

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Haught v. Maceluch

681 F.2d 291 (5th Cir. 1982) · No. No. 81-1103 · Decided July 26, 1982

SUMMARY

The Fifth Circuit considered a medical malpractice action arising from severe brain injuries sustained by a child during childbirth. The court held that, under Texas law, the mother could recover for foreseeable mental suffering associated with her daughter's birth in a brain-damaged condition and reinstated the jury's award for that suffering. The opinion also addressed the liability of an alleged partner by estoppel and the physician's cross-appeal concerning the malpractice verdict.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Thornberry, Circuit Judge; Clark, Chief Judge; Garza, Circuit Judge
JURISDICTION	Federal
DECIDED	July 26, 1982
DOCKET	No. 81-1103
DISPOSITION	other
PROCEDURAL POSTURE	Cross-appeals in a diversity medical-malpractice action following a jury trial and district-court judgment. The plaintiffs appealed the deletion of the mother's mental-suffering award and the refusal to hold Martin liable under partnership by estoppel; Maceluch cross-appealed the judgment imposing liability for the child's injuries.
STANDARD OF REVIEW	Directed-verdict and judgment-n.o.v. motions are reviewed by considering the evidence and reasonable inferences in the light most favorable to the party opposing the motion; relief is proper only when the evidence favors the movant so overwhelmingly that reasonable persons could not reach a contrary verdict. Denial of a new-trial motion is reviewed for abuse of discretion. Refusal to permit amendment under Federal Rule of Civil Procedure 15 is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential federal appellate opinion
PARTIES	Roger Haught, Delores Haught, Jamie Marie Haught, by next friends Roger and Delores Haught v. John Maceluch, M.D., William C.

TOPICS

medical malpractice negligent infliction of emotional distress professional negligence appellate procedure
standard of review

PRACTICE AREAS

medical malpractice negligent infliction of emotional distress professional negligence appellate procedure
damages

QUESTIONS PRESENTED

1. Whether Texas law permits a mother to recover for mental suffering caused by a negligently managed childbirth and the resulting impaired condition of her child under the modern foreseeability-based bystander-recovery rule.
2. Whether the evidence sufficiently established the applicable medical standard of care and Maceluch's breach of that standard.
3. Whether the evidence was sufficient for a reasonable jury to find that Maceluch's conduct proximately caused the injuries to Delores and Jamie.
4. Whether the district court abused its discretion by refusing to allow amendment under Federal Rule of Civil Procedure 15(b) and by refusing to enforce the jury's finding of partnership by estoppel after the issue was tried by implied consent.

HOLDINGS

1. Under Texas law, bystander recovery for emotional distress is governed by general negligence principles, principally reasonable foreseeability assessed case by case. A mother who experiences the negligently inflicted childbirth may recover when her proximity to the event, close relationship to the child, and experiential perception of the childbirth make her emotional distress foreseeable, even though she did not visually perceive the child's injury.
2. The evidence was sufficient to establish the medical standard applicable in Weatherford, Texas, in March 1978 and to support a finding that Maceluch breached it.
3. The evidence was sufficient for a reasonable jury to find that Maceluch's negligent conduct proximately caused the injuries to Delores and Jamie, and the district court properly denied judgment notwithstanding the verdict and a new trial.
4. Because the issue of partnership by estoppel was tried by implied consent and Martin was not prejudiced, Federal Rule of Civil Procedure 15(b) required that the pleadings be treated as amended and that the jury's finding of partnership by estoppel stand.

KEY QUOTATIONS

“We think that the Texas Supreme Court would allow appellant to recover on the compelling facts of this case, we reverse the district court and reinstate the verdict of the jury.” (681 F.2d at 295)

“This reading of the Texas case law clearly reveals that Texas will follow the modern rule of measuring bystander recovery according to the general negligence principle of foreseeability.” (681 F.2d at 297)

“The risk reasonably to be perceived defines the duty to be obeyed.” (681 F.2d at 298)

“In short, appellant had an "experiential perception" of the accident.” (681 F.2d at 300)

“Once the finding of trial by consent has been made, there remains no discretion to deny appellant's motion to amend.” (681 F.2d at 303)

FACTUAL BACKGROUND

During Delores Haught's labor, the fetus exhibited meconium staining and loss of beat-to-beat variability, both evidence of fetal distress. Dr. John Maceluch delayed performing a Caesarean section and administered Pitocin despite evidence supporting fetal distress; Jamie Marie Haught was born with severe perinatal asphyxia, meconium aspiration syndrome, seizures, and permanent brain damage. Delores experienced severe emotional and physical symptoms arising from the childbirth and her daughter's condition. Martin had represented or was found to have represented Maceluch as his partner, and Delores testified that she relied on that representation.

