

THE STATE OF OHIO,)
) SS: TIMOTHY MCCORMICK, J.
COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS

CIVIL DIVISION

RICHARD RIDOLFI, et al.,)
)
Plaintiffs,)
)
-v-) CASE NO. CV322843
)
)
ROBERT VAN BERGEN,)
)
Defendant.)

- - - -

PARTIAL TRANSCRIPT OF PROCEEDINGS

- - - -

APPEARANCES:

On behalf of the Plaintiffs:

Joseph L. Coticchia, Esq.;

On behalf of the Defendant:

REMINGER & REMINGER

By: William A. Meadows, Esq. and
Michael D. Shroge, Esq.

Scott L. Wallace, RMR, CRR
Official Court Reporter
Cuyahoga County, Ohio

OFFICIAL COURT REPORTERS

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BE IT REMEMBERED, that at the September
A.D. 2000 term of said Court, to-wit,
commencing on Monday, September 25, 2000, this
cause came on to heard before the Honorable
TIMOTHY MCCORMICK, in Courtroom No. 17-C,
Courts Tower, Justice Center, Cleveland, Ohio,
upon the pleadings filed heretofore.

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I N D E X

D i r e c t C r o s s R e d i r e c t R e c r o s s

DEFENDANT'S WITNESSES:

Phillip E. Lerner, M.D. 4

1 * * * * *

2 THE COURT:

You may cross.

3 CROSS-EXAMINATION PHILIP E. LERNER, M.D.

4 BY MR. COTICCHIA:

5 Q. Dr. Lerner, can drainage alone be a sign of
6 infection?

7 A. Depends on the nature of the drainage and the
8 circumstances in which it's occurring.

9 Q. Doctor, do you remember I took your deposition
10 at the office of Reminger and Reminger with the
11 defendant's attorney on September the 1st, just last
12 month -- or this month, I should say?

13 A. Yes.

14 Q. I asked you this question.

15 MR. MEADOWS: What page,
16 please?

17 MR. COTICCHIA: Page 28.

18 Q. "Drainage alone, can it be a sign of infection?
19 Answer: Can infection manifest as drainage? Yes." Do
20 you remember that question? Do you remember that
21 answer?

22 A. Yes.

23 Q. So, drainage alone can be a sign of infection,
24 can't it?

25 A. I didn't say it couldn't.

1 Q. Can an infection manifest by way of dehiscence?

2 A. Yes.

3 Q. Can a high white count be a sign of infection?

4 A. Yes.

5 Q. Can a low grade temperature be a sign of
6 infection?

7 A. It's possible.

8 Q. Everyone of these exhibits that you testified
9 to showed one, a sign of drainage, didn't it?

10 A. What exhibits?

11 Q. The various exhibits that the defendant's
12 lawyer just asked you to interpret.

13 A. We didn't talk about drainage.

14 Q. You didn't talk about drainage just now?

15 A. When he put up the exhibits? No, we didn't
16 mention drainage at all.

17 Q. All right. Forget the exhibits. You discussed
18 drainage in front of this jury, didn't you?

19 A. Drainage has been discussed.

20 Q. Right, and the drainage specifically came from
21 the sternal opening of Richard Ridolfi's chest, didn't
22 it?

23 A. Yes.

24 Q. And at the time of the rewiring by the
25 defendant, he took a culture, didn't he?

1 A. Yes.

2 Q. And the culture was deep below the sternum,
3 wasn't it?

4 A. It was within the depth of the wound.

5 Q. And you said you read Dr. VanBergen's
6 deposition, didn't you?

7 A. Yes.

8 Q. And he said in that deposition he took a swab
9 around the pericardium, didn't he?

10 A. Yes.

11 Q. And that culture grew Serratia, didn't it?

12 A. No, it didn't.

13 Q. Doctor, I'm showing you what's already been
14 marked Exhibit 1. For the record, it's a wound
15 culture dated August 26th, '95. You have seen this
16 before, haven't you, Doctor?

17 A. Yes.

18 Q. And does it show at the bottom culture, rare
19 Serratia marcescens?

20 A. Yes.

21 Q. And that wound culture came from below Richard
22 Ridolfi's sternum, didn't it?

23 A. So did the one on the list above it.

24 Q. Please, Doctor, it's a simple question.

25 THE COURT: Yes or no. Yes

1 or no. Answer yes or no.

2 **A.** What is the question?

