

SUPREME COURT OF MISSISSIPPI

Randal R. Palmer and Lynn I. Palmer, Individually and on Behalf of
Anne Palmer, a Minor v. Volkswagen of America, Inc., Van-Trow
Volkswagen, Inc., Volkswagen A.G. a/k/a Volkswagenwerk
Aktiengesellschaft, and Volkswagen de Mexico, S.A. de C.V. a/k/a
Volkswagen of Mexico

904 So. 2d 1077 (Miss. 2005) · No. 2001-CT-00875-SCT · Decided March 28, 2001

SUMMARY

The Mississippi Supreme Court reviews evidentiary rulings in a wrongful-death product-liability action arising from injuries caused by a passenger-side air bag in a 1995 Volkswagen Jetta. The court holds that the trial court properly excluded portions of the owner's manual and National Transportation Safety Board materials, admitted accident-reconstruction videos, and limited expert testimony concerning air-bag dangers. The court affirms in part and reverses in part the Court of Appeals and remands in part.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Dickinson, Justice; Smith, C.J.; Waller, P.J.; Cobb, P.J.; Carlson, J.; Randolph, J.; Graves, J.; Easley, J.; Diaz, J., not participating
JURISDICTION	Mississippi
DECIDED	March 28, 2001
DOCKET	2001-CT-00875-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	On writ of certiorari to review the Mississippi Court of Appeals' partial affirmance and partial reversal of a Hinds County Circuit Court judgment in a wrongful-death products-liability action.
STANDARD OF REVIEW	Evidentiary rulings, including admission or exclusion of evidence, discovery rulings, and expert-testimony rulings, are reviewed for abuse of discretion. The Court also considered whether any evidentiary error was prejudicial or harmless.

PRECEDENTIAL VALUE	Published, en banc decision of the Supreme Court of Mississippi; precedential.
PARTIES	Randal R. Palmer, Lynn I. Palmer, individually and on behalf of Anne Palmer, a minor v. Volkswagen of America, Inc., Van-Trow Volkswagen, Inc., Volkswagen A.G. a/k/a Volkswagenwerk Aktiengesellschaft, Volkswagen de Mexico, S.A. de C.V. a/k/a Volkswagen of Mexico

TOPICS

products liability

expert testimony

evidence

standard of review

appellate procedure

PRACTICE AREAS

products liability

wrongful death

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether exclusion of a contradictory picture and caption from the Jetta owner's manual was an abuse of discretion in the inadequate-warning claim.
2. Whether exclusion of a National Transportation Safety Board safety-recommendation letter was reversible error.
3. Whether admission of videos depicting staged sled tests and dummy occupants was an abuse of discretion.
4. Whether the trial court properly limited or excluded expert testimony from Dr. Michael Wogalter and Myrna Kruckenburg.
5. Whether the trial court improperly allowed Greg Miller to provide specialized technical testimony as a lay witness despite his late designation as an expert.
6. Whether evidence of seat-belt use by Anne Palmer and the Palmer family was admissible to show whether they would have heeded adequate warnings.

HOLDINGS

1. Reliance on a manufacturer's warning is not required when the claim is that a warning should have been provided but was absent. When the claim is that an issued warning was defective, however, the plaintiff must have read and relied on the defective warning. In either event, the plaintiff must prove proximate cause.
2. The trial court did not abuse its discretion by excluding the picture and caption from the owner's manual.
3. The trial court properly excluded the NTSB letter because plaintiffs did not adequately establish its relevance, authenticate it, or proffer the purpose for which it would be used; in any event, its exclusion was not sufficiently prejudicial to warrant reversal.

