

SUPREME COURT OF ARKANSAS

Dr. George L. Conner III, M.D.; Forrest City Family Practice Clinic
v. The Honorable L.T. Simes, Judge

355 Ark. 422 (2003) (Ark. 2003) · No. No. 02-1214 · Decided December 18, 2003

SUMMARY

The Supreme Court of Arkansas denied Dr. George L. Conner and Forrest City Family Practice Clinic’s petition for a writ of prohibition seeking to prevent a wrongful-death action involving an unborn fetus from proceeding. The court held that the circuit court had subject-matter jurisdiction over the medical-malpractice and wrongful-death claims, and that the alleged absence of a cognizable cause of action was not properly addressed through prohibition. The court also declined to treat the petition as one for certiorari because an appeal provided an adequate remedy and extraordinary relief could not be used as a substitute for an interlocutory appeal.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Annabelle Clinton Imber; Arnold, C.J.; Thornton, J.
JURISDICTION	Arkansas
DECIDED	December 18, 2003
DOCKET	No. 02-1214
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original petition for a writ of prohibition, treated alternatively as a petition for a writ of certiorari, arising from the circuit court’s denial of a partial Arkansas Rule of Civil Procedure 12(b)(6) motion to dismiss claims for wrongful death of an unborn fetus.
STANDARD OF REVIEW	A writ of prohibition is extraordinary relief available only when the lower court is wholly without jurisdiction, there is no adequate remedy such as appeal, and the writ is clearly warranted. The court confines review to the pleadings. Certiorari is available only for lack of jurisdiction, an act in excess of jurisdiction appearing on the face of the record, or proceedings erroneous on the face of the record, involving a plain, manifest, clear, and gross abuse of discretion with no adequate remedy.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Dr. George L. Conner III, M.D., Forrest City Family Practice Clinic,
P.A. v. The Honorable L.T. Simes, Judge

TOPICS

writ of certiorari motions to dismiss subject matter jurisdiction appellate procedure civil procedure

PRACTICE AREAS

civil procedure appellate procedure remedies medical malpractice wrongful death health law

QUESTIONS PRESENTED

1. Whether a writ of prohibition was available to prevent the circuit court from proceeding with a wrongful-death claim when the defendants asserted that no cause of action existed for the wrongful death of a fetus.
2. Whether the petition could be treated as a petition for a writ of certiorari.
3. Whether the defendants lacked an adequate remedy by appeal from the denial of the partial motion to dismiss.

HOLDINGS

1. A writ of prohibition is not available because the circuit court had subject-matter jurisdiction over medical-malpractice and wrongful-death actions, even if the complaint allegedly failed to state a cognizable wrongful-death cause of action.
2. The court declined to treat the petition for prohibition as a petition for certiorari because the record did not show that appeal was an inadequate remedy or that the circuit court had acted without or in excess of jurisdiction.

KEY QUOTATIONS

“The propriety of the circuit court hearing such a case, even when it appears that no cause of action exists, is an issue that is not properly addressed by a writ of prohibition because the writ does not prevent the court from erroneously exercising its jurisdiction.” (139 S.W.3d at 479)

“The issuance of a writ of certiorari under these circumstances would allow an extraordinary writ to serve as a substitute for an appeal and would effectively endorse piecemeal appellate review.” (139 S.W.3d at 481)

FACTUAL BACKGROUND

A fetus carried by Bridgette Bradley died in utero on or about April 21, 1999, while Dr. George L. Conner was her treating physician at Forrest City Family Practice Clinic. Bridgette and her husband sued Dr. Conner and the Clinic for medical negligence and wrongful death. The defendants argued that Arkansas law did not recognize a wrongful-death cause of action for a fetus at the time of death, while the plaintiffs argued that Act 1265 of 2001, which expressly included the wrongful death of a viable fetus, applied retroactively.

PROCEDURAL HISTORY

Bridgette and Maurice Bradley filed medical-negligence and wrongful-death claims against Dr. Conner and the Clinic after the death of a fetus in utero. After taking a voluntary nonsuit, the Bradleys refiled the action. The circuit court denied the defendants' partial motion to dismiss, and Dr. Conner petitioned the Arkansas Supreme Court for a writ of prohibition to prevent the wrongful-death claim from proceeding. The Supreme Court denied prohibition and declined to treat the petition as one for certiorari.

DISPOSITION

writ_denied

CASES CITED

- Chatelain v. Kelley, 322 Ark. 517, 910 S.W.2d 215 (1995)
- Aka v. Jefferson Hospital Association, 344 Ark. 627, 42 S.W.3d 508 (2001)
- Finney v. Cook, 351 Ark. 367, 94 S.W.3d 333 (2002)
- Arkansas Department of Human Services v. Collier, 351 Ark. 506, 95 S.W.3d 772 (2003)
- Farm Bureau Mutual Insurance Co. v. Southall, 281 Ark. 141, 661 S.W.2d 383 (1983)
- State v. Circuit Court of Lincoln County, 336 Ark. 122, 984 S.W.2d 412 (1999)
- St. Paul Mercury Insurance Co. v. Circuit Court of Craighead County, 348 Ark. 197, 73 S.W.3d 584 (2002)
- Ramirez v. White County Circuit Court, 343 Ark. 372, 38 S.W.3d 298 (2001)
- Forrest City Machine Works, Inc. v. Erwin, 304 Ark. 321, 802 S.W.2d 140 (1991)
- Vermeer Manufacturing Co. v. Steel, 263 Ark. 323, 564 S.W.2d 518 (1978)
- Arkansas Public Defender Commission v. Burnett, 340 Ark. 233, 12 S.W.3d 191 (2000)
- Fore v. Circuit Court of Izard County, 292 Ark. 13, 727 S.W.2d 840 (1987)
- Lupo v. Lineberger, 313 Ark. 315, 855 S.W.2d 293 (1993)
- Curtis v. Partain, 272 Ark. 400, 614 S.W.2d 671 (1981)
- Burney v. Hargraves, 264 Ark. 680, 573 S.W.2d 912 (1978)
- Arnold v. Spears, 343 Ark. 517, 36 S.W.3d 346 (2001)
- Neal v. Wilson, 321 Ark. 70, 900 S.W.2d 177 (1995)
- Gran v. Hale, 294 Ark. 563, 745 S.W.2d 129 (1988)
- Henderson Methodist Church v. Sewer Improvement District No. 142, 294 Ark. 188, 741 S.W.2d 272 (1987)
- Farm Service Cooperative v. Cummings, 262 Ark. 810, 561 S.W.2d 317 (1978)
- McKenzie v. Burris, 255 Ark. 330, 500 S.W.2d 357 (1973)
- Fisher v. Chavers, 351 Ark. 318, 92 S.W.3d 30 (2002)
- Chapman v. Wal-Mart Stores, Inc., 351 Ark. 1, 89 S.W.3d 906 (2002)
- Premium Aircraft Parts, LLC v. Circuit Court of Carroll County, 347 Ark. 977, 69 S.W.3d 849 (2002)

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