3 **Q.** Didn't this wound culture of the 26th of August
4 come from below Richard Ridolfi's sternum?

5 **A.** The specimen that was obtained was obtained
6 from the depths of the wound.

7 **Q.** Thank you. Doctor, I call your attention to
8 Plaintiff's Exhibit 6. It is a routine hematology,
9 26, 28, 29. You saw that earlier, didn't you?

10 **A.** What test are you talking about?

11 **Q.** The hematology, the white blood cells.

12 **A.** Okay. The hematology is made up of several
13 components, the red blood cells, the platelets, and
14 the white blood cells.

15 **Q.** All right. And my question, first of all, is
16 can a high white count be a sign of infection?

17 **A.** A high white count can be a sign of infection.

18 **Q.** And isn't it true on August the 28th, Richard
19 Ridolfi's white count was 12.7?

20 **A.** True.

21 **Q.** And there is an H after that reading. What
22 does that mean?

23 **A.** High.

24 **Q.** And isn't it true, on August the 29th, Richard
25 Ridolfi's white count was 12.0 with an H after it?

1 What does that mean?

2 A. High.

3 Q. Doctor, do you agree that the growth of the
4 rare Serratia represents a growth within the chest
5 cavity and not on the surface of Richard Ridolfi's
6 skin?

7 A. It grew from the specimen taken from the
8 cavity.

9 Q. Does that mean yes or no?

10 A. I'm just telling you where it grew. I don't
11 know.

12 Q. You don't know today?

13 A. I don't know the significance of the culture in
14 terms of anything other than the supporting evidence
15 to assess its significance.

16 Q. Doctor, do you remember at your deposition I
17 asked you this question: Page 25: "So, the growth of
18 the rare Serratia, do you agree, represents a growth
19 within the chest cavity and not on the surface of the
20 skin?" Answer, at the top of page 26: "Correct".

21 A. The growth --

22 Q. Was that your answer to that question, Doctor?

23 A. Within a different frame of reference, yes.

24 Q. During your testimony, Doctor, the defendant's
25 lawyer asked you some questions about the culture of

1 August the 26th, and he asked you about the rare
2 Serratia. Do you remember those questions?

3 A. Yes.

4 Q. In fact, calling your attention to Exhibit 1,
5 the culture that was taken on the 26th grew rare
6 Serratia which was finalized on the 30th, correct?

7 A. Yes.

8 Q. Now, isn't it true, if it was finalized on the
9 30th, it was growing on the 29th?

10 A. Not necessarily.

11 Q. Not necessarily, but it can be growing on the
12 29th, can't it, if it's finalized on the 30th?

13 A. If it was the anaerobic culture and it wasn't
14 examined until 72 hours had passed --

15 Q. Doctor, that's not my question.

16 A. But I'm here to give you information so you can
17 know.

18 Q. I appreciate that, Doctor, but I want to ask
19 you some questions, if you will let me.

20 A. Well, if you will let me --

21 THE COURT: Hold on. Put a
22 question to him.

23 Q. All right. Isn't it true that the rare
24 Serratia may have been identified on the third day?

25 MR. MEADOWS: Objection.

1 THE COURT: Overruled.

2 A. No, it wasn't identified on the third day.

3 Q. That's not my question. It may have been
4 identified on the third day, correct?

5 A. If it had been growing on the second day.
6 There is no evidence that it was.

7 Q. All right. If it was -- Let's back up.. I'm
8 glad you said that. Let's back up. If it shows on
9 the 30th, then it may have been growing on the 29th,
10 correct?

11 A. If it was identified by the 30th, it had to be
12 growing before that time in order to be sub-cultured
13 and set up for testing.

14 Q. Thank you. You agree, Doctor, that following
15 the discharge on the 29th, Mr. Ridolfi was readmitted
16 for an infection. Do you agree with that?

