

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Hamon v. Morris, M.D.

Hamon v. Morris, M.D. · No. No. 20-0841 · Decided October 29, 2021

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment for an anesthesiologist in a medical malpractice action arising from a postoperative popliteal nerve block. The court held that the plaintiff failed to present competent expert testimony establishing a breach of the applicable standard of care and could not rely on *res ipsa loquitur*. The court also upheld summary judgment on the purported informed-consent claim because that claim was not asserted in the amended complaint and lacked proof of causation.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Evan H. Jenkins; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	October 29, 2021
DOCKET	No. 20-0841
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the circuit court's order granting respondent summary judgment in a medical malpractice action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that it is issued under Rule 21 and finds no substantial question of law.
PARTIES	Kevin Hamon v. John L. Morris, M.D.

TOPICS

[medical malpractice](#)[summary judgment](#)[informed consent](#)[expert testimony](#)[standard of review](#)

PRACTICE AREAS

[medical malpractice](#)[health law](#)[civil procedure](#)[appellate procedure](#)[evidence](#)

QUESTIONS PRESENTED

1. Whether Hamon presented sufficient expert testimony to create a genuine issue of material fact regarding breach of the applicable medical standard of care.
2. Whether Hamon could rely on *res ipsa loquitur* to establish medical negligence where the evidence identified multiple possible causes of the alleged injury.
3. Whether Hamon could obtain relief on an informed-consent theory that was not asserted as a cause of action in his amended complaint.
4. Whether, even if an informed-consent claim had been properly pleaded, Hamon presented evidence establishing causation under the objective reasonable-person test.
5. Whether the circuit court properly considered the evidentiary materials submitted in opposition to summary judgment.

HOLDINGS

1. A medical-malpractice plaintiff generally must present competent expert testimony establishing both the applicable standard of care and the defendant's breach when those matters are at issue. Hamon's experts did not establish how Morris failed to exercise the care, skill, and learning expected of a reasonable anesthesiologist, so summary judgment was proper.
2. *Res ipsa loquitur* was unavailable because the evidence did not support the inference that Morris's negligence was the only reasonable and legitimate explanation for the injury.
3. Hamon could not obtain relief on a lack-of-informed-consent claim because he did not assert that claim in his amended complaint or move to amend the complaint to add it.
4. Even assuming an informed-consent claim had been properly pleaded, Hamon failed to create a genuine issue of material fact on causation because he did not show that a reasonable person in his circumstances would have refused the nerve block if the risk of nerve injury had been disclosed.
5. Hamon could not rely on his notice of claim, screening certificate of merit, expert disclosure, or expected trial testimony to defeat summary judgment because those materials were not competent summary-judgment evidence under the applicable statutes and rules.

KEY QUOTATIONS

“Thus, in most medical malpractice cases, an expert witness must establish a breach of the standard of care.” (7)

“Use of that word alone does not establish medical negligence.” (8)

“However, res ipsa loquitur is inapplicable to petitioner’s claim.” (9)

“We therefore see no conflict in the circuit court’s decision to deny petitioner’s motion for partial summary judgment while granting respondent’s motion.” (12)

FACTUAL BACKGROUND

After elective heel-spur surgery, Kevin Hamon reported extreme pain in the recovery room, and anesthesiologist John L. Morris performed a popliteal nerve block after Hamon agreed to it. Hamon later developed severe neurological symptoms and complex regional pain syndrome, which he attributed to the nerve block. His experts did not provide competent testimony establishing how Morris breached the anesthesiology standard of care, and the record identified several alternative potential causes of the injury, including the surgery, surgical positioning, and a tourniquet.

PROCEDURAL HISTORY

Hamon sued Morris under the West Virginia Medical Professional Liability Act, alleging that a popliteal nerve block caused a permanent neurological injury and that Morris breached the applicable standard of care. The Circuit Court of Monongalia County denied Hamon's partial summary judgment motion concerning informed consent and granted Morris's motion for summary judgment, disposing of the action. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Cavender v. Fouty, 195 W. Va. 94, 464 S.E.2d 736 (1995)
- Neary v. Charleston Area Medical Center, Inc., 194 W. Va. 329, 460 S.E.2d 464 (1995)
- Farley v. Meadows, 185 W. Va. 48, 404 S.E.2d 537 (1991)
- Williams v. Precision Coil, Inc., 194 W. Va. 52, 459 S.E.2d 329 (1995)
- Davidson's, Inc. v. Scott, 149 W. Va. 470, 140 S.E.2d 807 (1965)
- Foster v. City of Keyser, 202 W. Va. 1, 501 S.E.2d 165 (1997)
- Cross v. Trapp, 170 W. Va. 459, 294 S.E.2d 446 (1982)
- Adams v. El-Bash, 175 W. Va. 781, 338 S.E.2d 381 (1985)
- Mauck v. City of Martinsburg, 178 W. Va. 93, 357 S.E.2d 775 (1987)
- Wilson v. Kerr, No. 19-0933, 2020 WL 7391150 (W. Va. Dec. 16, 2020)
- Ramey v. Contractor Enterprises, Inc., 225 W. Va. 424, 693 S.E.2d 789 (2010)