

SUPREME COURT OF MISSISSIPPI

Shannon Montgomery and John David Montgomery as the Lawful Heirs of David E. Montgomery, Deceased v. SmithKline Beecham Corporation f/k/a GlaxoWellcome, Inc., d/b/a GlaxoSmithKline; Edward Gore, M.D.; North Mississippi Medical Center; North Mississippi Family Medical Clinic, Inc., d/b/a Chickasaw Family Medical Clinic; and Wal-Mart Stores, Inc.

Montgomery v. SmithKline Beecham Corp., No. 2004-CA-00091-SCT (Miss. Feb. 24, 2005) · No. No. 2004-CA-00091-SCT · Decided January 5, 2004

SUMMARY

The Mississippi Supreme Court affirmed the dismissal with prejudice of a medical-malpractice and wrongful-death action arising from the death allegedly caused by Allopurinol. The court held that the plaintiffs failed to demonstrate good cause and diligence for repeatedly failing to timely serve process under Mississippi Rule of Civil Procedure 4(h), and concluded that the statute of limitations had run. Justice Easley dissented, reasoning that the death of the attorney handling the case constituted good cause for the extension.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Justice Dickinson; Chief Justice Smith; Justice Waller; Presiding Justice Cobb; Justice Carlson; Justice Randolph; Justice Graves; Justice Easley; Justice Diaz
JURISDICTION	Mississippi
DECIDED	January 5, 2004
DOCKET	No. 2004-CA-00091-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from the Lee County Circuit Court's final judgment dismissing their medical-malpractice and related claims with prejudice after defendants moved to dismiss for failure to timely serve process, expiration of the statute of limitations, and failure to state a claim.

STANDARD OF REVIEW	A trial court's factual finding concerning good cause for delay in service of process is reviewed for abuse of discretion and substantial evidence. A decision to grant or deny an extension based on a question of law is reviewed de novo.
PRECEDENTIAL VALUE	Published, en banc Mississippi Supreme Court opinion; majority holding is precedential.
PARTIES	Shannon Montgomery, John David Montgomery as the lawful heir of David E. Montgomery, deceased v. SmithKline Beecham Corporation f/k/a GlaxoWellcome, Inc., d/b/a GlaxoSmithKline, Edward Gore, M.D., North Mississippi Medical Center, North Mississippi Family Medical Clinic, Inc., d/b/a Chickasaw Family Medical Clinic, Wal-Mart Stores, Inc.

TOPICS

service of process civil procedure appellate procedure standard of review medical malpractice

PRACTICE AREAS

civil procedure medical malpractice appellate procedure

QUESTIONS PRESENTED

1. Whether plaintiffs demonstrated good cause under Mississippi Rule of Civil Procedure 4(h) for failing to serve process within 120 days after filing the complaint.
2. Whether the trial court was bound by its own orders granting extensions of time for service of process and purporting to relate those extensions back to earlier orders.

HOLDINGS

1. Plaintiffs failed to demonstrate good cause and diligence sufficient to excuse their failure to serve process within the 120-day period required by Mississippi Rule of Civil Procedure 4(h). Counsel changes, failure to confer with clients, failure to transfer or review the file, and the death of an attorney did not establish the required diligence on this record.
2. The court did not need to resolve whether the trial court was bound by its prior extension orders because plaintiffs' failure to demonstrate good cause independently required affirmance of the dismissal.

KEY QUOTATIONS

“If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court’s own initiative with notice to such party or upon motion.” (¶ 11)

““Good cause” can never be demonstrated where plaintiff has not been diligent in attempting to serve process.” (¶ 13)

“More is required than “simple inadvertence, mistake of counsel, or ignorance of rules. . . .”” (¶ 24)

FACTUAL BACKGROUND

David E. Montgomery died on November 17, 1999, allegedly as a result of taking Allopurinol manufactured by SmithKline Beecham and prescribed by Dr. Edward Gore. His heirs filed suit on November 16, 2001, but plaintiffs' counsel did not promptly serve process. Plaintiffs obtained three extensions of time, citing changes in counsel, difficulty conferring with the clients, failure to transfer the file, and the shooting death of attorney Paul Goodman; all defendants were served by December 30, 2002.

PROCEDURAL HISTORY

Plaintiffs filed suit on November 16, 2001, but did not serve process within the original 120-day period under Mississippi Rule of Civil Procedure 4(h). The circuit court granted three extensions of time, including a third extension after the death of plaintiffs' attorney, and plaintiffs ultimately served all defendants by December 30, 2002. The circuit court later granted defendants' motions to dismiss with prejudice, and the Mississippi Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Rains v. Gardner, 731 So. 2d 1192, 1197-98 (Miss. 1999)
- Holmes v. Coast Transit Auth., 815 So. 2d 1183, 1184-86 (Miss. 2002)
- Fortenberry v. Memorial Hospital, 676 So. 2d 252, 256 (Miss. 1996)
- Bang v. Pittman, 749 So. 2d 47, 52 (Miss. 1999)
- Webster v. Webster, 835 So. 2d 26, 28-29 (Miss. 2002)
- Mitchell v. Brown, 835 So. 2d 110, 112 (Miss. Ct. App. 2003)
- Moore v. Boyd, 799 So. 2d 133, 136 (Miss. Ct. App. 2001)
- Black v. Carey Canada, Inc., 791 F. Supp. 1120, 1126 (S.D. Miss. 1990)
- Watters v. Stripling, 675 So. 2d 1242, 1243 (Miss. 1996)
- Weymouth v. Chism, 75 Ark. App. 164, 55 S.W.3d 307 (2001)
- Norstar Bank of Upstate New York v. Wittbrodt, 154 Misc. 2d 260, 594 N.Y.S.2d 115 (N.Y. Sup. Ct. 1993)