

Health Law

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Illinois Supreme Court Reverses Third District Ruling in Fatal Blood Clot Case

The Illinois Supreme Court recently held that the trial court properly denied the plaintiff's post-trial motion for judgment notwithstanding the verdict in a case involving a fatal blood clot. *Steed v. Rezin Orthopedics & Sports Med.*, 2021 IL 125150, ¶ 2. In overruling the Third District Appellate Court, the Illinois Supreme Court concluded that the evidence in the record supported the jury's conclusion that the patient's death was so "highly extraordinary" that the death was not a reasonably foreseeable result of the defendant's failure to set follow-up appointment within two weeks. *Steed*, 2021 IL 125150, ¶ 41.

Factual and Procedural Background

In this case, the plaintiff's husband, Glenn Steed, suffered a partial tear in his Achilles tendon while playing basketball and obtained treatment from Dr. Treacy, an orthopedic surgeon for Rezin Orthopedics (Rezin). *Id.* ¶ 4. At Dr. Treacy's direction, Glenn's lower right leg was set in a cast and placed in a plantar flexion position for six weeks. *Id.* ¶¶ 4-5. Dr. Treacy identified mild swelling of Glenn's lower leg and advised Glenn that he could potentially develop deep vein thrombosis (DVT) as a result of his leg being placed in a cast. *Id.* ¶ 10. Dr. Treacy explained that DVT occurs when a deep vein blood clot forms in an extremity and has the potential to cause significant harm. *Id.* ¶ 11.

Dr. Treacy instructed the receptionist at Rezin to schedule a two-week follow-up appointment. *Id.* ¶ 5. For unknown reasons, the receptionist failed to schedule the appointment as directed. *Id.* Glenn's leg was placed in a cast two days later and another receptionist scheduled Glenn's follow-up appointment for more than three weeks after his initial appointment. *Id.* During that period, Glenn began to suffer from discomfort. *Id.* ¶ 9. He called Rezin Orthopedics and was able to reschedule his follow-up appointment for one day earlier. *Id.* ¶ 5. However, four days before his rescheduled appointment, he suffered a fatal blood clot that traveled to one of his lungs, resulting in his death. *Id.*

The plaintiff, Susan Steed, filed a negligence action against Rezin. *Id.* ¶ 6. To succeed on her claim, Steed needed to establish that Rezin deviated from the standard of care and that the deviation was the proximate cause of her husband's death. *Id.* ¶ 36. Thus, Steed alleged that a DVT and pulmonary embolism were left undiscovered due to Rezin's negligence and resulted in Glenn's death. *Id.* ¶ 6.

At trial, the initial receptionist testified that she received a written order from Dr. Treacy to schedule a two-week follow-up appointment for Glenn. *Id.* ¶ 16. However, she failed to provide a reason as to why she did not follow the order. *Id.* The second receptionist also failed to provide an adequate explanation as to why the follow-up appointment was scheduled so late, on March 13. *Id.* Regardless, Dr. Treacy testified that the risk of DVT occurring in cases similar to Glenn's was 1% or less. *Id.* ¶ 11.

Steed presented expert testimony from Dr. Matthew Jimenez, an orthopedic surgeon. Dr. Jimenez testified that Glenn died due to a blood clot in his leg caused by DVT, but also admitted that the risk of developing DVT in cases

like Glenn's would be less than 1%. *Id.* ¶¶ 17-20. Dr. Jimenez acknowledged that the overall rates of readmission to a hospital as a result of a pulmonary embolism and DVT were roughly around 0.34% and 0.05%. *Id.* ¶ 20.

