

SUPREME COURT OF MISSISSIPPI

Ken E. Cleveland, George T. Smith-Vaniz, M.D., and Jackson HMA, Inc. d/b/a Central Mississippi Medical Center v. Lanell Hamil, Individually and on Behalf of the Wrongful Death Beneficiaries of Emmett O. Hamil, Deceased, Who Are Entitled to Recover Under the Wrongful Death and Survival Statute

Cleveland v. Hamil · No. 2010-CT-01527-SCT · Decided June 7, 2010

SUMMARY

The Mississippi Supreme Court held that the plaintiff’s medical-negligence expert improperly introduced an undisclosed theory of malpractice at trial. Because exclusion of that testimony left the plaintiff without admissible expert evidence establishing the applicable standard of care or breach, the court concluded that judgment notwithstanding the verdict was required rather than a new trial. The court affirmed in part and reversed in part the Court of Appeals and reversed and rendered judgment for all defendants.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Dickinson, Presiding Justice, for the Court; Waller, C.J.; Randolph, P.J.; Lamar, J.; Kitchens, J.; Chandler, J.; Pierce, J.; King, J.; Coleman, J.
JURISDICTION	Mississippi
DECIDED	June 7, 2010
DOCKET	2010-CT-01527-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	On writ of certiorari to review the Mississippi Court of Appeals' decision reversing the judgment against the defendants, rendering judgment for Dr. Smith-Vaniz and Jackson HMA, and remanding for a new trial against Dr. Cleveland.
STANDARD OF REVIEW	The Court reviewed whether the Court of Appeals erred in remanding for a new trial rather than rendering judgment for Dr. Cleveland, applying the JNOV standard to determine whether the plaintiff

	presented sufficient admissible evidence to establish a prima facie medical-malpractice case.
PRECEDENTIAL VALUE	binding
PARTIES	Ken E. Cleveland, George T. Smith-Vaniz, M.D., Jackson HMA, Inc. d/b/a Central Mississippi Medical Center v. Lanell Hamil, individually and on behalf of the wrongful death beneficiaries of Emmett O. Hamil, deceased

TOPICS

medical malpractice

expert testimony

wrongful death

motion for directed verdict

discovery dispute

PRACTICE AREAS

medical malpractice

wrongful death

evidence

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred by remanding for a new trial against Dr. Cleveland rather than rendering judgment in his favor after determining that the plaintiff's only expert testimony concerning his alleged breach was an undisclosed and inadmissible new theory.
2. Whether a plaintiff in a medical-malpractice action may establish the standard of care or breach through inadmissible expert testimony.
3. Whether JNOV is appropriate when, after exclusion of improperly admitted expert testimony, the plaintiff lacks admissible evidence establishing a prima facie medical-malpractice case.

HOLDINGS

1. A plaintiff may not use inadmissible expert testimony to establish the applicable medical standard of care or a medical provider's breach of that standard.
2. JNOV was proper because, after exclusion of the undisclosed expert opinion, the plaintiff failed to present admissible evidence establishing a prima facie case of medical malpractice against Dr. Cleveland.
3. The judgments of the Court of Appeals and the Hinds County Circuit Court were reversed in part, and judgment was rendered for all defendants.

KEY QUOTATIONS

“But the failure to produce a competent medical expert prohibits the plaintiff from bringing the case to trial.” (§14)

“To be clear, a plaintiff may not use inadmissible evidence to establish the standard of care, or that a medical provider failed to comply with that standard of care.” (§15)

“And because the plaintiff failed to establish a prima facie case with admissible evidence, the trial judge erred in failing to grant Dr. Cleveland judgment notwithstanding the verdict.” (¶16)

FACTUAL BACKGROUND

Emmett Hamil was hospitalized for severe abdominal pain and gastrointestinal bleeding, underwent surgery to repair an ulcer, and was discharged after approximately one week. He returned the next morning with additional pain and bleeding, and surgery revealed a second ulcer that had eroded a large blood vessel and caused his death. During discovery, Hamil's expert attributed the alleged malpractice to failure to prescribe anti-ulcer medication, but at trial the expert abandoned that theory after learning that medication had been prescribed and offered a new, undisclosed theory that the second ulcer should have been detected before discharge.

PROCEDURAL HISTORY

Lanell Hamil brought a medical-negligence wrongful-death action against Drs. Smith-Vaniz and Cleveland and Jackson HMA. The circuit court denied Dr. Smith-Vaniz's motion for a directed verdict, granted Jackson HMA a partial directed verdict, and entered a jury verdict for Hamil against all three defendants while denying their JNOV motions. The Court of Appeals rendered judgment for Dr. Smith-Vaniz and Jackson HMA but remanded for a new trial against Dr. Cleveland based on the admission of an undisclosed expert theory. The Mississippi Supreme Court granted Dr. Cleveland's petition for certiorari and held that judgment should instead be rendered for all defendants.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

No remand was ordered by the Mississippi Supreme Court; it rendered judgment for all defendants. The Court of Appeals judgment was affirmed in part and reversed in part, and the Hinds County Circuit Court judgment was reversed and rendered.

CASES CITED

- Cleveland v. Hamil, 2013 WL 936217, *9 (Miss. Ct. App. March 12, 2013)
- University of Mississippi Medical Center v. Lanier, 97 So. 3d 1197, 1203 (Miss. 2012)
- Bailey Lumber & Supply Co. v. Robinson, 98 So. 3d 986, 998 (Miss. 2012)
- Hyundai Motor America v. Applewhite, 53 So. 3d 749, 759 (Miss. 2011)
- T.K. Stanley, Inc. v. Cason, 614 So. 2d 942, 950-51 (Miss. 1992)
- Jones v. Hatchett, 504 So. 2d 198, 202 (Miss. 1987)
- Square D Co. v. Edwards, 419 So. 2d 1327, 1329 (Miss. 1982)
- Hubbard v. Wansley, 954 So. 2d 951, 956-57 (Miss. 2007)
- Drummond v. Buckley, 627 So. 2d 264, 268 (Miss. 1993)
- Burnham v. Tabb, 508 So. 2d 1072, 1074 (Miss. 1987)

- Barner v. Gorman, 605 So. 2d 805, 809 (Miss. 1992)
- Latham v. Hayes, 495 So. 2d 453 (Miss. 1986)
- McDonald v. Memorial Hospital at Gulfport, 8 So. 3d 175, 182 (Miss. 2009)
- Troupe v. McAuley, 955 So. 2d 848, 858 (Miss. 2007)
- 3M Co. v. Johnson, 895 So. 2d 151, 167 (Miss. 2005)
- Wilson v. General Motors Acceptance Corp., 883 So. 2d 56, 63 (Miss. 2004)
- Harrison v. McMillan, 828 So. 2d 756, 763 (Miss. 2002)

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