

SUPREME COURT OF MISSISSIPPI

Ruby Angela Hubbard and Pinkie J. Hubbard, individually and on behalf of and in her capacity as guardian of her daughter Ruby Angela Hubbard v. Billy M. Wansley, M.D.

954 So. 2d 951 (Miss. 2007) · No. No. 2005-CA-01055-SCT · Decided January 25, 2005

SUMMARY

The Mississippi Supreme Court affirmed summary judgment for Dr. Billy M. Wansley in a medical malpractice action arising from treatment of Ruby Angela Hubbard after a subarachnoid hemorrhage. The Court held that Hubbard’s proposed neurosurgical expert was not qualified to testify regarding the standard of care applicable to an internal-medicine physician, that Wansley was not subject to a neurologist’s or neurosurgeon’s standard of care, and that the layman exception did not apply. The Court also rejected Hubbard’s challenges concerning the designation of an additional expert.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Cobb, Presiding Justice; Smith, Chief Justice; Waller, Presiding Justice; Carlson, Justice; Dickinson, Justice; Randolph, Justice; Diaz, Justice; Easley, Justice; Graves, Justice
JURISDICTION	Mississippi
DECIDED	January 25, 2005
DOCKET	No. 2005-CA-01055-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Harrison County Circuit Court's grant of summary judgment and dismissal with prejudice in a medical-malpractice action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The evidence is viewed in the light most favorable to the nonmoving party, and summary judgment is proper when no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. A trial court's determination regarding an expert's qualifications is reviewed for abuse of discretion.

PRECEDENTIAL VALUE	Published, precedential Mississippi Supreme Court decision; en banc majority opinion with a separate dissent.
PARTIES	Ruby Angela Hubbard, Pinkie J. Hubbard, individually and on behalf of and in her capacity as guardian of her daughter Ruby Angela Hubbard v. Billy M. Wansley, M.D.

TOPICS

medical malpractice expert testimony summary judgment standard of review appellate procedure

PRACTICE AREAS

medical malpractice evidence civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether Dr. Lynn Stringer was qualified to testify regarding the standard of care applicable to Dr. Wansley, an internal-medicine physician.
2. Whether Dr. Wansley should have been held to the standard of care of a neurologist or neurosurgeon because he allegedly assumed the duties of those specialties.
3. Whether the alleged negligence fell within Mississippi's layman exception, making expert testimony unnecessary.
4. Whether the circuit court erred by entering final judgment after inadvertently granting Hubbard additional time to designate another expert.
5. Whether Hubbard presented sufficient evidence to create a genuine issue of material fact regarding medical causation.

HOLDINGS

1. The circuit court did not abuse its discretion in finding that Dr. Stringer, although an experienced neurosurgeon familiar with treating subarachnoid hemorrhages, lacked demonstrated familiarity with the standard of care applicable to an internal-medicine practitioner and therefore was not qualified to testify on that issue.
2. Dr. Wansley should not have been held to the standard of care of a neurologist or neurosurgeon because the record did not show that he gave assurances that he possessed the skills of those specialists or undertook treatment of Hubbard's condition to the exclusion of consultation with a neurologist.
3. The alleged negligence did not fall within Mississippi's layman exception, so Hubbard was required to present qualified expert testimony.
4. The circuit court's inadvertent order granting Hubbard thirty additional days to designate an expert did not justify depriving Dr. Wansley of the summary judgment already granted.
5. Hubbard failed to present evidence sufficient to create a genuine issue of material fact on causation, so summary judgment was proper.

KEY QUOTATIONS

“It is generally not required that an expert testifying in a medical malpractice case be of the same specialty as the doctor about whom the expert is testifying.” (¶ 13)

“where a layman can observe and understand the negligence as a matter of common sense and practical experience” (¶ 29)

“Mississippi law does not permit recovery of damages because of mere diminishment of the ‘chance of recovery.’ Recovery is allowed only when the failure of the physician to render the required level of care results in the loss of a reasonable probability of substantial improvement of the plaintiff’s condition.” (¶ 42)

FACTUAL BACKGROUND

Ruby Angela Hubbard was hospitalized after suffering a light stroke and systemic lupus. After complaining of a severe headache and briefly losing consciousness, she was discharged on Dr. Wansley's instructions to monitor her for two hours and send her home if her condition did not change. She returned to the emergency room that night, was diagnosed with a subarachnoid hemorrhage, and later underwent surgery to repair a ruptured aneurysm. Hubbard alleged that Dr. Wansley breached the standard of care by failing to provide appropriate treatment and to promptly involve a neurologist, and that these failures caused or worsened her neurological injuries.

PROCEDURAL HISTORY

Hubbard filed suit in the Harrison County Circuit Court in 1999. The case was removed to the United States District Court for the Southern District of Mississippi and later remanded to state court after Biloxi Regional Medical Center was dismissed. The circuit court granted Dr. Wansley's motions for summary judgment, finding that Hubbard's expert was unqualified to testify regarding the applicable standard of care and that Hubbard had not presented sufficient evidence of causation. The court entered final judgment with prejudice, denied reconsideration, and Hubbard appealed.

DISPOSITION

affirmed

CASES CITED

- Leffler v. Sharp, 891 So. 2d 152, 156 (Miss. 2004)
- Russell v. Orr, 700 So. 2d 619, 622 (Miss. 1997)
- Palmer v. Biloxi Reg'l Med. Ctr., 564 So. 2d 1346, 1357 (Miss. 1990)
- Ill. Cent. R.R. Co. v. Benoit Gin Co., 248 So. 2d 426 (Miss. 1971)
- Drummond v. Buckley, 627 So. 2d 264, 267-68 (Miss. 1993)
- Burnham v. Tabb, 508 So. 2d 1072, 1074 (Miss. 1987)
- Barner v. Gorman, 605 So. 2d 805, 809 (Miss. 1992)
- Latham v. Hayes, 495 So. 2d 453 (Miss. 1986)

- West v. Sanders Clinic for Women, P.A., 661 So. 2d 714, 718-20 (Miss. 1995)
- Lewis v. Soriano, 374 So. 2d 829, 830-31 (Miss. 1979)
- Adkins v. Sanders, 871 So. 2d 732, 737-40 (Miss. 2004)
- Palmer v. Anderson Infirmary Benevolent Ass'n, 656 So. 2d 790, 795 (Miss. 1995)
- Walker v. Skiwski, 529 So. 2d 184, 187 & n.2 (Miss. 1988)
- Kelley v. Frederic, 573 So. 2d 1385, 1388 (Miss. 1990)
- Sheffield v. Goodwin, 740 So. 2d 854, 857 (Miss. 1999)
- Coleman v. Rice, 706 So. 2d 696, 698 (Miss. 1997)
- Hammond v. Grissom, 470 So. 2d 1049, 1050-54 (Miss. 1985)
- Franklin v. Franklin, 858 So. 2d 110, 112, 121-23 (Miss. 2003)
- Thompson v. Patino, 784 So. 2d 220, 221 (Miss. 2001)
- Ladner v. Campbell, 515 So. 2d 882, 888-89 (Miss. 1987)
- Clayton v. Thompson, 475 So. 2d 439, 445 (Miss. 1985)
- Hardy v. Brantley, 471 So. 2d 358, 360-61 (Miss. 1985)
- Brown v. Mladineo, 504 So. 2d 1201, 1202-03 (Miss. 1987)
- Partin v. North Miss. Med. Ctr., Inc., 929 So. 2d 924, 930 (Miss. Ct. App. 2005)

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