

SUPREME COURT OF MISSISSIPPI

Ronald A. Bullock, M.D. v. W. L. Lott and Laura Lott, individually
and on behalf of the wrongful death beneficiaries, as parents of
Dustin Lott, a deceased minor

Bullock v. Lott · No. No. 2005-CA-01613-SCT · Decided August 2, 2005

SUMMARY

The Mississippi Supreme Court reviewed a wrongful-death and medical-malpractice action arising from the death of a minor from a brain infection. The court held that venue was proper in the county where the death occurred under the version of Mississippi's venue statute applicable when the action was filed, but concluded that the trial court erred in permitting the plaintiffs' medical expert to testify about facts not supported by the evidence. The judgment was reversed and the case was remanded for a new trial.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Carlson, Justice; Smith, C.J.; Waller, P.J.; Easley, J.; Dickinson, J.; Randolph, J.; Lamar, J.; Graves, J.; Diaz, P.J.
JURISDICTION	Mississippi
DECIDED	August 2, 2005
DOCKET	No. 2005-CA-01613-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Dr. Bullock appealed a Covington County Circuit Court judgment entered after a jury returned a \$400,000 wrongful-death and medical-malpractice verdict for the Lotts. The trial court later granted a \$250,000 additur, which the Lotts accepted, and denied Dr. Bullock's motions for judgment notwithstanding the verdict and a new trial.
STANDARD OF REVIEW	Abuse of discretion for venue rulings and evidentiary rulings, including admission of expert testimony and learned-treatise materials; the Court also reviewed whether the verdict was against the overwhelming weight of the evidence.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Ronald A. Bullock, M.D. v. W. L. Lott, Laura Lott, individually and on behalf of the wrongful death beneficiaries, as parents of Dustin Lott, a deceased minor

TOPICS

medical malpractice

wrongful death

expert testimony

daubert standard

venue

PRACTICE AREAS

medical malpractice

wrongful death

evidence

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether venue was proper in Covington County under the version of Mississippi Code section 11-11-3 applicable when the wrongful-death action was filed in 2002.
2. Whether the trial court abused its discretion under Mississippi Rule of Evidence 702 and Daubert by permitting the plaintiffs' expert to testify to opinions based on facts not supported by the evidence.
3. Whether the trial court improperly permitted cross-examination of defense experts using medical articles that had not been established as reliable authorities under Mississippi Rule of Evidence 803(18).
4. Whether the jury verdict was against the overwhelming weight of the evidence and therefore required a new trial.

HOLDINGS

1. For a wrongful-death action filed before January 1, 2003, venue may be proper both in the county where the alleged negligence occurred and in the county where the death occurred, because the pre-amendment venue statute permitted suit where the cause of action could occur or accrue.
2. Although the plaintiffs' expert was qualified to testify regarding the standard of care applicable to a family-practice physician, the trial court abused its discretion by permitting him to testify to purported medical facts and causation mechanisms that were not supported by sufficient facts or data in the record.
3. Medical publications may be used to cross-examine an expert under Mississippi Rule of Evidence 803(18) only after their status as reliable authorities has been established through the testimony or admission of the witness, other expert testimony, or judicial notice.
4. A new trial was required because the verdict was against the overwhelming weight of the evidence when considered together with the improper expert testimony based on unsupported factual premises.

KEY QUOTATIONS

"We thus take this opportunity to remind our trial judges of their solemn gate-keeping responsibilities consistent with Daubert, our amended Rule 702, and McLemore and its progeny, whether it be assuring that an expert is confined to offering opinions within his/her areas of expertise or assuring that an expert's testimony is based upon sufficient facts and data, is the product of reliable principles and methods, and is based on the principles and methods having been applied reliably to the facts of the case." (¶32)

“Thus, cross-examination of an expert witness with published medical articles is permitted only if such articles can be established as a reliable authority by (1) the testimony of the witness; (2) by other expert testimony; or (3) the court takes judicial notice.” (§138)

“For the reasons above, we reverse the trial court judgment entered in favor of W. L. Lott and Laura Lott, individually, and on behalf of the wrongful death beneficiaries, as parents of Dustin Lott, a deceased minor, and against Ronald A. Bullock, M.D., and we remand this case to the Circuit Court of Covington County for a new trial to be conducted consistent with this opinion” (§148)

