

SUPREME COURT OF ARKANSAS

Antoine Jean-Pierre M.D. v. Plantation Homes of Crittenden County, Inc., d/b/a Southwoods Long Term Residential Care Facility

89 S.W.3d 337, 350 Ark. 569 (2002) · No. No. 02-217 · Decided November 14, 2002

SUMMARY

The Supreme Court of Arkansas held that the appellant's argument concerning a common defense was not preserved because it was raised for the first time on appeal. The court affirmed the default judgment establishing liability and the \$775,000 indemnity award, concluding that the settlement was supported by proof of liability, reasonableness, and actual loss. The court reversed the award of attorney's fees because no statutory or other legal authority supported it.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Tom Glaze, Justice
JURISDICTION	Arkansas
DECIDED	November 14, 2002
DOCKET	No. 02-217
DISPOSITION	other
PROCEDURAL POSTURE	Dr. Jean-Pierre appealed from a default judgment and a subsequent damages and attorney-fee award entered in favor of Southwoods on Southwoods's third-party claims for indemnity and contribution.
STANDARD OF REVIEW	Arguments not raised below are not considered on appeal; the sufficiency of evidence supporting damages may be reviewed, subject to preservation requirements. The availability of attorney fees under statute or rule is reviewed under the governing legal rule.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Antoine Jean-Pierre M.D. v. Plantation Homes of Crittenden County, Inc., d/b/a Southwoods Long Term Residential Care Facility

TOPICS

- default judgment
- attorney fees
- appellate procedure
- preservation of error
- civil procedure

PRACTICE AREAS

civil procedure

torts

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether an answer filed by Behavioral Health Services to Southwoods's cross-claim inured to Dr. Jean-Pierre's benefit and prevented entry of default judgment.
2. Whether the default judgment established Dr. Jean-Pierre's liability to indemnify Southwoods without requiring Southwoods to prove its underlying liability to the Mills estate.
3. Whether Southwoods's settlement was sufficiently compelled, reasonable, and supported by proof to permit recovery from Dr. Jean-Pierre after default judgment.
4. Whether Jean-Pierre could introduce evidence to defeat Southwoods's cause of action after default judgment.
5. Whether the trial court properly awarded attorney fees to Southwoods in an implied-indemnity action.

HOLDINGS

1. The argument was not preserved because Jean-Pierre relied below on Southwoods's answer to Mills's complaint, not on BHS's answer to Southwoods's cross-claim.
2. A default judgment establishes liability, although it does not establish the amount of damages.
3. A defaulting defendant may not introduce evidence to defeat the plaintiff's cause of action, but may contest the amount of damages, present mitigation evidence, cross-examine witnesses, and challenge the sufficiency of damages evidence.
4. An indemnitee may settle an underlying claim and recover from the indemnitor without first being compelled by a judgment, provided the indemnitee proves liability, actual loss or payment, and the reasonableness of the settlement.
5. The attorney-fee award was improper because the trial court identified no statute or rule authorizing attorney fees in the implied-indemnity action.

KEY QUOTATIONS

"This court has repeatedly held that a default judgment establishes liability, although not the extent of damages." (at 340)

"The defaulting defendant may not, however, introduce evidence to defeat the plaintiff's cause of action." (at 341)

"Because the trial court's order here offered no statutory authority for awarding attorneys' fees to Southwoods, and because that award was contrary to the general rule against awarding such fees in the absence of a statute or rule, we reverse that portion of the trial court's order." (at 343)

FACTUAL BACKGROUND

A mentally handicapped patient, Haywood Wilder, left Southwoods Residential Care Facility, stole a vehicle, and struck and killed Mary Mills. Mills's estate sued Southwoods and others, and Southwoods filed a third-party complaint against Dr. Antoine Jean-Pierre, alleging negligence and seeking indemnity and contribution. Jean-Pierre failed to answer, resulting in a default judgment establishing his liability. Southwoods later settled the underlying claim for \$775,000, and the trial court found the settlement reasonable and awarded that amount plus attorney fees and costs.

PROCEDURAL HISTORY

Southwoods filed a third-party complaint against Dr. Jean-Pierre, who did not answer and instead filed a motion to dismiss after the answer deadline. The trial court entered default judgment, establishing liability. After Southwoods settled the underlying wrongful-death claims for \$775,000, the trial court found the settlement reasonable and awarded Southwoods \$775,000 plus \$191,678.19 in attorney fees and costs. The Supreme Court of Arkansas affirmed the liability and settlement-damages rulings but reversed the attorney-fee award.

DISPOSITION

other

CASES CITED

- Laird v. Shelnut, 348 Ark. 632, 74 S.W.3d 206 (2002)
- Hurst v. Holland, 347 Ark. 235, 61 S.W.3d 180 (2001)
- Ghegan & Ghegan, Inc. v. Barclay, 345 Ark. 514, 49 S.W.3d 652 (2001)
- B.A.R. Enterprises, Inc. v. Palin Mfg. Co., 312 Ark. 500, 850 S.W.2d 322 (1993)
- Tharp v. Smith, 326 Ark. 260, 930 S.W.2d 350 (1996)
- Byrd v. Dark, 322 Ark. 640, 911 S.W.2d 572 (1995)
- B & F Engineering v. Cotroneo, 309 Ark. 175, 830 S.W.2d 835 (1992)
- Clark v. Michael Motor Co., 322 Ark. 570, 910 S.W.2d 697 (1995)
- Polselli v. Aulgur, 328 Ark. 111, 942 S.W.2d 832 (1997)
- Carpetland of Northwest Arkansas, Inc. v. Howard, 304 Ark. 420, 803 S.W.2d 512 (1991)
- Larson Machine v. Wallace, 268 Ark. 192, 600 S.W.2d 1 (1980)
- Garrett v. Brown, 319 Ark. 662, 893 S.W.2d 784 (1995)
- McDonald v. Wilcox, 300 Ark. 445, 780 S.W.2d 17 (1989)
- St. Francis County v. Joshaway, 346 Ark. 496, 58 S.W.3d 361 (2001)
- Furman v. Second Injury Fund, 336 Ark. 10, 983 S.W.2d 923 (1999)
- Arkansas Oklahoma Gas Corp. v. Waelder Oil & Gas, Inc., 332 Ark. 548, 966 S.W.2d 259 (1998)
- State ex rel. Bryant v. McLeod, 318 Ark. 781, 888 S.W.2d 639 (1994)
- Lake View School District No. 25 of Phillips County v. Huckabee, 340 Ark. 481, 10 S.W.3d 892 (2000)
- Love v. Smackover School Dist., 329 Ark. 4, 946 S.W.2d 676 (1997)
- Cotten v. Fooks, 346 Ark. 130, 55 S.W.3d 290 (2001)

- Liles v. Liles, 289 Ark. 159, 711 S.W.2d 447 (1986)

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