

ROBIN MULCAHY v. GARY E. HARTELL, D.C., AC 33381

Judicial District of Hartford

Torts; Malpractice; Whether the Trial Court, in Denying the Plaintiff's Motion in Limine and in Charging the Jury, Improperly Allowed the Defendant to Inject the Issue of Contributory Negligence into the Case When the Defendant did not Plead Contributory Negligence as a Special Defense. While undergoing chemotherapy for breast cancer, the plaintiff engaged the services of the defendant chiropractor to perform acupuncture to alleviate the chemotherapy's side effects. She brought this action alleging that she had suffered severe injuries from the acupuncture, including infection and scarring, and that those injuries were the result of the defendant's negligence. She claimed, among other things, that the defendant failed to properly clean her skin prior to performing the acupuncture. The defendant's theory was that the plaintiff's own conduct in wiping the area of her skin where she received the acupuncture with a non-sterile item after leaving his office was the sole proximate cause of her injuries. The plaintiff filed a motion in limine, seeking to preclude the defendant from offering evidence that her own conduct led to her injuries. She argued that, as the defendant had not pleaded contributory negligence as a special defense, the jury should not be presented with evidence that she was negligent. The defendant, in turn, argued that the evidence regarding the plaintiff's conduct was not being offered to prove that she was negligent but rather that his actions were not the cause of her injuries. He claimed that he had the right, in denying the plaintiff's allegations of causation, to offer proof of an alternate cause of the harm to the plaintiff. The trial court denied the motion in limine and instructed the jury that it could find that the plaintiff's own conduct caused her injuries. Thereafter, the jury found that, while the plaintiff had proved that the defendant violated the applicable standard of care by failing properly to swab the area of the acupuncture needle insertion, that breach was not the cause of the plaintiff's injuries. The jury accordingly rendered a verdict in favor of the defendant. The plaintiff appeals, claiming the trial court improperly denied her motion in limine and improperly charged the jury that it could find that her conduct in wiping her forehead in the car following the acupuncture treatment constituted the sole proximate cause of her injuries.