

ROSA SCHECK v JOHN K G DART (2004)

[2004] EWHC 2336 (QB)

QBD (Wilkie J) 22/10/2004

NEGLIGENCE - PERSONAL INJURY

CLINICAL NEGLIGENCE : BREACH OF CONTRACT : PATIENTS : EYES :
INTRA OCULAR LENS REPLACEMENT : FAILURE TO CLARIFY PREVIOUS
SURGEON'S NOTES : CATARACT : DISPLACEMENT OF THE INTRA
OCULAR LENS

It was negligent for an ophthalmic surgeon to fail to clarify the ambiguous notes of a previous surgeon's examination before proceeding to diagnose and operate on a patient.

The claimant (S) made a claim against her consultant ophthalmic surgeon (D) for negligence and breach of contract following an intra ocular lens replacement operation. This was the judgment of the court on the trial on liability only. S had undergone a right cataract extraction and lens implant insertion. Following that procedure she was left effectively blind in her right eye and therefore totally dependent on her left eye for useful vision. Thereafter, S underwent a left cataract extraction and lens implant. The lens displaced downwards at an early stage following the surgery. S's visual acuity in the eye remained relatively stable, but she complained about the quality of her vision. S reported a subjective deterioration in vision and was consequently examined by a surgeon. The surgeon made a poorly legible hand written note that stated "IOL just in pupil", and in a letter to S's GP, the surgeon described the left eye as having "clear visual axis", without specifying whether he was using the expression in the strict technical sense or in the loose colloquial sense. However, S consulted D for a second opinion. Having read the surgeon's notes, D concluded that there had been a significant displacement of the intra ocular lens since the surgeon's examination, and offered S an intra ocular lens replacement which she agreed to have performed. Following surgery, S suffered an extensive ciliochoroidal haemorrhage detachment with sub retinal haemorrhage, rendering her practically blind with no prospect of either recovery or improvement. The crucial issue in the case was whether D had acted competently and reasonably in drawing the conclusion that the lens displacement was acute and that, in addition to any other benefit, lens exchange was clinically indicated given the risk of further complications arising from an incorrect displacement.

HELD: Where an ophthalmic surgeon was aware that a particular phrase may be used either strictly or in a looser, colloquial, sense then it was incumbent upon him, if acting reasonably, to clarify with the user of that phrase before using it as the basis for a conclusion that symptoms observed were acute and had developed since the previous surgeon had seen the patient. D was therefore negligent in basing his

conclusion that displacement was acute upon such a single and equivocal piece of evidence. Furthermore it was negligent of D to ignore the note the surgeon sent to S's GP, which manifestly concerned the focus of the examination he was carrying out, where he could have with ease contacted the surgeon in order to have the note deciphered and if need be further explained. The advice which D gave and the risk analysis which he conducted therefore proceeded on a false basis which arose from his negligence.

Judgment for claimant.