

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

THE STATE OF OHIO,)
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Plaintiff,)

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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.

- - - - -

I N D E X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>DEFENDANT'S WITNESSES:</u>				
Phillip E. Lerner, M.D.		46		
Robert VanBergen, M.D.		30		

1 THE COURT: You may
2 cross-examine.

3 CROSS-EXAMINATION OF ROBERT VAN BERGEN, M.D.

4 BY MR. COTICCHIA:

5 Q. Dr. VanBergen, when Richard Ridolfi was
6 discharged following the initial bypass surgery, you
7 ordered antibiotics, didn't you?

8 A. No, not after the initial bypass surgery when
9 he was discharged, no.

10 Q. Okay. And when he was readmitted on August the
11 26th, you had to rewire his sternum because it had
12 pulled apart, correct?

13 A. Yes.

14 Q. And you did a culture, correct?

15 A. Yes.

16 Q. Or you did a swab for a culture, correct?

17 A. Well, that's how you get the culture, yes.

18 Q. And that was a deep culture, wasn't it?

19 A. I did superficial and deep.

20 Q. Right. And on his discharge of the 29th, it's
21 true, isn't it, that nowhere in that stack of records
22 is there a note from you that you, yourself, called
23 the lab?

24 A. That's true.

25 Q. And isn't it true, Doctor, that the only note

1 in that record is a note from your resident,
2 Dr. Mayers?

3 A. That's true.

4 Q. Showing you what's been marked Plaintiff's
5 Exhibit 2, at the bottom of this August 29th progress
6 note, first of all, have you seen that before?

7 A. Yes.

8 Q. And isn't that, in fact, the signature of
9 Dr. Mayers on the bottom?

10 A. Yes.

11 Q. All right. And doesn't it, in fact, state
12 "Will discharge with staff"? That means he's got to
13 check with you, doesn't he?

14 A. Yep.

15 Q. "Cultures negative so far." Isn't that what
16 that says?

17 A. Yep.

18 Q. It doesn't say cultures negative final, does
19 it?

20 A. No.

21 Q. And on the 30th, the day after Richard
22 Ridolfi's discharge, that culture showed positive for
23 rare Serratia, didn't it?

24 A. Yes.

25 Q. And that was from the chest --

1 A. One of the cultures on the three showed
2 positive for rare Serratia.

3 Q. And that was from the chest wound, wasn't it?

4 A. Yes.

5 Q. And isn't it true, Doctor, that if you want to
6 prevent an overwhelming infection, it should be
7 diagnosed early, correct?

8 A. Generally, yes.

9 Q. When Richard Ridolfi was discharged by you on
10 August 29th, you discharged him with Keflex, correct?

11 A. Yes.

12 Q. And Serratia resists Keflex, doesn't it?

13 A. Yes.

14 Q. And when he was in the hospital, you had him on
15 an antibiotic called Ancef, correct?

16 A. Which time in the hospital?

17 Q. This hospitalization of the 26th.

18 A. Yes.

19 Q. And, in fact, that drug -- I'm sorry, Serratia
20 is resistant to that drug, isn't it?

21 A. Yes.

22 Q. And you talked about Mr. Ridolfi's being at the
23 emergency room on September 4th, correct?

24 A. I don't know that I talked about it. I was
25 asked questions by Mr. Meadows. I mean --

1 Q. Okay. Here is Exhibit 7, and for the record
2 it's signed by one of your office people. It's an
3 affidavit that this is Richard Ridolfi's chart that
4 you keep at your office. Tell me if in that chart
5 that you keep at the office there is anything about
6 Richard Ridolfi's being at the emergency room on
7 September the 4th.

8 A. There is nothing.

9 Q. When did you find out that he was in the
10 emergency room on September 4th?

11 A. I think when we started -- I think sometime
12 around my deposition.

13 Q. Your deposition. You did not know from
14 September 4th, 1995 until the date of your deposition,
15 is that what you are saying?