One of Rezin's experts, Dr. Michael Pinzur (also an orthopedic surgeon), testified that the difference between a two-week or a three-week follow-up appointment would have an inconsequential effect on Glenn. *Id.* ¶ 21. Rezin also presented expert testimony from Dr. Jeffrey Huml, a pulmonologist, who opined that Glenn was not at high risk for development of DVT. *Id.* ¶ 23. Dr. Huml testified that, in 2009, there were no case reports of a fatal pulmonary embolism from an isolated Achilles tendon injury. *Id.*

Based on the evidence and testimony, the jury found for Rezin. *Id.* ¶ 26. Steed filed a post-trial motion for judgment notwithstanding the verdict. In the alternative, Steed requested a new trial against Rezin Orthopedics. *Id.* The trial court denied both motions, and Steed appealed. *Id.* The Third District Appellate Court agreed with Steed and held that Rezin breached the standard of care. *Id.* ¶ 28. The court noted that if Glenn would have returned to Rezin within two weeks, his DVT could likely have been diagnosed and treated. *Id.* The appellate court concluded that, considering the evidence and inferences in a light most favorable to Rezin, no contrary verdict could ever stand, and it therefore reversed the decision of the trial court and remanded the case with directions for the trial court to find in favor of the plaintiff. *Id.* Rezin appealed to the Illinois Supreme Court. *Id.* ¶ 29. Of note, numerous amicus briefs were filed, including a brief by the Illinois Defense Counsel in support of Rezin's position. *Id.*

Illinois Supreme Court Decision

On appeal, the Illinois Supreme Court analyzed the issues and reversed the Third District's decision. *Id.* ¶ 52. In doing so, the Court held that a reasonable jury could find for the defendant in establishing both elements of proximate cause: (1) whether their actions were the but-for cause and (2) whether the plaintiff's damages were a foreseeable consequence of the defendants' actions. *Id.* ¶¶ 37-41.

The court reasoned that the Third District erred in reaching its decision because it ignored evidence that Rezin's actions were not sufficient to establish but-for causation. *Id.* ¶ 39. The court held that a reasonable jury could find that the receptionist's actions were not the but-for cause of the plaintiff's death. *Id.* Furthermore, the court found that there was ample evidence to show that this occurrence was not only not foreseeable, but it was also highly unlikely to have occurred. *Id.* ¶¶ 40-41. The court held that it was not foreseeable for a receptionist to have known that by not scheduling the follow-up appointment in two weeks, a DVT resulting in death was likely to occur. *Id.* ¶ 41. The facts show that the risk of developing DVT, like in Glenn's case, was less than 1%, and it would be unreasonable to hold the receptionists' actions as proximately causing Glenn's death. Therefore, the court concluded that the Third District erred and reversed its decision. *Id.*

The Illinois Supreme Court also addressed Steed's request for a new trial. *Id.* ¶ 43. During the closing argument, Rezin mistakenly stated that the original receptionist followed the instructions given by Dr. Treacy. *Id.* ¶ 25. On appeal, Steed argued that the comments made by the defense in closing were highly prejudicial and warranted a new trial. *Id.* ¶ 47. The court denied the plaintiff's appeal to grant a new trial. *Id.* ¶ 48. The court chose to analyze Steed's argument in great detail given the court's conclusion that she failed to establish proximate cause on behalf of Rezin. *Id.*



Conclusion

The Illinois Supreme Court held that the trial court correctly denied Steed's request for judgment notwithstanding the verdict or for a new trial. In its decision, the Illinois Supreme Court concluded that a reasonable jury could find that the receptionist's actions were not the but-for cause of the plaintiff's death and that there existed sufficient evidence to show that the occurrence was not foreseeable. The *Steed* case highlights the plaintiff's burden to establish proximate cause, including the establishment of foreseeability and but-for causation.

About the Authors

Mark D. Hansen is a partner in the Peoria office of *Heyl, Royster, Voelker & Allen, P.C.* He has been involved in the defense of cases involving catastrophic injury, including the defense of complex cases in the areas of medical malpractice, products liability, and professional liability. Mr. Hansen has defended doctors, nurses, hospitals, clinics, dentists, and nursing homes in healthcare malpractice cases. He received his undergraduate degree from Northern Illinois University and law degree from University of Illinois College of Law. Mr. Hansen is a member of the Illinois Association of Defense Trial Counsel and is a former co-chair of the Young Lawyers Committee, former *ex officio* member of the Board of Directors, and has served as chair for various seminars hosted by the IDC. He is also a member of the Illinois Society of Healthcare Risk Management, the Abraham Lincoln American Inn of Court, and the Defense Research Institute.

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