

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-3832

Charles Scharf,

Plaintiff-Appellant,

v.

Paul Zanaboni, M.D.,

Defendant-Appellee.

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Appeal from the United States
District Court for the Eastern
District of Missouri.

[UNPUBLISHED]

Submitted: September 10, 2002

Filed: September 20, 2002

Before BOWMAN, LAY, and MURPHY, Circuit Judges.

PER CURIAM.

Charles Scharf appeals from a grant of summary judgment in favor of Paul Zanaboni, M.D. in this medical malpractice action. Mr. Scharf underwent coronary artery bypass surgery on July 3, 1997, at St. Louis University Medical Center. He was given general anesthesia during the surgery, which required that Mr. Scharf have an endotracheal tube and nasogastric tube placed during the course of the procedure. Dr. Paul Zanaboni was the attending anesthesiologist on duty that day. However, Mr. Scharf's anesthesia was initiated and administered by Dr. Samuel Singer, a resident physician in anesthesiology. During the surgical procedure, Mr. Scharf suffered a

Mallory-Weiss tear of his esophagus. Mr. Scharf claims that his esophageal injury occurred during negligent insertion of either an endotracheal tube or probe, or a nasogastric tube, all of which were performed during his surgical procedure. The plaintiff's expert medical witness testified that the injury occurred near the end of the surgery and it was at that time that the nasogastric tube had been inserted. It is significant that Dr. Zanaboni was not in the operative suite at the time Dr. Singer inserted the nasogastric tube. Mr. Scharf does not assert a vicarious liability claim, nor does he claim that Dr. Singer was an employee of Dr. Zanaboni.

On appeal Mr. Scharf asserts that the district court¹ erred in granting summary judgment on the issues of *res ipsa loquitur* and negligent supervision.

The district court held that Mr. Scharf failed to prove that Dr. Zanaboni had exclusive control of the instrumentality that caused the injury. To the contrary, the evidence revealed that Dr. Singer had control over the instrumentality which was alleged to have injured Mr. Scharf, because he inserted the nasogastric tube, and was involved in initiating and administering Mr. Scharf's anesthesia. The district court correctly held that Mr. Scharf failed to meet his burden of establishing that Dr. Zanaboni had exclusive control over the instrumentality, consequently the *res ipsa loquitur* claim could not survive summary judgment. As to Mr. Scharf's claim of negligent supervision on the part of Dr. Zanaboni, the district court held that Mr. Scharf presented no evidence to demonstrate that a genuine issue of material fact exists that Dr. Zanaboni was negligent in his supervisory capacity. Therefore, Mr. Scharf's claim for negligent supervision could not survive summary judgment.

We have reviewed the record and find the district court committed no error of law.

¹The Honorable Rodney W. Sippel, United States District Judge for the Eastern District of Missouri.

The district court is AFFIRMED. See, 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.