

Docket Nos. 97895, 97899 cons.-Agenda 8-May 2005.

NORTHERN ILLINOIS EMERGENCY PHYSICIANS *et al.*,
Appellees, v. LANDAU, OMAHANA & KOPKA, LTD., *et al.*,
Appellants.

Opinion filed September 22, 2005.

JUSTICE KARMEIER delivered the opinion of the court:

Plaintiff, Northern Illinois Emergency Physicians (NIEP), brought an action in the circuit court of Cook County against the law firms of Landau, Omahana & Kopka, Ltd., and DiMonte, Schostok & Lizak, and two of the firms' attorneys alleging that the law firms had committed legal malpractice while representing NIEP in connection with a medical malpractice claim. The circuit court granted summary judgment in favor of the law firms and their attorneys and against NIEP on the grounds that NIEP had sustained no damages as a matter of law and therefore could not establish a necessary element for a cause of action for legal malpractice. The appellate court reversed and remanded. No. 1-02-1218 (unpublished order under Supreme Court Rule 23). The law firms and their attorneys then petitioned our court for leave to appeal. 177 Ill. 2d R. 315. We granted their petitions and consolidated the cases. For the reasons that follow, the cause of action against attorney Stephen J. Schostok is dismissed. As to all of the remaining attorneys, the judgment of the appellate court is reversed.

The events giving rise to these proceedings began 15 years ago, when Erica Johnson, a 22-month-old child, fell ill and was taken by her parents to the emergency room at St. Therese Medical Center in Waukegan. Erica was treated at the hospital by Dr. Bruce Sands, a partner in NIEP. Erica's symptoms included high fever, an elevated respiratory rate, a red rash, and a purple mark on the back of her neck and shoulder. Dr. Sands believed, erroneously, that Erica's symptoms were attributable to an ear infection and child abuse. He did not think the child was in any imminent danger. He therefore discharged her from the hospital and sent her home with her family, a syringe of antibiotics, and a prescription for more antibiotics.

In fact, Erica did not have an ear infection and was not the victim of child abuse. She was actually in shock and suffering from petechiae, purpura, and a bacterial infection known as meningococemia. Her condition was life threatening, but could have been treated successfully had it been properly diagnosed. Because Dr. Sands failed to recognize her symptoms for what they were, however, Erica did not receive the care she required. Within 11 hours of her discharge from St. Therese, Erica lapsed into a coma. Her parents took her to the emergency room of another hospital, but it was too late. Efforts at emergency resuscitation failed, and she was pronounced dead.

Erica's parents, as special administrators of Erica's estate, subsequently filed a medical malpractice action in the circuit court of Lake County against Dr. Sands, NIEP, and St. Therese Medical Center. St. Therese, in turn, filed a third-party claim for common law implied indemnity against Dr. Sands and NIEP based on vicarious liability.⁽¹⁾ Following a jury trial, judgment was entered in favor of Erica's parents and against all defendants in the amount of \$4 million. On St. Therese's motion, the trial court then directed a verdict against Dr. Sands and NIEP and in favor of St. Therese on the medical center's indemnity claim.

