

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERRI D. SHORT,  
Appellant,  
vs.  
RENOWN REGIONAL MEDICAL  
CENTER,  
Respondent.

No. 53481

FILED

APR 09 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY A. Ingersoll  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting respondent's motion for judgment on the pleadings in a medical malpractice action. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Having reviewed the briefs and appendix on appeal, we conclude that the district court erred in granting respondent's motion for judgment on the pleadings, based on its determination that *res ipsa loquitur* did not apply and therefore appellant's complaint should be dismissed for failure to attach a medical affidavit. If a party challenges the filing of a complaint under *res ipsa loquitur*, the plaintiff is required to "present facts and evidence that show the existence of one or more of the situations enumerated in NRS 41A.100(1)(a)-(e)." Szydel v. Markman, 121 Nev. 453, 460, 117 P.3d 200, 205 (2005). We conclude that appellant made a sufficient showing to proceed on her *res ipsa loquitur* claim under NRS 41A.100(1)(d), which provides for the application of *res ipsa loquitur* to "[a]n injury . . . suffered during the course of treatment to a part of the

body not directly involved in the treatment or proximate thereto.”<sup>1</sup> See, e.g., Banks v. Sunrise Hospital, 120 Nev. 822, 832-33, 102 P.3d 52, 59-60 (2004) (holding that a res ipsa loquitur jury instruction under NRS 41A.100(d) was properly given in a case where the plaintiff suffered cardiac arrest and injury to his brain during rotator cuff surgery). Therefore, a medical affidavit was not required at the time of filing the complaint, Szydel, 121 Nev. at 459, 117 P.3d at 204, and a judgment on the pleadings in favor of respondent was improper. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. Steven R. Kosach, District Judge  
Paul F. Hamilton, Settlement Judge  
Robert C. Herman  
John H. Cotton & Associates, Ltd.  
Piscevich & Fenner  
Washoe District Court Clerk

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<sup>1</sup>We do not make any determination as to the merits of appellant’s medical malpractice claim. We only conclude that, at this stage of the proceedings, appellant made a sufficient showing to proceed under a res ipsa loquitur claim.