4. The trial court did not abuse its discretion by admitting videos depicting sled tests with dummy occupants.
5. The trial court properly excluded Dr. Wogalter's testimony concerning the dangers posed by the Jetta's air bags to children because he lacked expertise in air-bag mechanics and the specific dangers involved, but properly permitted testimony about the visibility, effectiveness, and compliance of the sun-visor warnings.
6. Testimony is expert testimony when it requires scientific, technical, or other specialized knowledge beyond that of a randomly selected adult, regardless of whether it is presented as fact or opinion. The trial court abused its discretion by allowing Miller to provide such technical testimony as a lay witness after defendants had not timely designated him as an expert.
7. Evidence of seat-belt nonuse may be admitted to show that a plaintiff would not have heeded an adequate warning, provided it has probative value independent of negligence, its probative value is not substantially outweighed by prejudice, no other evidentiary rule bars it, and the jury receives a limiting instruction prohibiting consideration of the evidence as negligence.

KEY QUOTATIONS

“Had the jury in this case found the Jetta’s warnings, including those on the sun visors, to be defective for failure to properly direct the plaintiffs to the owner’s manual for air bag warnings, the plaintiffs’ proximate cause requirement would have been met – not by anything in the manual which might constitute a defective warning – but by the failure to properly warn the Palmers that they should refer to the manual.” (¶30)

“To be clear, the test for expert testimony is not whether it is fact or opinion. The test is whether it requires “scientific, technical, or other specialized knowledge” beyond that of the randomly selected adult.” (¶63)

“Inadequate warnings cannot serve as the proximate cause of injuries where adequate warnings would have resulted in the same injuries.” (¶67)

FACTUAL BACKGROUND

Sixteen-year-old Anne Palmer was driving her parents' 1995 Volkswagen Jetta with permission when she collided with a police vehicle that had stopped suddenly in rush-hour traffic. Anne and her ten-year-old sister Jennifer were not wearing seat belts; the Jetta's air bags deployed, causing Anne minor injuries but severely injuring Jennifer and ultimately causing her death. Jennifer's family alleged negligence, warranty violations, and violations of the Mississippi Product Liability Act based on defective design, defective manufacture, and inadequate warnings.

PROCEDURAL HISTORY

The circuit court directed verdicts for defendants on negligence, breach of warranty, and defective-manufacture claims, and submitted defective-design and inadequate-warning claims to the jury. The jury returned a unanimous defense verdict on defective design and an eleven-to-one defense verdict on inadequate warnings. The Court of Appeals affirmed the directed verdicts, affirmed some evidentiary rulings, reversed others, and remanded for a new trial. The Supreme Court of Mississippi affirmed in part, reversed in part, and remanded for a new trial limited to defective design.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Hinds County Circuit Court for a new trial limited to the plaintiffs' defective-design claim and consistent with the opinion.

CASES CITED

- Palmer v. Volkswagen of Am., Inc., 2003 WL 22006296 (Miss. Ct. App. 2003)
- Graves v. Church & Dwight Co., 631 A.2d 1248, 1258 (N.J. Super. Ct. App. Div. 1993)
- General Motors Corp. v. Saenz ex rel. Saenz, 873 S.W.2d 353, 361 (Tex. 1993)
- Bushong v. Garman Co., 843 S.W.2d 807, 811 (Ark. 1992)
- Gauthier v. McDonough Power Equip., Inc., 608 So. 2d 1086, 1088-89 (La. Ct. App. 1992)
- Bloxom v. Bloxom, 512 So. 2d 839, 850-51 (La. 1987)
- E.R. Squibb & Sons, Inc. v. Cox, 477 So. 2d 963, 970 (Ala. 1985)
- Cotton v. State, 675 So. 2d 308, 311 (Miss. 1996)
- Sample v. State, 643 So. 2d 524, 530 (Miss. 1994)
- Miss. State Hwy. Comm'n v. Gilich, 609 So. 2d 367, 377 (Miss. 1992)
- Wells v. State, 604 So. 2d 271, 279 (Miss. 1992)
- Estate of Hunter v. General Motors Corp., 729 So. 2d 1264, 1268 (Miss. 1999)
- Herring v. Poirrier, 797 So. 2d 797 (Miss. 2000)
- Golonka v. General Motors Corp., 65 P.3d 956 (Ariz. Ct. App. 2003)