

BOISE, IDAHO, WEDNESDAY, DECEMBER 7, 2022, AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**JOHN C. BEEBE and CHERYL L. BEEBE,)
individually, and as Husband and Wife,)**

Plaintiffs-Appellants,)

v.)

**NORTH IDAHO DAY SURGERY, LLC, an)
Idaho limited liability company, dba)
NORTHWEST SPECIALTY HOSPITAL,)**

Defendants-Respondents,)

and)

**JOHN STACKOW, M.D. and unknown)
physicians, surgeons, medical assistants,)
nurses or employees as JOHN or JANE DOES)
I-X; INCYTE PATHOLOGY, INC., a)
Washington State for-profit corporation;)
INCYTE PATHOLOGY PROFESSIONAL,)
P.S.; a Washington State Professional Services)
corporation, or employees as JOHN or JANE)
DOES XI-XX; and MINIMALLY INVASIVE)
SURGERY NORTHWEST, PA, an Idaho)
Professional Service Corporation, and its)
owners, agents or employees,)**

Defendants.)

Docket No. 49137

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. John T. Mitchell, District Judge.

Clark & Associates, Attorneys, Eagle, for Appellants.

Garrett Richardson, PLLC, Eagle, for Respondent.

This case arises from a medical malpractice action. In 2018, John Beebe was diagnosed with melanoma cancer in his foot. After his diagnosis, oncology specialists at North Idaho Day Surgery, LLC d/b/a Northwest Specialty Hospital (“NWSH”) recommended a forefoot amputation

to remove the melanoma and a sentinel lymph node biopsy (“SLNB”) to assist the oncologist with staging the cancer. John scheduled both procedures, which were completed without complications. After both procedures, NWSH surgeons placed the forefoot specimen and the SNLB in sealed specimen bags for transfer to Incyte Pathology, Inc. and Incyte Pathology Professional, P.S. (“Incyte”). Two days after the surgery, NWSH received notice from Incyte that the lymph node was missing. After some investigation, the lymph node was never found and never tested.

John and his wife, Cheryl Beebe, filed a negligence complaint against NWSH and Incyte for losing John’s sentinel lymph node after surgery. The Beebes argued that because the sentinel lymph node was lost, John was never given a proper prognosis of his cancer condition, which caused him to suffer emotional harm. Cheryl joined a loss of consortium claim to the complaint. NWSH filed a motion for summary judgment, arguing the Beebes’ claims lacked sufficient evidence. The district court subsequently dismissed several claims, including Cheryl’s loss of consortium claim because John failed to prove he suffered a physical injury. Before the matter proceeded to trial, Incyte settled with John and the lawsuit was tried solely against NWSH.

John’s medical malpractice claims against NWSH were tried to a jury. At the close of trial, John asked the district court for a substantial factor causation instruction, while the NWSH asked for a “but for” proximate cause instruction. The district court gave the “but for” instruction. The jury unanimously returned a verdict in favor of NWSH. John appeals, arguing the district court erred by refusing to give his requested jury instruction and dismissing Cheryl’s loss of consortium claim.