

SUPREME COURT OF TENNESSEE

Samuel E. Foster et al. v. Walter William Chiles, III, M.D. et al.

Foster · No. E2012-01780-SC-R11-CV · Decided January 27, 2015

SUMMARY

The Tennessee Supreme Court held that Tennessee Code Annotated section 29-26-121(a)(1) requires plaintiffs asserting a health care liability claim to provide pre-suit notice before filing each complaint, including a complaint refiled after voluntary dismissal. The Court further held that failure to provide the required notice warrants dismissal without prejudice. The Court reversed the Court of Appeals and dismissed the action without prejudice.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Sharon G. Lee, Chief Justice; Cornelia A. Clark; Jeffrey S. Bivins; Holly Kirby; Gary R. Wade
JURISDICTION	Tennessee
DECIDED	January 27, 2015
DOCKET	E2012-01780-SC-R11-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	The Tennessee Supreme Court granted the defendants' application for permission to appeal under Tennessee Rule of Appellate Procedure 11 after the Court of Appeals reversed the trial court's dismissal of the plaintiffs' refiled health care liability complaint.
STANDARD OF REVIEW	The dismissal was reviewed de novo with no presumption of correctness. The court likewise reviewed the statutory-construction issue de novo, affording no presumption of correctness to the lower courts' decisions.
PRECEDENTIAL VALUE	Published Tennessee Supreme Court opinion; binding precedent in Tennessee.
PARTIES	Walter William Chiles, III, M.D., Knoxville Urology Clinic, P.C., Gordon Lee Collins, M.D., Anesthesia Medical Alliance of East Tennessee, P.C., Covenant Health, Parkwest Medical Center v. Samuel E. Foster, Mary Foster

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QUESTIONS PRESENTED

1. Whether Tennessee Code Annotated section 29-26-121(a)(1) requires a plaintiff asserting a health care liability claim to provide written pre-suit notice before filing each complaint, including a complaint refiled after voluntary dismissal.
2. Whether the sanction for failure to comply with Tennessee Code Annotated section 29-26-121(a)(1) is dismissal with prejudice or dismissal without prejudice.

HOLDINGS

1. Tennessee Code Annotated section 29-26-121(a)(1) requires a plaintiff to provide written pre-suit notice to each prospective health care defendant at least sixty days before filing each health care liability complaint, including a complaint refiled after dismissal.
2. The proper sanction for noncompliance with Tennessee Code Annotated section 29-26-121(a)(1) is dismissal without prejudice.

KEY QUOTATIONS

“We hold that Tenn. Code Ann. § 29-26-121(a)(1) requires that plaintiffs provide pre-suit notice to prospective health care defendants each time a complaint is filed.” (-5)

“Therefore, we hold that dismissal without prejudice is the proper sanction for noncompliance with Tenn. Code Ann. § 29-26-121(a)(1).” (-6)

“We reverse the judgment of the Court of Appeals and dismiss this action without prejudice.” (-7)

FACTUAL BACKGROUND

Samuel Foster received medical treatment in November 2009 from the defendant health care providers. Before filing suit, the Fosters gave the defendants written notice of their potential health care liability claim on November 18, 2010, and filed their first complaint on March 17, 2011. They voluntarily dismissed that action on May 6, 2011, then filed a new complaint asserting the same claims against the same defendants on May 4, 2012, without providing new pre-suit notice.

PROCEDURAL HISTORY

The Fosters provided pre-suit notice and filed an initial health care liability complaint in Knox County Circuit Court, then voluntarily dismissed it. They refiled the same claims against the same defendants without providing new pre-suit notice. The trial court dismissed the refiled complaint with prejudice. The Court of Appeals

reversed, concluding that the original notice was sufficient, and the Tennessee Supreme Court reversed the Court of Appeals and dismissed the action without prejudice.

DISPOSITION

dismissed

CASES CITED

- *Thurmond v. Mid-Cumberland Infectious Disease Consultants, PLC*, 433 S.W.3d 512, 516 (Tenn. 2014)
- *Myers v. AMISUB (SFH), Inc.*, 382 S.W.3d 300, 307, 308-10 (Tenn. 2012)
- *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 894 (Tenn. 2011)
- *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997)
- *Womack v. Correctional Corporation of America*, No. M2012-00871-SC-R11-CV, 2014 WL 4670807, at *3 (Tenn. Sept. 22, 2014)
- *Baker v. State*, 417 S.W.3d 428, 433 (Tenn. 2013)
- *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405, 420 (Tenn. 2013)
- *State v. Strode*, 232 S.W.3d 1, 9 (Tenn. 2007)
- *Frye v. Blue Ridge Neuroscience Center, P.C.*, 70 S.W.3d 710, 716 (Tenn. 2002)
- *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010)
- *Waldschmidt v. Reassure America Life Insurance Co.*, 271 S.W.3d 173, 176 (Tenn. 2008)
- *Cunningham v. Williamson County Hospital District*, 405 S.W.3d 41, 44 (Tenn. 2013)
- *State v. Hawk*, 170 S.W.3d 547, 551 (Tenn. 2005)
- *Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009)
- *Mills v. Fulmarque, Inc.*, 360 S.W.3d 362, 368 (Tenn. 2012)
- *Stevens ex rel. Stevens v. Hickman Community Health Care Services, Inc.*, 418 S.W.3d 547, 560-61 (Tenn. 2013)
- *DePue v. Schroeder*, No. E2010-00504-COA-R9-CV, 2011 WL 538865, at *5-7 (Tenn. Ct. App. Feb. 15, 2011)
- *Jenkins v. Marvel*, 683 F. Supp. 2d 626, 638-39 (E.D. Tenn. 2010)