17 A. Yes.

18 Q. And because of the infection, Richard Ridolfi
19 went through extensive debridement surgery, didn't he?

20 A. That's what he required.

21 Q. And that was to remove all the infected tissue,
22 correct?

23 A. Correct.

24 Q. And that was to remove all the infected bone in
25 his sternum, correct?

1 A. Yes

2 Q. And following the second wound, wound,
3 Mr. Riolfo experienced laceration of his heart,
4 correct?

5 A. There was a laceration to the ventricle, yes

6 Q. And the ventricle is part of his heart, isn't
7 it?

8 A. Yes

9 Q. And that was all because of this infection,
10 correct?

11 A. What infection?

12 Q. That infection -- you don't know what infection
13 we're talking about?

14 A. I want to know what infection you're talking
15 about

16 Q. We're going to get to that

17 A. Well, I can only answer --

18 Q. I'm going to ask you a question.

19 THE COURT: Hold on. Hold
20 on.

21 A. I want to answer the question here. You tell
22 me which infection you're talking about.

23 Q. I don't know yet. I'm trying to find out what
24 you think it is.

25 A. It's a specific question.

1 THE COURT: Withdraw the
2 question and ask a question.

3 Q. I withdraw the question. Subsequent or during
4 these hospital admissions, do you agree that cultures
5 showed Serratia in Richard Ridolfi's tracheal
6 aspirate?

7 A. That's later on.

8 Q. All right. Okay. Later on?

9 A. I thought we were trying to establish a
10 sequence here.

11 Q. During the --

12 A. You're asking me questions --

13 THE COURT: Hold on. Hold on.

14 A. -- out of sequence.

15 THE COURT: Hold on. If you
16 can't answer the question or if it's unclear,
17 we will have him rephrase his question. We are
18 not going to argue over the meaning of
19 questions between the two of you. I don't
20 understand, I can't answer as phrased. Go
21 ahead. Ask a question.

22 Q. Thank you. Doctor, do you have your records in
23 front of you?

24 A. Yes.

25 Q. All right. Do you agree on September 17th

1 Richard Ridolfi had a culture taken from his trachea
2 and it grew Serratia?

3 A. If it says so, I agree with it.

4 Q. Do you agree on September 20th, blood cultures
5 were obtained that grew Serratia?

6 A. If it says so, I agree with it.

7 Q. Do you agree on September 24th, an abdominal
8 wound culture grew Serratia?

9 A. Yes, if it says so, I agree with it.

10 Q. And do you agree that the susceptibility for
11 the Serratia of the 26th was identical to the
12 susceptibility of the Serratia that I just identified
13 on September 17th, September 19th, and September 20th?

14 A. That the sensitivities were the same?

15 Q. Yes.

16 A. Yes, but it's meaningless.

17 Q. But they are the same, aren't they?

18 A. But it's meaningless.

19 Q. Okay. You say it's meaningless. Doctor, in
20 your earlier testimony, you said that Serratia does
21 cause problems?

22 A. It can, certainly.

23 Q. What is a pathogen, Doctor, in the infectious
24 disease area of your practice?

25 A. A pathogen is something that causes injury

1 through the mechanism of infection.

2 Q. And, in fact, Serratia is a pathogen, isn't it?

3 A. In this particular case, it was both a pathogen
4 and a non-pathogen at different times.

5 Q. This Serratia that Richard Ridolfi
6 contracted —

7 A. Which Serratia?

8 Q. The first and the second.

9 A. The first is not associated with infection.

10 Q. All right. Let me put it this way: What is a
11 nosocomial bacteria?

12 A. Nosocomial infection is something that occurs
13 in the health care setting.

14 Q. Does that include a hospital?

15 A. Yes.

16 Q. That's a commonly known bacteria or infection
17 in hospitals; is that correct?

18 A. It is a --

19 Q. All right. Do you agree that this is an
20 infection that Richard Ridolfi had?

21 A. Which infection are you talking about?

22 Q. The subsequent one here that we're talking
23 about.

24 A. What subsequent one?

25 Q. In September.

1 A. Which one, which organism?

2 Q. The Serratia.

3 A. Which admission?

4 Q. The September admission.

5 A. The September admission, his initial infection
6 was a Streptococcal infection.

7 Q. I'm talking about the Serratia.

8 A. I'm talking about his infection, since you're
9 talking about it.

10 Q. All right. What is Serratia?

11 A. His initial infection was a Streptococcal
12 infection.

13 Q. Was the Serratia a nosocomial infection?

14 A. Which admission?

15 Q. In September.

16 A. The Serratia infection that occurred following
17 the Streptococcal infection was, in deed, a nosocomial
18 infection, and that's the first time he was infected
19 with Serratia.

