Foreseeability of Harm May be Necessary to Prove Medical Malpractice

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The Supreme Court of Ohio resolved a long-disputed issue in Cromer v. Children’s Hospital Medical Center of Akron that foreseeability of harm may be relevant for a jury to consider in the context of a medical malpractice case.

The Cromer case involves the death of 5-year-old Seth Cromer while he was being treated in the PICU at Children’s Hospital. Several days earlier, the child had been diagnosed with an ear infection by his pediatrician. Although he had been taking antibiotics and had shown signs of improvement, his condition worsened and his parents took him to the hospital’s emergency room. At approximately 10:44 pm, triage assessed Seth as “urgent” then noting he had a stomachache and fever, was clammy, cold and listless. He was initially treated for dehydration but his condition worsened within a few short hours. By 1:14 am, Seth was transferred to the PICU where the critical care staff determined he was in shock. Despite the efforts of various medical professionals, the child went into cardiac arrest and by 4:05 am was pronounced dead.

At issue on appeal was a jury instruction the hospital had requested, and the trial court accepted jurisdiction as a matter of public or general interest, finding that foreseeability of harm was irrelevant to a determination of a medical professional’s standard of care. The Supreme Court of Ohio held that foreseeability was not necessary but found no material prejudice as a result of giving the unnecessary instruction.

The Supreme Court was divided in their opinion and has remanded the case back to the Ninth District Court of Appeals for further consideration of other potential errors that may have occurred during trial. However, the future landscape of medical malpractice cases in Ohio has changed. It is now clear that foreseeability of harm is not only relevant, but may be necessary, for a jury to consider when determining if medical negligence has occurred.

If the defendant, by the use of ordinary care, should have foreseen the death and should not have acted, or if they did act, should have taken precautions to avoid the result, the performance of the act or the failure to act to take such precautions is negligence.

The Supreme Court of Ohio held that while foreseeability may be irrelevant to a determination of a physician’s duty, the scope of that duty owed includes the expectation that physicians will exercise the degree of care that is reasonable in light of the physician’s superior training and knowledge. Specifically, the Supreme Court stated, “just as with the general negligence standard, it necessarily follows that we would not expect medical professionals to guard against a risk of harm that a medical professional of ordinary skill, care, and diligence would not foresee.”

Therefore, foreseeability of harm is relevant to a physician’s standard of care, and a general statement of the law regarding the standard of care or the breach of that standard includes the element of foreseeability. Under the particular facts of Cromer, the Supreme Court of Ohio determined that the instruction on foreseeability was not necessary but found