

SUPREME COURT OF LOUISIANA

Ballard v. Plantation Management Co.

99 So. 3d 16 (La. 2012) · Decided October 8, 2012

SUMMARY

Justice Johnson would have granted the writ application in a wrongful death action arising from a nursing-home resident's fall, hip fracture, and subsequent death. The dissent concludes that affidavits from a geriatric nurse and forensic pathologist provided sufficient evidence of the applicable standard of care, breach, and causation to defeat summary judgment.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Johnson, Justice; Grant, Justice; Knoll, Justice
JURISDICTION	Louisiana
DECIDED	October 8, 2012
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff sought review of summary judgment rejecting her wrongful-death claim arising from her mother's fall and death while residing at a nursing home. Justice Johnson dissented from the denial of the writ application and would have granted review.
STANDARD OF REVIEW	Summary judgment is appropriate when the evidence shows no genuine issue of material fact and the mover is entitled to judgment as a matter of law; the nonmoving plaintiff must present sufficient evidence to satisfy the applicable burden of proof at trial.
PRECEDENTIAL VALUE	Dissenting opinion; the legal analysis is not binding standing alone.
PARTIES	Daisy Ballard v. Plantation Management Co.

TOPICS

[summary judgment](#)[nursing home liability](#)[medical malpractice](#)[wrongful death](#)[standard of care](#)

PRACTICE AREAS

[civil procedure](#)[medical malpractice](#)[nursing home liability](#)[wrongful death](#)[evidence](#)

QUESTIONS PRESENTED

1. Whether Ballard submitted sufficient expert evidence concerning the applicable nursing-home standard of care, breach, and causation to defeat summary judgment on the wrongful-death claim.
2. Whether an expert affidavit opposing summary judgment must state the applicable medical-malpractice standard of care with a particular level of specificity.

HOLDINGS

1. Justice Johnson would hold that Ballard's affidavits, considered together, supplied sufficient evidence of the applicable standard of care, breach, and causation to defeat summary judgment.
2. Justice Johnson would hold that Louisiana law does not require the standard of care to be established with a particular level of specificity when a plaintiff opposes summary judgment in a medical-malpractice case, so long as the evidence identifies the standard and supports specific breaches.

KEY QUOTATIONS

“A plaintiff pursuing a medical malpractice claim against a nursing home must prove, by a preponderance of the evidence, the applicable standard of care, the breach of that standard of care, and a causal connection between the medical negligence and the patient’s injuries.” (17)

“Moreover, this Court has never held that the standard of care must be established with a particular level of specificity for purposes of opposing summary judgment in medical malpractice cases.” (17)

FACTUAL BACKGROUND

Alma Noble Stubbs was a resident at Harvest Manor when she fell, fractured her hip, developed ensuing complications, and died. Ballard submitted affidavits from geriatric nurse expert Renee Bridges, who identified the applicable standard of care and alleged specific breaches, and forensic pathologist Amy Gruszecki, who opined that the fall significantly contributed to Stubbs's death. Evidence from the nursing home's own expert indicated that close monitoring every thirty minutes was required and that there was no evidence staff complied with that requirement.

PROCEDURAL HISTORY

Daisy Ballard sued Plantation Management Co. on a wrongful-death claim and other claims based on her mother's fall while a resident at Harvest Manor. The trial court granted summary judgment for the defendant on the wrongful-death claim, finding that Ballard failed to establish the applicable standard of care. The court of appeal upheld that ruling, and Justice Johnson would have granted Ballard's writ application.

DISPOSITION

other

CASES CITED

- *Pfiffner v. Correa*, 94-0992 (La. 10/17/94), 643 So. 2d 1228, 1233

- *Sepulvado v. Toledo Nursing Ctr., Inc.*, 2007-122 (La. App. 3 Cir. 5/30/07), 958 So. 2d 135, writ denied, 2007-1583 (La. 10/12/07), 965 So. 2d 406

OPINION

JOHNSON, J.

JOHNSON, Justice, would grant the writ application. h Contrary to the majority, I would grant the writ application, finding that plaintiff submitted sufficient evidence regarding the standard of care to defeat summary judgment. Plaintiff, Daisy Ballard, filed suit against defendant, alleging a wrongful death claim (in addition to other claims) arising out of her mother's, Mrs. Alma Noble Stubbs, eventual death following a fall while she was a resident at Harvest Manor.

The trial court granted defendant's motion for summary judgment on the wrongful death claim, finding plaintiff failed to establish the standard of care applicable to Harvest Manor. *17A plaintiff pursuing a medical malpractice claim against a nursing home must prove, by a preponderance of the evidence, the applicable standard of care, the breach of that standard of care, and a causal connection between the medical negligence and the patient's injuries.

See *Pfiffner v. Correa*, 94-0992 (La.10/17/94), 643 So.2d 1228, 1233. Ms. Ballard submitted the affidavit of Renee Bridges, RN, a geriatric nurse expert, who testified that the standard of care required Harvest Manor to provide daily living activity assistance as well as to comply with a number of other protocols. Nurse Bridges further attested that Harvest Manor's failure to comply with the standard of care resulted in Mrs. Stubb's fall, hip fracture, ensuing complications and death.

Ms. Ballard also submitted the affidavit of a forensic pathologist, Dr. Amy Gruszecki, 12who opined that the fall suffered by Mrs. Stubbs was a significant contributing factor to her death. Additionally, I note that Harvest Manor's own expert, Denise Hart, RN, apparently testified that the standard of care required close monitoring of the patient every 30 minutes, yet she admitted that there was no evidence that the nursing staff at Harvest Manor adhered to this standard.

In finding Ms. Ballard failed to present sufficient evidence to establish that she would be able to satisfy her evidentiary burden of proof at trial, the court of appeal opined that "[t]hough Ms. Bridges refers to numerous generalized breaches in the standard of care, she does not specifically detail the standard of care applicable to Harvest Manor in the instant case." However, Nurse Bridges attested to several specific breaches, equivalent to setting forth violations of the standard of care.

Moreover, this Court has never held that the standard of care must be established with a particular level of specificity for purposes of opposing summary judgment in medical malpractice cases. Further, the court of appeal took issue with the fact that Dr. Gruszecki did not define the standard of care, nor did she state that Harvest Manor breached the standard of care.

However, Dr. Gruszecki was not called to give an expert opinion on the standard of care. Such evidence was submitted by Nurse Bridges (as well as Nurse Hart). The nurse experts were clearly qualified to testify and establish the applicable standard of care. See, e.g., *Sepulvado v. Toledo Nursing Ctr., Inc.*, 2007-122 (La.App. 3 Cir. 5/30/07), 958 So.2d 135, writ denied, 2007-1583 (La.10/12/07), 965 So.2d 406.

Considering Nurse Bridges' affidavit in conjunction with Dr. Gruszecki's affidavit, opining that the fall was a significant contributing factor to Mrs. Stubbs' death, I would find plaintiff submitted sufficient to defeat summary judgment on the wrongful death claim.

Thus, I would grant the plaintiffs writ application.