

SUPREME COURT OF MISSISSIPPI

Janssen Pharmaceutica, Inc. v. Bailey

878 So. 2d 31 (Miss. 2004) · No. No. 2002-CA-00736-SCT · Decided August 5, 2004

SUMMARY

The Supreme Court of Mississippi reviewed a products-liability action involving alleged injuries from the prescription medication Propulsid. The plaintiffs asserted failure-to-warn and negligent-misrepresentation claims, and a jury awarded substantial compensatory damages that were reduced by remittitur. Relying on its recent decision in Janssen Pharmaceutica, Inc. v. Armond, the court addressed the appropriate disposition of the appeal.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Carlson, Justice, for the Court; Smith, C.J.; Waller, P.J.; Cobb, P.J.; Carlson, J.; Dickinson, J.; Graves, J.; Easley, J.; Diaz, J.; Randolph, J.
JURISDICTION	Mississippi
DECIDED	August 5, 2004
DOCKET	No. 2002-CA-00736-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendants appealed from a Rule 54(b) final judgment entered after a jury awarded compensatory damages to ten plaintiffs in a prescription-drug failure-to-warn action. The Supreme Court of Mississippi reviewed joinder, venue, the denial of judgment notwithstanding the verdict, the denial of a new trial, allegedly improper closing argument, and submission of parent-company liability to the jury.
STANDARD OF REVIEW	Improper joinder and venue are reviewed deferentially for abuse of discretion. Denial of judgment notwithstanding the verdict is reviewed by viewing the evidence and reasonable inferences in the light most favorable to the nonmovant and asking whether reasonable jurors could have reached the verdict. Denial of a new trial is reviewed for abuse of discretion, with reversal warranted when the verdict is so contrary to the overwhelming weight of the evidence that allowing it to stand would sanction an unconscionable injustice. The sufficiency of foundational facts supporting expert testimony is a question of law.

PRECEDENTIAL VALUE	Published Mississippi Supreme Court en banc opinion; precedential.
PARTIES	Janssen Pharmaceutica, Inc., Johnson & Johnson v. Robert Bailey, Rosie Lee Bell, Barbara Bishop, Connie Coleman, Martha Evans, Macy B. Johnston, Tracy Johnston, Maurice Landers, Elsie Queen, Janis White, Mary Williams

TOPICS

products liability

appellate procedure

standard of review

health law

remedies

PRACTICE AREAS

products liability

mass tort litigation

appellate procedure

health law

remedies

QUESTIONS PRESENTED

1. Whether the ten plaintiffs were improperly joined under Mississippi Rule of Civil Procedure 20 because their claims did not arise from the same transaction or occurrence.
2. Whether the trial court abused its discretion by transferring venue from Jefferson County to Claiborne County despite evidence of community bias and connections to Propulsid litigation.
3. Whether the plaintiffs presented sufficient evidence of medical causation to support the verdict and whether denial of a new trial was an abuse of discretion.
4. Whether the FDA-approved warnings were adequate as a matter of law or whether adequacy remained a factual question for the jury.
5. Whether the trial court improperly permitted inflammatory closing argument concerning dismissed misrepresentation claims and punitive damages.
6. Whether sufficient evidence supported submitting Johnson & Johnson's direct liability to the jury.

HOLDINGS

1. Joinder of the ten plaintiffs was improper because their claims arose from individual facts and circumstances rather than the same transaction, occurrence, or series of transactions or occurrences, and the joint trial unfairly prejudiced the defendants.
2. The trial court abused its discretion by transferring the case from Jefferson County to neighboring Claiborne County, because the record showed that Claiborne County was not sufficiently free from bias and community connections to permit a fair trial.
3. The trial court abused its discretion by denying a new trial because the plaintiffs' medical evidence did not adequately account for substantial preexisting conditions and alternative causes, and the verdict was against the overwhelming weight of the evidence.
4. The adequacy of Janssen's warnings was a question of fact for the jury, but the plaintiffs still bore the burden of proving that Propulsid caused their injuries and that an adequate warning would have altered the prescribing physicians' decisions.

5. The trial court did not err by submitting Johnson & Johnson's direct liability to the jury because the evidence permitted a finding that it actively participated in the marketing and plan for Propulsid.

KEY QUOTATIONS

“From the record before us, there can be little doubt that this method of presentation of evidence created unfair prejudice for the defendants by overwhelming the jury with this testimony, thus creating a confusion of the issues.” (878 So. 2d at 48)

“The purpose of changing venue is to ensure a fair venire for all parties free from bias, prejudice and passion.” (878 So. 2d at 53)

“An adequate warning is one reasonable under the circumstances.” (878 So. 2d at 55)

“Therefore, a new trial is granted.” (878 So. 2d at 61)

FACTUAL BACKGROUND

Ten plaintiffs alleged that the prescription drug Propulsid caused cardiac injuries or worsened preexisting conditions because Janssen inadequately warned prescribing physicians. The plaintiffs were prescribed the drug by different physicians, at different times, under different FDA-approved labels, and for different conditions; they also presented substantially different medical histories, alleged injuries, and causation evidence. The defense evidence largely attributed the plaintiffs' symptoms to preexisting conditions or other causes, and several treating physicians testified that Propulsid had not caused the alleged injuries.

PROCEDURAL HISTORY

The plaintiffs initially filed a 155-plaintiff Propulsid action in Jefferson County. Venue was transferred to Claiborne County, where ten plaintiffs were tried together. The trial court directed a verdict for defendants on negligent misrepresentation and punitive damages, but the jury awarded \$10 million to each plaintiff; the court later ordered remittiturs totaling \$48 million. The Supreme Court reversed and remanded for severance, transfer to an appropriate venue, and new trials.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the circuit court judgment; sever the claims of all ten plaintiffs; transfer the severed cases to appropriate venues; conduct new trials; and undertake any other proceedings consistent with the opinion.

CASES CITED

- Janssen Pharmaceutica, Inc. v. Armond, 866 So. 2d 1092, 1095-96 (Miss. 2004)
- American Bankers Ins. Co. v. Alexander, 818 So. 2d 1073, 1076-79 (Miss. 2001)
- Grayson v. K-Mart Corp., 849 F. Supp. 785, 790-91 (N.D. Ga. 1994)

- *Insolia v. Philip Morris, Inc.*, 186 F.R.D. 547, 548-51 (W.D. Wis. 1999)
- *Quinn v. Estate of Jones*, 818 So. 2d 1148, 1154 (Miss. 2002)
- *Johnson v. State*, 476 So. 2d 1195, 1214-15 (Miss. 1985)
- *Wyeth Laboratories, Inc. v. Fortenberry*, 530 So. 2d 688, 691-92 (Miss. 1988)
- *Thomas v. Hoffmann-LaRoche, Inc.*, 949 F.2d 806, 811, 815 (5th Cir. 1992)
- *APAC-Mississippi, Inc. v. Goodman*, 803 So. 2d 1177, 1185 (Miss. 2002)
- *T.K. Stanley, Inc. v. Cason*, 614 So. 2d 942, 951 (Miss. 1992)
- *Jesco, Inc. v. Whitehead*, 451 So. 2d 706, 713-16 (Miss. 1984)
- *Baker v. State*, 802 So. 2d 77, 81 (Miss. 2001)
- *Mississippi State Highway Commission v. Hall*, 252 Miss. 863, 877, 174 So. 2d 488, 493-94 (1965)
- *Shell Oil Co. v. Pou*, 204 So. 2d 155, 157 (Miss. 1967)
- *City of Jackson v. Locklar*, 431 So. 2d 475, 478-79 (Miss. 1983)