

SUPREME COURT OF NORTH CAROLINA

Preston v. Movahed

No. 124PA19 (N.C. Apr. 3, 2020) · No. No. 124PA19 · Decided April 3, 2020

SUMMARY

The Supreme Court of North Carolina considered whether a medical malpractice complaint complied with North Carolina Rule of Civil Procedure 9(j). The Court held that, viewing disputed or ambiguous evidence in the light most favorable to the plaintiff, the record showed that the plaintiff's expert was willing to testify that the defendant breached the applicable standard of care and that the plaintiff reasonably expected the expert to qualify. The Court reversed the Court of Appeals and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Earls, Justice
JURISDICTION	North Carolina
DECIDED	April 3, 2020
DOCKET	No. 124PA19
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	On discretionary review under N.C.G.S. § 7A-31 of a unanimous Court of Appeals decision affirming dismissal of a medical malpractice complaint for noncompliance with North Carolina Rule of Civil Procedure 9(j).
STANDARD OF REVIEW	At the preliminary Rule 9(j) stage, the court must examine the facts and circumstances known or that should have been known to the pleader at filing, draw reasonable inferences in favor of the nonmoving party when the forecasted evidence is disputed or ambiguous, and avoid credibility determinations and weighing of evidence. On appellate review, the Supreme Court rejected the Court of Appeals' application of a deferential fact-finding standard to the Rule 9(j) preliminary determination.
PRECEDENTIAL VALUE	published binding opinion of the Supreme Court of North Carolina
PARTIES	Donna J. Preston, Administrator of the Estate of William M. Preston v. Assadollah Movahed, M.D.

TOPICS

medical malpractice

motions to dismiss

civil procedure

standard of review

appellate procedure

PRACTICE AREAS

medical malpractice

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court and Court of Appeals applied the proper framework and standard of review in determining that plaintiff's Rule 9(j) certification was unsupported by the evidence.
2. Whether, viewing the evidence in the light most favorable to plaintiff, Dr. Toporoff was willing at the time of filing to testify that Dr. Movahed breached the applicable standard of care.
3. Whether plaintiff reasonably expected Dr. Toporoff to qualify as an expert under North Carolina Rule of Evidence 702(b).

HOLDINGS

1. When a defendant challenges a facially valid Rule 9(j) certification under Rule 12(b)(6), the trial court must examine the facts and circumstances known or that should have been known to the pleader at filing and draw all reasonable inferences in favor of the nonmoving party when the forecasted evidence is reasonably disputed or ambiguous.
2. The evidence, viewed in the light most favorable to plaintiff, demonstrated that Dr. Toporoff was willing at the time of filing the second complaint to testify that Dr. Movahed breached the applicable standard of care as a cardiologist interpreting the treadmill stress test and EKG recordings and communicating those results.
3. Plaintiff reasonably expected Dr. Toporoff to qualify under Rule 702(b) to testify concerning the standard of care applicable to treadmill stress tests and EKG recordings, even though he was not a nuclear cardiologist.

KEY QUOTATIONS

"We do not view the legislature's enactment of Rule 9(j) as intending for the trial court to engage in credibility determinations and weigh competent evidence at this preliminary stage of the proceedings." (at 19-20)

"Rule 9(j) is intended as a gatekeeping rule to prevent the prosecution of frivolous malpractice claims, not an endless maze of impossible hurdles to bar juries from hearing meritorious cases." (at 35)

FACTUAL BACKGROUND

William Preston presented to a hospital with chest pain, shortness of breath, abnormal EKGs, and significant cardiac risk factors. Dr. Movahed interpreted a nuclear stress test, while Dr. Stuart Toporoff, a clinical cardiologist, later reviewed the care and opined that the treadmill-test findings, communication of the results, and failure to obtain an immediate cardiology consultation breached the standard of care. Preston was discharged

and died several days later from an acute myocardial infarction and coronary artery disease. Plaintiff filed a complaint against Dr. Movahed supported by a Rule 9(j) certification based on Toporoff's affidavit and later testimony.

PROCEDURAL HISTORY

Plaintiff filed a wrongful-death medical malpractice action against Dr. Movahed and other defendants, alleging compliance with Rule 9(j) based on review and certification by cardiologist Dr. Stuart Toporoff. The trial court granted Dr. Movahed's motion to dismiss, finding that plaintiff had no cardiologist competent or willing to testify against him when the complaint was filed. The Court of Appeals affirmed. The Supreme Court of North Carolina reversed and remanded, holding that the evidence had to be viewed in the light most favorable to plaintiff and that plaintiff reasonably expected Dr. Toporoff to qualify and was able to show his willingness to testify.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings; the complaint should not be dismissed on Rule 9(j) grounds.

CASES CITED

- Vaughan v. Mashburn, 371 N.C. 428, 817 S.E.2d 370 (2018)
- Moore v. Proper, 366 N.C. 25, 726 S.E.2d 812 (2012)
- Estate v. Wooden ex rel. Jones v. Hillcrest Convalescent Ctr., Inc., 222 N.C. App. 396 (2012)
- Scott v. Scott, 336 N.C. 284, 442 S.E.2d 493 (1994)
- State v. Bullard, 312 N.C. 129, 322 S.E.2d 370 (1984)
- Trapp v. Maccioli, 129 N.C. App. 237, 497 S.E.2d 708 (1998)
- Fort Worth & Denver City Ry. Co. v. Hegwood, 198 N.C. 309, 151 S.E. 641 (1930)
- Barringer v. Wake Forest Univ. Baptist Med. Ctr., 197 N.C. App. 238, 677 S.E.2d 465 (2009)
- Ford v. McCain, 192 N.C. App. 667, 666 S.E.2d 153 (2008)
- State v. Dew, 225 N.C. App. 750, 738 S.E.2d 215 (2013)
- Howerton v. Arai Helmet, Ltd., 358 N.C. 440, 597 S.E.2d 674 (2004)
- Roush v. Kennon, 188 N.C. App. 570, 656 S.E.2d 603 (2008)
- Thigpen v. Ngo, 355 N.C. 198, 558 S.E.2d 162 (2002)