16 A. I didn't remember that I did. My partner was
17 on call that weekend. He saw him, and if there is
18 something significant, partners will tell one another
19 that somebody was seen and they're on the way back in.
20 Very possibly I was told. I really don't remember at
21 all.

22 Q. It's possible you were told but for some reason
23 you didn't think it significant enough to put in your
24 chart?

25 A. No, because I saw him on the 6th and I was

1 dealing with what I saw on the 6th.

2 Q. But on the 6th there is no reference at all
3 that on the 4th he had drainage and was in the
4 emergency room, correct?

5 A. Right, but I was seeing him on the 6th because
6 he had some drainage, and he was told to come to the
7 office by my partner and keep his appointment on the
8 6th.

9 Q. It's true on September 4th in the emergency
10 room no culture of Mr. Ridolfi's chest drainage was
11 taken, correct?

12 A. According -- I don't see any sign that there
13 was a culture taken on the material, the emergency
14 room visit.

15 Q. Right. Is that a safe assumption? Is that a
16 fair assumption?

17 A. I don't know.

18 Q. Okay.

19 A. I don't know.

20 Q. I mean, there is nothing in your office chart?

21 A. No.

22 Q. All right. And on September the 6th, Richard
23 Ridolfi complained to you that he was concerned about
24 the drainage in his chest, didn't he?

25 A. Sure.

1 Q. And again you ordered no culture, right?

2 A. Right.

3 Q. And at that time, despite his complaints, your
4 patient's complaints, you were unaware of the
5 September -- I'm sorry, the August 30 positive culture
6 for Serratia, correct?

7 A. Correct.

8 Q. On August -- I'm sorry, on September the 8th,
9 Margaret Ridolfi called you, correct, or call your
10 office?

11 A. Yes.

12 Q. Again, she was worried about drainage?

13 A. Well, there had been a change. She said that
14 the wound was open and it was hissing and there was
15 more drainage.

16 Q. All right. There was more drainage, right?

17 A. Yeah.

18 Q. And this time it turned out to be purulent,
19 didn't it?

20 A. Yes.

21 Q. Pussy?

22 A. Yes.

23 Q. That's a sign of infection, isn't it?

24 A. Yes, it is, Mr. Coticchia.

25 Q. So, you take him and call in Mr. Levy, correct?

1 A. Right.

2 Q. Because now the bone and the tissue is infected
3 and it's got to be cut away?

4 A. Right.

5 Q. It's debridement, is that correct, what it's
6 called?

7 A. Yes.

8 Q. And again, at this point, you're still unaware
9 that there is a culture back there from September 30
10 that shows positive for Serratia?

11 A. Yes.

12 Q. Correct?

13 A. Yes.

14 Q. And that's just because you didn't go back and
15 get the record, isn't --

16 A. That's not true. I was unaware of it because I
17 was told that the lab had been contacted on the 29th.
18 The gold standard is three days of growth. There was
19 no growth. I had no reason to go back and look.
20 Moreover, when we --

21 Q. Doctor, are you --

22 MR. MEADOWS: I'm sorry, can he
23 finish his answer?

24 THE COURT: Go ahead, finish.

25 A. Overall, while we admitted Mr. Ridolfi on the

1 8th, he had puss and we cultured and gram stained that
2 immediately.

3 Q. My question was real simple. I'll rephrase it.
4 When Richard was admitted to the hospital on September
5 8th and he underwent debridement surgery on September
6 9th, at that point you were unaware of the positive
7 culture of August the 30th, yes or no?

8 A. Yes.

9 Q. Okay. And the reason you were unaware of it is
10 because you didn't go back and recheck the record, did
11 you?

12 A. I had no reason to recheck the record.

13 Q. Okay. Isn't that something that you would want
14 to know?

15 A. I would want to know early on, yes.

16 Q. You would want to know that to determine
17 whether or not to rule out an infection of Serratia,
18 correct?

19 A. I want to know that so I can talk with my
20 infectious disease consultant to find out if a rare
21 Serratia growth is something that should be treated
22 with antibiotics. I don't feel it's wise in an
23 organism like Serratia that's nosocomial, that's found
24 in all hospitals, I don't think it's wise to
25 indiscriminately throw in an antibiotic to so.