20 Q. Thank you. I'm speaking hypothetically. If,
21 in fact, the Serratia that showed on this culture of
22 the 26th was the same Serratia that we find in
23 September on these cultures --

24 A. We didn't find it in September.

25 Q. I'm asking you hypothetically.

1 THE COURT: Assume this.

2 Assume this.

3 Q. For the question. If, in fact, it's the same
4 Serratia, doesn't it make sense that now, if you find
5 it just below the chest cavity, it spread into the
6 blood, the abdomen, the trachea, isn't that the way
7 that kind of infection grows, if it's the same
8 Serratia?

9 A. I'm assuming that you're talking about the
10 Serratia infection he experienced after the
11 Streptococcal infection.

12 Q. No, I'm asking you to assume that the Serratia
13 that was grown in this culture of August the 26th is
14 the same Serratia that was cultured on September 17th,
15 September 19th, and September 20th. And for the
16 record, so that I'm clear, the 17th was tracheal
17 aspirate and sputum. September 19th was wound
18 culture, and September 20th was blood.

19 A. I can't make the assumption because you're
20 ignoring the intervening events. You're trying to tie
21 two things together that are not, and I'm trying to
22 tie the Serratia infection that he experienced to the
23 Streptococcal experience that he first experienced.

24 Q. So, the answer is you can't answer the
25 question? Isn't that your answer?

1 A. You're asking me to make an impossible
2 assumption, because we have intervening cultures that
3 don't show the Serratia, and every rule and regulation
4 that I practice my specialty by tells me that the
5 Serratia was not present at the time of the strep
6 infection, and therefore, the two are unlikely to be
7 related.

8 Q. Doctor, you spent a lot of time on the
9 defendant when the defendant's attorney was asking you
10 questions. You talked about colonization, correct?

11 A. We discussed it, yes.

12 Q. And I want to ask you this question: Isn't
13 there a way to determine that the Serratia cultured in
14 September was the same Serratia cultured in August?

15 A. Yeah, there is a way to do it.

16 Q. And that's because if there is the presence of
17 a colonization, most people will retain the same
18 organization from August to September?

19 A. Same organism.

20 Q. Same organism.

21 A. Not organization.

22 Q. I said organization. I'm sorry. Pardon me.
23 Most people will retain the same organism, won't they?

24 A. That's exactly my argument, and you're denying
25 it. Where was it on the admission where the

1 Streptococcus grew?

2 Q. Doctor, it was there in August, wasn't it, rare
3 Serratia?

4 A. Yes.

5 Q. And it was there in September in the blood, in
6 the sputum, in the tracheal aspirate, and in the
7 wound?

8 A. After a whole series of intervening events.

9 Q. Does that mean yes? After a whole series of
10 intervening events, it was there, wasn't it?

11 A. It means I'm trying to hedge. It wasn't there
12 when Mr. Ridolfi unfortunately experienced his first
13 infection.

14 Q. Thank you, Doctor. We heard that testimony. I
15 think I'm almost done here. You agree that whether it
16 was -- regardless of whether it was what you say,
17 strep, or what Dr. Markowitz says is Serratia, Richard
18 Ridolfi had an overwhelming infection?

19 A. When?

20 Q. Following all those days in the hospital in
21 September.

22 A. He had different infections.

23 THE COURT: He had an
24 overwhelming infection?

25 THE WITNESS: I want to know

1 which infection he's talking about.

2 THE COURT: That's not the
3 question. Did he have an infection, yes or no?

4 THE WITNESS: Yes.

5 Q. And eventually, regardless of what that was, it
6 became overwhelming, didn't it?

7 A. It became critical.

8 Q. It became life-threatening, didn't it?

9 A. Yes.

10 Q. And all of that surgery was necessary because
11 of the infection, wasn't it?

12 A. To save his life, yes.

13 Q. Yes. And, of course, if he didn't have that
14 infection, he wouldn't have been in that
15 life-threatening condition, would he?

16 A. If he didn't dehis, he wouldn't have had the
17 infection.

18 Q. Thank you. I don't have any more questions.

19 THE COURT: Redirect.

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C E R T I F I C A T E

I, Scott L. Wallace, Official Court Reporter for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that as such reporter I took down in stenotype all of the proceedings had in said Court of Common Pleas in the above-entitled cause; that I have transcribed my said stenotype notes into typewritten form, as appears in the foregoing Partial Transcript of Proceedings; that said transcript is a partial record of the proceedings had in the trial of said cause and constitutes a true and correct Partial Transcript of Proceedings had therein.

Scott L. Wallace, RMR, CRR
Official Court Reporter
Cuyahoga County, Ohio