PROCEDURAL HISTORY

After a jury trial in the Northern District of Texas, the court entered awards of \$1,160,000 for the child's medical expenses and \$175,000 for lost future earnings, but deleted the jury's \$118,000 award for Delores Haught's mental suffering. The court also refused to impose liability on Martin despite the jury's finding of partnership by estoppel and denied Maceluch's motions challenging the sufficiency of the medical-standard and causation evidence. The Fifth Circuit affirmed in part and reversed in part, reinstating the mental-suffering award and the partnership-by-estoppel finding while upholding Maceluch's liability.

DISPOSITION

other

REMAND INSTRUCTIONS

The opinion does not state a separate remand instruction. It affirms in part and reverses in part, reinstating Delores Haught's mental-suffering award and the jury's finding of partnership by estoppel against Martin while leaving Maceluch's liability intact.

CASES CITED

- Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)
- Commissioner v. Estate of Bosch, 387 U.S. 456 (1967)
- Cole v. Elliott Equipment Co., 653 F.2d 1031 (5th Cir. 1981)
- Hill v. Kimball, 76 Tex. 210, 13 S.W. 59 (1890)

- Gulf, C. & S.F. Ry. v. Hayter, 93 Tex. 239, 54 S.W. 944 (1900)
- Kaufman v. Miller, 414 S.W.2d 164 (Tex. 1967)
- Dillon v. Legg, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968)
- Landreth v. Reed, 570 S.W.2d 486 (Tex. Civ. App.—Texarkana 1978, no writ)
- Bedgood v. Madalin, 589 S.W.2d 797 (Tex. Civ. App.—Corpus Christi 1979), rev'd on other grounds, 600 S.W.2d 773 (Tex. 1980)
- Newman v. Minyard Food Stores, Inc., 601 S.W.2d 754 (Tex. Civ. App.—Dallas 1980), aff'd per curiam, 612 S.W.2d 198 (Tex. 1980)
- Covington v. Estate of Foster, 584 S.W.2d 726 (Tex. Civ. App.—Waco 1979, no writ)
- Dave Snelling Lincoln-Mercury v. Simon, 508 S.W.2d 923 (Tex. Civ. App.—Houston [1st Dist.] 1974, no writ)
- Mott v. Mitsubishi International Corp., 636 F.2d 1073 (5th Cir. 1981)
- Palsgraf v. Long Island R.R., 248 N.Y. 339, 162 N.E. 99 (1928)
- Krouse v. Graham, 19 Cal. 3d 59, 562 P.2d 1022, 137 Cal. Rptr. 863 (1977)
- Justus v. Atchison, 19 Cal. 3d 564, 565 P.2d 122, 139 Cal. Rptr. 97 (1977)
- Austin v. Regents of the University of California, 89 Cal. App. 3d 354, 152 Cal. Rptr. 420 (Cal. Ct. App. 1979)
- Harned v. E-Z Finance Co., 151 Tex. 641, 254 S.W.2d 81 (1953)
- Fisher v. Carrousel Motor Hotel, Inc., 424 S.W.2d 627 (Tex. 1967)
- Sutton Motor Co. v. Crysel, 289 S.W.2d 631 (Tex. Civ. App.—Beaumont 1956, no writ)
- Duty v. General Finance Co., 154 Tex. 16, 273 S.W.2d 64 (1954)
- Houston Electric Co. v. Dorsett, 145 Tex. 95, 194 S.W.2d 546 (1946)
- Bailey v. American General Insurance Co., 154 Tex. 430, 279 S.W.2d 315 (1955)
- St. Louis Southwestern Ry. Co. of Texas v. Alexander, 106 Tex. 518, 172 S.W. 709 (1915)
- Schwartz v. Sears, Roebuck & Co., 669 F.2d 1091 (5th Cir. 1982)
- Bunch v. Walter, 673 F.2d 127 (5th Cir. 1982)
- Lockley v. Page, 142 Tex. 594, 180 S.W.2d 616 (1944)
- Nash v. Verhalen, 330 S.W.2d 676 (Tex. Civ. App.—Texarkana 1959, writ ref'd n.r.e.)
- Addington v. Farmer's Elevator Mutual Insurance Co., 650 F.2d 663 (5th Cir. 1981), cert. denied, 454 U.S. 1092 (1981)
- Wallin v. Fuller, 476 F.2d 1204 (5th Cir. 1973)
- International Harvester Credit Corp. v. East Coast Truck, 547 F.2d 888 (5th Cir. 1977)