

SUPREME COURT OF IDAHO

Coombs v. Curnow, 148 Idaho 129

219 P.3d 453 (2009) · No. No. 35157 · Decided October 13, 2009

SUMMARY

The Idaho Supreme Court reviewed a judgment notwithstanding the verdict in a medical malpractice action arising from a child's death after prolonged, high-dose Propofol sedation. The court held that a trial court may not reconsider the admissibility of evidence already submitted to the jury when ruling on a j.n.o.v. motion and may not weigh conflicting expert testimony at that stage. The court vacated the judgment notwithstanding the verdict and remanded with instructions to reinstate the jury's verdict.

CASE DETAILS

COURT	Supreme Court of Idaho
WRITING FOR THE COURT	J. Jones, Justice; Chief Justice Eismann; Justice Burdick; Justice W. Jones; Justice Horton
JURISDICTION	Idaho
DECIDED	October 13, 2009
DOCKET	No. 35157
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from the district court's grant of judgment notwithstanding the verdict in favor of the defendant physicians in a medical malpractice action.
STANDARD OF REVIEW	The Supreme Court applies the same standard as the district court in reviewing a judgment notwithstanding the verdict. The verdict must be upheld if supported by substantial and competent evidence; the court may not weigh evidence, assess witness credibility, or draw inferences against the nonmoving party. Whether evidence was sufficient to create a jury issue is reviewed de novo as a question of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Melinda Coombs, natural mother of Michael Hall, deceased, The Estate of Michael Hall, represented by Melinda Coombs, personal representative v. Adrian Curnow, M.D., Russell Griffiths, M.D.

TOPICS

medical malpractice

expert testimony

standard of review

appellate procedure

proximate cause

PRACTICE AREAS

medical malpractice

health law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether a trial court may reconsider the admissibility or reliability of evidence already submitted to the jury when ruling on a motion for judgment notwithstanding the verdict.
2. Whether substantial and competent evidence supported the jury's findings that the physicians breached the applicable standard of care and proximately caused Michael Hall's death.
3. Whether the physicians were entitled to attorney fees on appeal.

HOLDINGS

1. An Idaho trial court may not reconsider and exclude evidence that was submitted to the jury when determining whether a judgment notwithstanding the verdict is proper.
2. Substantial and competent evidence supported the jury's verdict that the physicians breached the applicable standard of care and that their conduct proximately caused Michael Hall's death.
3. The physicians were not entitled to attorney fees under Idaho Code section 12-121 because they were not prevailing parties on appeal.

KEY QUOTATIONS

"Therefore, we hold that trial courts may not reconsider the record submitted to the jury when determining the propriety of a j.n.o.v." (148 Idaho at 139)

"Although his opinion was not directly supported by any peer-reviewed articles, that support is not a necessary finding for scientific reliability." (148 Idaho at 143)

"In light of this evidence, the district court's decision, granting the doctors' motions for j.n.o.v., invaded the province of the jury." (148 Idaho at 147)

FACTUAL BACKGROUND

Nearly three-year-old Michael Hall suffered a serious facial dog bite and underwent surgery to reimplant severed facial tissue. After surgery, physicians ordered prolonged, high-dose Propofol sedation in the pediatric intensive care unit, despite the drug not being indicated for long-term pediatric ICU sedation. Michael developed hypotension, ventricular tachycardia, fever, metabolic abnormalities, and ultimately cerebral edema, was declared brain dead, and died. Plaintiff's expert, Dr. Gregory Hammer, testified that the physicians' Propofol administration breached the standard of care and contributed to cerebral edema through hypotension, impaired oxygen delivery, lipid toxicity, and cellular injury.

PROCEDURAL HISTORY

The jury found both physicians liable for breach of the applicable standard of care and proximate causation and awarded \$750,000 in damages. The district court granted the physicians' motions for judgment notwithstanding the verdict, concluding that the plaintiff's expert causation testimony was scientifically unreliable and that the verdict lacked substantial and competent evidentiary support. The Idaho Supreme Court vacated the judgment notwithstanding the verdict and remanded for entry of judgment on the jury's verdict.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the judgment notwithstanding the verdict and remand for entry of judgment pursuant to the jury verdict effective as of September 17, 2007.