1 when they may not need them.

2 Q. So, if you had known about it, you would have
3 called an infectious disease specialist, correct?

4 A. Yes.

5 Q. But you didn't know about it, correct?

6 A. Correct.

7 Q. And the reason you didn't know about it is you
8 never went back and rechecked the records during --

9 MR. MEADOWS: Objection.

10 THE COURT: Overruled.

11 THE WITNESS: I answer? I
12 answer that?

13 THE COURT: Go ahead and
14 answer.

15 A. I'm sorry, restate the question.

16 Q. The reason that you did not know about this
17 positive culture is because you never went back and
18 rechecked the records from the admission of August the
19 26th?

20 A. True.

21 Q. As a matter of fact, isn't it true, Doctor,
22 that the first time you became aware of that positive
23 culture on August the 30th was when I took your -- a
24 week before I took your deposition on November 10th,
25 1999?

1 A. That's true.

2 Q. I don't have this marked as an exhibit. I'm
3 going to call it Plaintiff's Exhibit 24. Doctor, this
4 is a --

5 MR. MEADOWS: May I see it,
6 please.

7 MR. COTICCHIA: I'm sorry, it's
8 page 0018 in the record.

9 MR. MEADOWS: Show an objection
10 to discussing this exhibit. Notes of his are
11 on it.

12 MR. COTICCHIA: I put a black
13 line through a note. There is no note on it.

14 Q. Doctor, I'm going to hand you what's been
15 marked Plaintiff's Exhibit 24. For the record, it
16 appears to be either a progress note or a discharge
17 signed by Dr. Mayers. Can you tell the jury what time
18 Richard Ridolfi was discharged on August the 29th?

19 A. Looks like 2:25 p.m.

20 Q. And showing you what's been marked Plaintiff's
21 Exhibit 2, what time does that note say the cultures
22 that are negative so far?

23 A. 6:45.

24 Q. In fact, Doctor, those cultures were growing
25 for approximately eight hours from the time this note

1 was made to the time Richard Ridolfi was discharged?

2 A. Yes.

3 Q. And regardless of what kind of infection we're
4 talking about, the first debridement surgery, the
5 second debridement surgery, and the repair of Richard
6 Ridolfi's ventricle all started because of the
7 infection, didn't it?

8 A. Because of an infection of Strep mitis, yes.

9 Q. Well, I'm not asking you what kind. We know
10 what kind you think it is. But regardless of whether
11 it was Strep or Serratia, all of this followed because
12 of the infection, correct?

13 A. All of this followed, yes, with the infection
14 of the Strep mitis.

15 Q. And if he wouldn't have had this infection, you
16 would not have had to come back and repair the
17 lacerated ventricle?

18 A. That's true.

19 Q. From page 0303, have you seen this nurse's note
20 as part of a progress note?

21 A. Yes, I think I have.

22 Q. All right. Can I have that, please. Does it
23 not state, "September 14th, 5:30, patient requested
24 Kleenex to sneeze. After patient sneezed, patient
25 began profusely bleeding under the chest and neck and

1 incision. Blood was squirting out of the wound,
2 triple page surgical doctors to room 224-1?" Do you
3 remember reading that? He was pumping blood
4 profusely?

5 A. He was bleeding profusely, yes.

6 Q. He was close to dying at that point, wasn't he?

7 A. Yes.

8 Q. And if he hadn't had an infection, none of this
9 would have happened, true?

10 MR. MEADOWS: Objection.

11 THE COURT: Overruled.

12 A. Yes.

13 MR. COTICCHIA: I don't have
14 anymore questions. Thank you.

15 THE COURT: Reirect.

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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
Official Court Reporter
Cuyahoga County, Ohio