

No. 25831 -- Catherine H. Reynolds, individually and in her own capacity; and Catherine H. Reynolds, by and through Roy A. Horning, her power of attorney v. City Hospital, Inc., a West Virginia corporation; and C. Dong Park, M.D.

Starcher, C.J., dissenting:

I cannot agree with the majority opinion's discussion of the record in this case. I realize that medical treatment often does not result in a perfect outcome. Patients in hospitals get infections and broken bones do not always mend properly. But the facts in this case have nothing to do with a "bad outcome." The plaintiff in this case, Catherine Reynolds, went into the hospital with lower back pain, and her diagnosis on admission was "falling episodes;" the plan for her treatment was three to five days of testing. The plaintiff came out of the hospital a month later with a broken shoulder, a broken hip, a urinary tract infection, a loss of 20 pounds and bed sores.

Mrs. Reynolds was an 86-year-old self-sufficient woman who lived alone at home, ate without assistance and went to the bathroom just like the rest of us. In January 1994 she walked into the hospital, under her own power, for a few days of testing because of lower back pain she was having that resulted from a "dizzy spell" fall. Mrs. Reynolds was carried out of the hospital a month later on a stretcher to an ambulance that transported her back to her home where she has since been under 24-hour nursing care.

Mrs. Reynolds's attorney introduced evidence showing that the defendant doctor over-prescribed certain drugs for the plaintiff which adversely interacted with other drugs given to the plaintiff. This left the plaintiff in a dazed, heavily medicated state -- so bad that one doctor decided to diagnose the plaintiff with "dementia." Then

the hospital failed to follow its own policies concerning the restraint of such dazed patients, and neglected to have enough personnel who could tend to the plaintiff's basic needs. The result was that Mrs. Reynolds, who was left sitting in her own feces and urine, tried to get out of bed under her own power. The first time she fell and broke her shoulder. The second time she fell and broke her hip.

When the hospital did take the time to tie Mrs. Reynolds to her bed, it catheterized her and left the catheter in for long periods, resulting in a urinary tract infection. The plaintiff was unable to feed herself, and lost 20 pounds during her month in the hospital. The plaintiff was given a "call" button so she could page a nurse for assistance -- but the button was attached to the bed above the plaintiff's immobilized broken shoulder, out of her reach, so that it was unusable. And the whole time that this "treatment" was occurring, the hospital failed to diagnose the fractured lumbar vertebrae that was causing the plaintiff's lower back pain.

The majority opinion examines this case as a dry legal dispute of whether the plaintiff proved by a preponderance of the evidence that the defendants deviated from the standard of care. The interests of justice rises above a mere statement of the law. It's patently obvious that Mrs. Reynolds didn't get proper treatment from the defendants, and in this lawsuit, did not get justice.

The Court cannot, should not, sanction the kind of "care" that Mrs. Reynolds received from the defendants. The defendants should have been held liable for

the humiliation and pain they inflicted upon this elderly lady. I therefore respectfully dissent.

I am authorized to state that Justice McGraw joins in this opinion.