FACTUAL BACKGROUND

Sixteen-year-old Dustin Lott was examined by Dr. Bullock for recurrent headaches accompanied by nausea, vomiting, flashing lights, and sinus symptoms. Dr. Bullock diagnosed migraine headaches and sinusitis and prescribed medication; Dustin died in his sleep two days later. An autopsy identified approximately sixty cubic centimeters of purulent material within the ventricular system of the brain and findings suggestive of sinusitis. At trial, the plaintiffs' expert testified that additional diagnostic testing would have identified a brain infection and provided Dustin at least a fifty-percent chance of survival, while defense experts disputed the diagnosis and the need for further testing.

PROCEDURAL HISTORY

The Lotts sued Drs. Bullock and Massey after their sixteen-year-old son died from an intraventricular infection following treatment for headaches, nausea, vomiting, and sinus symptoms. Dr. Massey was dismissed with prejudice before trial. A jury found for the Lotts, and the trial court entered judgment and later granted additur. The Mississippi Supreme Court reversed the judgment and remanded for a new trial because the trial court improperly admitted portions of the plaintiffs' expert testimony and improperly allowed cross-examination using unauthenticated learned-treatise materials.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment in favor of the Lotts was reversed, and the case was remanded to the Covington County Circuit Court for a new trial consistent with the opinion, including proper application of the rules governing expert testimony and learned treatises.

CASES CITED

- Crenshaw v. Roman, 942 So. 2d 806, 809 (Miss. 2006)
- American Home Products Corp. v. Sumlin, 942 So. 2d 766, 768, 769-71 (Miss. 2006)
- Guice v. Mississippi Life Insurance Co., 836 So. 2d 756, 758 (Miss. 2003)
- Baptist Memorial Hospital-DeSoto, Inc. v. Bailey, 919 So. 2d 1 (Miss. 2005)
- Namihiro v. Bailey, 891 So. 2d 831 (Miss. 2005)

- Capital City Insurance Co. v. G.B. Boots Smith Corp., 889 So. 2d 505, 516-17 (Miss. 2004)
- Burgess v. Lucky, 674 So. 2d 506, 508-09 (Miss. 1996)
- Owens-Illinois, Inc. v. Edwards, 573 So. 2d 704, 706 (Miss. 1990)
- Rankin v. Mark, 238 Miss. 858, 120 So. 2d 435 (1960)
- Gentry v. Wallace, 606 So. 2d 1117, 1119 (Miss. 1992)
- Flight Line, Inc. v. Tanksley, 608 So. 2d 1149, 1155-57 (Miss. 1992)
- Braswell v. T & T Welding, Inc., 883 So. 2d 82, 84 (Miss. 2004)
- Forrest County General Hospital v. Conway, 700 So. 2d 324, 326 (Miss. 1997)
- McMillan v. Puckett, 678 So. 2d 652, 656 (Miss. 1996)
- Jenkins v. Pensacola Health Trust, Inc., 933 So. 2d 923, 926 (Miss. 2006)
- Webb v. Braswell, 930 So. 2d 387, 396-97 (Miss. 2006)
- Mississippi Transportation Commission v. McLemore, 863 So. 2d 31, 34, 36 (Miss. 2003)
- Jones v. State, 918 So. 2d 1220, 1223 (Miss. 2005)
- McGowen v. State, 859 So. 2d 320, 328 (Miss. 2003)
- Whittley v. City of Meridian, 530 So. 2d 1341, 1344 (Miss. 1988)
- Poole v. Avara, 908 So. 2d 716, 723, 726-27 (Miss. 2005)
- Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147 (1999)
- Stubbs v. State, 845 So. 2d 656, 670 (Miss. 2003)
- Jesco, Inc. v. Whitehead, 451 So. 2d 706, 713-14 (Miss. 1984)
- Blossman Gas v. Shelter Mutual General Insurance Co., 920 So. 2d 422, 424 (Miss. 2005)
- White v. Yellow Freight System, Inc., 905 So. 2d 506, 510 (Miss. 2004)
- United States v. Norman, 415 F.3d 466, 473 (5th Cir. 2005)
- Dawsey v. Olin Corp., 782 F.2d 1254, 1263-64 (5th Cir. 1986)