CASES CITED

- *Jeremiah v. Yanke Mach. Shop, Inc.*, 131 Idaho 242, 247, 953 P.2d 992, 997 (1998)
- *O'Neil v. Schuckardt*, 112 Idaho 472, 480, 733 P.2d 693, 701 (1986)
- *Karlson v. Harris*, 140 Idaho 561, 565, 567, 97 P.3d 428, 432, 434 (2004)
- *Watson v. Navistar International Transportation Corp.*, 121 Idaho 643, 658, 827 P.2d 656, 671 (1992)
- *Hall v. Farmers Alliance Mutual Insurance Co.*, 145 Idaho 313, 324, 179 P.3d 276, 287 (2008)
- *Weisgram v. Marley Co.*, 528 U.S. 440, 454, 457, 120 S. Ct. 1011, 1020, 1022, 145 L. Ed. 2d 958, 971-73 (2000)
- *Hudson v. Cobbs*, 118 Idaho 474, 478, 797 P.2d 1322, 1326 (1990)
- *City of McCall v. Seubert*, 142 Idaho 580, 585-86, 130 P.3d 1118, 1123-24 (2006)
- *Donaldson v. Henry*, 63 Idaho 467, 473, 121 P.2d 445, 447 (1941)
- *Jackson v. Pleasant Grove Health Care Center*, 980 F.2d 692, 696 (11th Cir. 1993)
- *Puckett v. Verska*, 144 Idaho 161, 166, 158 P.3d 937, 942 (2007)
- *Kinser v. Gehl Co.*, 184 F.3d 1259, 1267, 1269 (10th Cir. 1999)
- *Weeks v. Eastern Idaho Health Services, Inc.*, 143 Idaho 834, 837-39, 153 P.3d 1180, 1183-85 (2007)
- *Dekker v. Magic Valley Regional Medical Center*, 115 Idaho 332, 334, 766 P.2d 1213, 1215 (1988)
- *Willis v. Western Hospital Association*, 67 Idaho 435, 442, 182 P.2d 950, 954 (1947)
- *Pearson v. Parsons*, 114 Idaho 334, 339, 757 P.2d 197, 202 (1988)
- *Munson v. Department of Highways*, 96 Idaho 529, 531, 531 P.2d 1174, 1176 (1975)
- *Cramer v. Slater*, 146 Idaho 868, 875, 204 P.3d 508, 515 (2009)
- *Sheridan v. St. Luke's Regional Medical Center*, 135 Idaho 775, 785, 25 P.3d 88, 98 (2001)
- *Flowerdew v. Warner*, 90 Idaho 164, 170, 409 P.2d 110, 113 (1965)
- *Ryan v. Beisner*, 123 Idaho 42, 46-47, 844 P.2d 24, 28-29 (Ct. App. 1992)
- *Bloching v. Albertson's, Inc.*, 129 Idaho 844, 846-47, 934 P.2d 17, 19-20 (1997)

- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 589-94, 113 S. Ct. 2786, 2794-97, 125 L. Ed. 2d 469, 480-84 (1993)
- State v. Konechny, 134 Idaho 410, 417-18, 3 P.3d 535, 542-43 (Ct. App. 2000)
- Swallow v. Emergency Medical of Idaho, P.A., 138 Idaho 589, 592-93, 67 P.3d 68, 71-72 (2003)
- Thomson v. Olsen, 147 Idaho 99, 108, 205 P.3d 1235, 1243 (2009)
- Rueth v. State, 103 Idaho 74, 78, 644 P.2d 1333, 1337 (1982)
- Leavitt v. Swain, 133 Idaho 624, 628, 991 P.2d 349, 353 (1999)
- Quick v. Crane, 111 Idaho 759, 763-64, 727 P.2d 1187, 1191-92 (1986)
- Stephens v. Stearns, 106 Idaho 249, 252-53, 678 P.2d 41, 44-45 (1984)
- Townsend v. United States Rubber Co., 74 N.M. 206, 392 P.2d 404, 406-07 (1964)