

SUPREME COURT OF ALABAMA

Weber v. Freeman

3 So. 3d 825 (Ala. 2008) · No. 1060001; 1060854 · Decided June 26, 2008

SUMMARY

The Alabama Supreme Court considers interlocutory appeals involving the relation-back of amended medical-malpractice claims under Alabama Rules of Civil Procedure 9(h) and 15(c). The court holds that plaintiffs who knew the identities and involvement of a radiologist and radiology group before filing suit could not later substitute them for fictitious parties after the statute of limitations had expired. The court also addresses whether amended claims against a hospital based on a different physician's conduct and alleged radiology-notification policies arose from the same conduct, transaction, or occurrence as the original complaint.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Bolin, Justice; Cobb, C.J.; See, J.; Lyons, J.; Woodall, J.; Stuart, J.; Smith, J.; Parker, J.; Murdock, J.
JURISDICTION	Alabama
DECIDED	June 26, 2008
DOCKET	1060001; 1060854
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeals, consolidated for decision, from orders denying motions to dismiss amended wrongful-death medical-malpractice claims as barred by the statute of limitations.
STANDARD OF REVIEW	The court reviewed interlocutory orders denying motions to dismiss concerning the application of Rules 9(h) and 15(c), Ala. R. Civ. P., and the statute of limitations.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Alabama.
PARTIES	Dr. Therese Weber, The Radiology Group, P.A., Jackson Hospital & Clinic, Inc. v. Carolyn Freeman

TOPICS

- statute of limitations
- motion to amend
- motions to dismiss
- interlocutory appeal
- medical malpractice

PRACTICE AREAS

Civil procedure

Medical malpractice

Wrongful death

Torts

QUESTIONS PRESENTED

1. Whether Dr. Weber and The Radiology Group were proper fictitious parties under Rule 9(h), Ala. R. Civ. P., such that the amended complaint substituting them after expiration of the statute of limitations related back to the original complaint.
2. Whether the clarified second amended complaint's new allegations that Jackson was vicariously liable for Dr. Weber's conduct arose out of the conduct, transaction, or occurrence set forth in the original complaint and therefore related back under Rule 15(c), Ala. R. Civ. P.

HOLDINGS

1. They were not proper fictitious parties because Carolyn Freeman knew their identities and knew Dr. Weber had interpreted Samuel's abdominal radiographs before filing the original complaint. Her later discovery of a possible negligence claim did not constitute ignorance of the defendants' identities under Rule 9(h), so the amended claims did not relate back and were barred by the statute of limitations.
2. The clarified second amended complaint did not relate back to the original complaint because it asserted new allegations concerning Jackson's vicarious liability for Dr. Weber's conduct, a different doctor's conduct on a different aspect of the treatment, and new policies and procedures that were absent from the original pleading. The claims were therefore time-barred.

KEY QUOTATIONS

“Rule 9(h)[, Ala. R. Civ. P.,] is not intended to give plaintiffs additional time beyond the statutorily prescribed period within which to formulate causes of action.” (832)

“However, it was incumbent upon them to learn of that significance before the running of the statutory period.” (833)

“Under Rule 15(c)(2), an amendment relates back to the original complaint when “the claim ... asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading ”” (835)

FACTUAL BACKGROUND

Three-month-old Samuel Freeman was treated at Jackson Hospital's emergency room on December 20, 2002, after his mother reported abdominal distention and persistent crying. Although abdominal radiographs indicated a possible bowel obstruction, he was discharged; he returned two days later, was diagnosed with an acute severe small-bowel obstruction, and died en route to Children's Hospital. Dr. Therese Weber had interpreted the December 20 radiographs and allegedly failed to notify emergency-room personnel of the life-threatening condition, but the original complaint did not identify her or The Radiology Group as defendants or allege that theory of negligence.

PROCEDURAL HISTORY

Carolyn Freeman filed a wrongful-death medical-malpractice action after her infant son died following treatment at Jackson Hospital. After the statute of limitations had run, she amended the complaint to substitute Dr. Weber and The Radiology Group for fictitiously named defendants and asserted new negligence and vicarious-liability allegations against Jackson based on Dr. Weber's conduct. The trial court denied the defendants' motions to dismiss and certified the orders for interlocutory appeal under Rule 5, Ala. R. App. P.; the Supreme Court of Alabama granted permission to appeal, consolidated the appeals, and reversed and remanded both matters.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for proceedings consistent with the opinion, including dismissal of the time-barred claims against Dr. Weber and The Radiology Group and dismissal of Jackson-related claims based on its alleged vicarious liability for Dr. Weber's conduct.

CASES CITED

- Ex parte Atkinson, 976 So. 2d 1001, 1003 (Ala. 2007)
- Fulmer v. Clark Equipment Co., 654 So. 2d 45 (Ala. 1995)
- Columbia Engineering International, Ltd. v. Espey, 429 So. 2d 955, 959 (Ala. 1983)
- Browning v. City of Gadsden, 359 So. 2d 361 (Ala. 1978)
- Toomey v. Foxboro Co., 528 So. 2d 302 (Ala. 1988)
- Marsh v. Wenzel, 732 So. 2d 985, 990 (Ala. 1998)
- Ex parte Snow, 764 So. 2d 531, 537 (Ala. 1999)
- Harmon v. Blackwood, 623 So. 2d 726, 727 (Ala. 1993)
- Ex parte Bowman, 986 So. 2d 1152, 1157 (Ala. 2007)
- Prior v. Cancer Surgery of Mobile, P.C., 959 So. 2d 1092 (Ala. 2006)