant.

Blom sued Douglas County Hospital and the three emergency room physicians who treated her, claiming medical malpractice and alleging that their negligence caused her heart attack and stroke. Blom moved the district court to prohibit the defendants from arguing that her failure to visit the emergency room immediately after she began experiencing chest pain constituted comparative negligence. The district court did not immediately decide the motion and decided it nine days into the jury trial. It found that evidence existed indicating that Blom failed to get a physical examination and failed to visit the emergency room when she first experienced symptoms. It therefore included a jury instruction on comparative negligence and listed Blom among the potentially negligent parties on the special-verdict form.

Blom moved to amend her complaint to add a claim of negligent nondisclosure, alleging that Dr. Donald Odland and Dr. Edwards had negligently failed to inform Blom of her electrocardiogram results. The district court denied Blom's motion.

The jury returned a verdict finding that the physicians were not negligent, that Blom was negligent, and that Blom's negligence was the sole contributing cause of her injury. Blom moved for a new trial, and the district court denied her motion. Blom appeals.

DECISION

Blom challenges the denial of her motion for a new trial. We review a district court's decision to deny a motion for a new trial for an abuse of discretion, *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018), and we review de novo any claimed errors of law. *Moorhead Econ. Dev. Authority v. Anda*, 789 N.W.2d 860, 890 (Minn. 2010). Blom raises three theories arguing that we reverse the district court's judgment and order further proceedings in the district court. None of her theories supports reversing.

We reject Blom's contention that reversal is necessary to correct the district court's alleged error in instructing the jury on comparative negligence and listing Blom as a potentially negligent party on the special-verdict form. She adds that, even if her inclusion as a potentially negligent party was appropriate, we should reverse because the evidence was insufficient to support the jury's finding that her negligence caused her injury. The jury's verdict defeats both arguments.

The jury found that the accused physicians were not negligent, and Blom has not challenged that finding. Because the jury found that none of the defendants acted negligently, and a medical malpractice claim fails without a finding of the defendants' negligence, see *Cornfeldt v. Tongen*, 295 N.W.2d 638, 640 (Minn. 1977), the instructions and finding as to Blom's negligence are irrelevant to Blom's appeal. That is, we have no reason to explore the merit of Blom's arguments about her own negligence because her

malpractice claim fails as a matter of law on the uncontested finding that the defendants committed no malpractice.

We also reject Blom's argument that the district court abused its discretion by denying her request to amend her complaint to add a negligent-nondisclosure claim. We review a district court's denial of a motion to amend the pleadings for an abuse of discretion. *Hunt v. Univ. of Minn.*, 465 N.W.2d 88, 95 (Minn. App. 1991). District courts must freely grant leave to amend a complaint "when justice so requires." Minn. R. Civ. P. 15.01. The district court may allow an amendment to conform to the evidence presented at trial. Minn. R. Civ. P. 15.02. But district courts properly deny a motion to amend a complaint when the additional claim cannot be maintained. *Hunt*, 465 N.W.2d at 95.

The district court acted within its discretion by finding Blom's allegation of negligent nondisclosure lacking. A medical negligent-nondisclosure claim requires the claimant to establish that the accused physician had a duty to know of a risk or of an alternative treatment plan and to disclose it to the patient who must decide whether to consent to treatment, that the doctor breached that duty, and that the nondisclosure caused harm resulting in damages. *Reinhardt v. Colton*, 337 N.W.2d 88, 95–96 (Minn. 1983). The patient must also prove that a reasonable person in her position would have refused the treatment had she been informed of the risk. *Id.* at 96. Because Blom did not consent to any treatment, the district court concluded that Blom could not establish a claim of negligent nondisclosure.

Blom argues that the district court should have recognized her “non-treatment” negligent-nondisclosure claim, asserting that the Minnesota Supreme Court paved the way for the claim in two cases in the 1980s. The argument fails.

It is true that the supreme court opined in 1987 that “there may be some non-treatment situations where the [negligent-nondisclosure] doctrine could be applicable.” *Pratt v. Univ. of Minn. Affiliated Hosps.*, 414 N.W.2d 399, 402 (Minn. 1987). And in the following year the supreme court ruminated further that “a duty might arise to advise the patient of the availability of additional diagnostic tests, which, if given, would be essentially determinative of the presence of disease.” *Madsen v. Park Nicollet Med. Ctr.*, 431 N.W.2d 855, 859–60 (Minn. 1988). The first problem with relying on these statements in *Pratt* and *Madsen* for the proposition asserted is that both the text (“may” and “might”) and the context of each statement (neither forming the basis for the outcome in those cases) indicate plainly that they are merely dicta, and dicta is no substitute for controlling legal precedent. *See State v. Atwood*, 925 N.W.2d 626, 631 (Minn. 2019).

The second problem is that, not only has Minnesota never adopted the expansion of negligent-nondisclosure claims in this fashion, the Washington Supreme Court opinion that apparently inspired the Minnesota dicta has fallen out of favor even in Washington. The *Madsen* court based its statement on *Gates v. Jensen*, a Washington case that concluded that a physician had a duty to inform his patient about additional testing available to detect glaucoma. 595 P.2d 919, 923 (Wash. 1979). Much more recently, however, the Washington Supreme Court has explained that its *Gates* decision has been superseded by statute and its negligent nondisclosure analysis is no longer viable. *Gomez v. Sauerwein*, 331 P.3d 19,

22–23 (Wash. 2014). And our own caselaw contradicts the course Blom asks us to follow. See *Russell v. Johnson*, 608 N.W.2d 895, 898–99 (Minn. App. 2000) (reaffirming that negligent nondisclosure does not involve negligence in the administration of treatment, in the failure to treat, or in the failure to properly diagnose), *review denied* (Minn. June 27, 2000). We therefore have no reason to apply the dicta in the Minnesota cases or the seemingly rejected rationale of the Washington case that prefaced them.

We do acknowledge that the term “treatment” is to be broadly construed for negligent-nondisclosure cases, and we will so construe it here. See, e.g., *Pratt*, 414 N.W.2d at 402 (“‘[T]reatment’ should be construed broadly.”); *Madsen*, 431 N.W.2d at 860 (construing “treatment” broadly to include orders to be on bed rest). But this construction does not save Blom’s claim. The emergency room physicians treating her did not administer any sort of treatment, however broadly we read the term. Blom pointed to no facts on which the district court was bound to add a negligent-nondisclosure-of-treatment claim. We hold that the district court did not abuse its discretion by denying Blom’s motion to add the claim.

Affirmed.