

INDIANA SUPREME COURT

**Charles McKeen, M.D. v. Billy Turner**

71 N.E.3d 833 (Ind. 2017) · No. No. 53S05-1704-CT-202 · Decided April 7, 2017

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OPINION

Charles McKeen, M.D. v. Billy Turner 71 N.E.3d 833

PER CURIAM.

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CLERK

Indiana Supreme Court ATTORNEYS FOR AMICUS CURIAE Court of Appeals and Tax Court

STEPHEN W. ROBERTSON, COMMISSIONER

OF THE INDIANA DEPARTMENT OF INSURANCE

AND ADMINISTRATOR OF THE INDIANA

PATIENT'S COMPENSATION FUND

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In the Indiana Supreme Court \_\_\_\_\_ No. 53S05-1704-CT-202

CHARLES MCKEEN, M.D.,

Appellant (Defendant below), v. BILLY TURNER , Appellee (Plaintiff below).

\_\_\_\_\_ Appeal from the Monroe Circuit Court, No. 53C06-1201-CT-000088 The Honorable Frances G. Hill, Judge \_\_\_\_\_

On Petition to Transfer from the Indiana Court of Appeals, No. 53A05-1511-CT-02047

\_\_\_\_\_ April 7, 2017 Per Curiam. Billy Turner filed a proposed malpractice complaint with the Indiana Department of Insurance pursuant to the Medical Malpractice Act, alleging Doctor Charles McKeen's medical and surgical treatment of Turner's wife, Rowena, failed to meet the appropriate standard of care. In addition to the complaint, Turner's submission to the Medical Review Panel ("MRP") included Rowena's medical records and a narrative statement describing the records and alleging the delay in exploratory surgery

following Rowena's readmission to the hospital resulted in her death. (Appellant's App. pp. 74, 86.) The MRP issued a unanimous opinion finding the evidence did not support a conclusion that Dr. McKeen had failed to meet the applicable standard of care. Turner then filed a complaint in court. After extensive discovery, Turner filed a supplemental witness list naming an expert hematologist who was expected to testify that Dr. McKeen had failed to prescribe the appropriate dosage of anticoagulation medication, leading to Rowena's death. Dr. McKeen filed a motion to strike the hematologist's opinion on grounds Turner's submission to the MRP did not allege malpractice relating to the anticoagulation medication, and so Turner could not pursue the claim in court. The trial court denied Dr. McKeen's motion, and this interlocutory appeal followed. Before a plaintiff may pursue a malpractice complaint in court against a qualified healthcare provider, the Medical Malpractice Act requires the plaintiff to present a proposed complaint to a MRP, and the MRP must give its opinion as to whether the provider breached the standard of care.<sup>1</sup> See Ind. Code § 34-18-8-4. Dr. McKeen contends Turner is attempting to raise a new claim in the trial court that he did not present to the MRP, in violation of the statute. The Court of Appeals disagreed in an opinion authored by Judge Baker, holding "a plaintiff may raise any theories of alleged malpractice during litigation following the MRP process if (1) the proposed complaint encompasses the theories, and (2) the evidence relating to those theories was before the MRP." *McKeen v. Turner*, 61 N.E.3d 1251, 1262 (Ind. Ct. App. 2016). The Court of Appeals concluded Turner met these requirements and may pursue in court his claim related to the anticoagulation medication. We agree with the Court of Appeals, finding its opinion consistent with *Miller v. Memorial Hospital of South Bend, Inc.*, 679 N.E.2d 1329 (Ind. 1997). We thus grant transfer and adopt and incorporate by reference the Court of Appeals opinion. See Ind. Appellate Rule 58(A) (1). We further find *K.D. v. Chambers*, 951 N.E.2d 855 (Ind. Ct. App. 2011), is at odds with *Miller* on the issue we address today and expressly disapprove *K.D.* All Justices concur. 1 None of the limited exceptions to this general rule apply here.