

## SUPREME COURT OF IDAHO

### Puckett v. Verska, 144 Idaho 161

158 P.3d 937 (2007) · No. No. 32571 · Decided March 28, 2007

#### SUMMARY

The Idaho Supreme Court affirmed rulings in a medical malpractice action arising from partial paralysis following cervical spine surgery. The court upheld reconsideration of summary judgment based on a supplemental expert affidavit, the jury instructions, limits on informed-consent evidence, an additur or conditional new trial on damages, and an award of discretionary costs to the plaintiff. It also affirmed the denial of costs and attorney fees to the defendant after the first trial.

#### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Idaho                                                                                                                                                                                                                                                                                                                                           |
| WRITING FOR THE COURT | Jones, Justice; Schroeder, Chief Justice; Trout, Justice; Eismann, Justice; Burdick, Justice                                                                                                                                                                                                                                                                     |
| JURISDICTION          | Idaho                                                                                                                                                                                                                                                                                                                                                            |
| DECIDED               | March 28, 2007                                                                                                                                                                                                                                                                                                                                                   |
| DOCKET                | No. 32571                                                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Dr. Verska appealed several interlocutory and post-trial rulings arising from a medical-malpractice action, including reconsideration of summary judgment, jury instructions, a motion in limine, additur, discretionary costs, and denial of costs after an earlier mistrial.                                                                                   |
| STANDARD OF REVIEW    | The court reviewed reconsideration, motions in limine, additur or new-trial rulings, discretionary costs, prevailing-party determinations, and attorney-fee determinations for abuse of discretion. Jury instructions were reviewed freely, with the question whether the instructions as a whole fairly and adequately presented the issues and stated the law. |
| PRECEDENTIAL VALUE    | Published Idaho Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                             |
| PARTIES               | Joseph Verska, M.D. v. Paula Puckett                                                                                                                                                                                                                                                                                                                             |

#### TOPICS

medical malpractice

informed consent

summary judgment

appellate procedure

damages

## PRACTICE AREAS

medical malpractice

health law

civil procedure

appellate procedure

damages

evidence

## QUESTIONS PRESENTED

1. Whether the district court properly reconsidered its interlocutory summary judgment ruling and considered a new expert affidavit submitted with the motion for reconsideration.
2. Whether the district court properly refused Verska's proposed jury instruction stating that an undesirable medical result alone does not establish a breach of the standard of care.
3. Whether the district court abused its discretion by limiting cross-examination of Puckett concerning informed consent and the inherent risks of surgery.
4. Whether the district court properly granted an additur or conditional new trial on damages and limited any new trial to damages.
5. Whether the district court properly awarded Puckett discretionary costs incurred during the litigation, including costs associated with the first trial.
6. Whether Verska was entitled to discretionary costs or attorney fees after Puckett voluntarily dismissed the indications-for-surgery claim following the first trial.

## HOLDINGS

1. A district court may reconsider an interlocutory order granting summary judgment before entry of final judgment and may consider new facts presented with the motion for reconsideration that bear on the correctness of the prior order.
2. The district court did not err by refusing a proposed instruction stating that an undesirable medical result alone does not establish a breach of the standard of care because the instructions as a whole adequately stated the applicable medical-malpractice standard.
3. The district court did not abuse its discretion by limiting examination of Puckett concerning informed consent and the inherent risks of surgery where informed consent had already been resolved and the court permitted expert testimony about surgical risks.
4. The district court did not abuse its discretion by granting an additur or conditional new trial based on inadequate damages and by limiting any new trial to damages.
5. The district court properly awarded Puckett discretionary costs because the costs were necessary, exceptional, reasonable, and in the interests of justice, and the court could evaluate the costs by general category rather than item by item.
6. Verska was not entitled to costs or attorney fees after the first trial because no party had prevailed at that stage, the voluntarily dismissed claim was dismissed without prejudice, and Puckett's claims were not all frivolous or without foundation.

## KEY QUOTATIONS

*“Thus, until a final judgment has been entered, an order granting summary judgment is an interlocutory order and subject to reconsideration pursuant to I.R.C.P. 11(a)(2)(B).”* (at 942)

*“Puckett did not need to prove that passion or prejudice affected the jury's verdict; the appearance alone was sufficient to justify a new trial or additur.”* (at 944)

*“Thus, the district court need not evaluate the requested costs item by item.”* (at 946)

## FACTUAL BACKGROUND

Puckett underwent cervical discectomy and fusion performed by Verska, and her spinal cord was contused by contact with a bone graft, resulting in partial left-sided paralysis. She sued Verska for medical malpractice and lack of informed consent. After expert-disclosure disputes and reconsideration of summary judgment, a second jury trial resulted in a verdict awarding economic and noneconomic damages. The district court found the verdict inadequate and granted an additur, increasing the damages award.

## PROCEDURAL HISTORY

Puckett sued Verska for medical malpractice and lack of informed consent. The district court initially granted summary judgment on the standard-of-care issue, later reconsidered that ruling after receiving an additional expert affidavit, and separately resolved informed-consent issues. After the first trial ended in a hung jury and Puckett voluntarily dismissed one claim, a second trial resulted in a verdict for Puckett. The district court increased the damages by additur, awarded Puckett discretionary costs, and denied Verska costs and attorney fees relating to the first trial. The Idaho Supreme Court affirmed, while permitting Verska to reject the additur and obtain a new trial limited to damages.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

Verska had fourteen days after issuance of the appellate remittitur to accept the additur and discretionary-cost award or reject the additur and elect a new trial limited to damages. If he elected a new trial, the discretionary-cost award to Puckett would be vacated, and the district court could reconsider allowable costs after the new trial.

## CASES CITED

- Schwan's Sales Enters., Inc. v. Idaho Transp. Dept., 142 Idaho 826, 831, 136 P.3d 297, 302 (2006)
- Carnell v. Barker Mgt., Inc., 137 Idaho 322, 329, 48 P.3d 651, 658 (2002)
- Jarman v. Hale, 122 Idaho 952, 957 n. 2, 842 P.2d 288, 293 n. 2 (App. 1992)
- Idaho First Natl. Bank v. David Steed & Assocs., 121 Idaho 356, 361, 825 P.2d 79, 84 (1992)
- Coeur d'Alene Mining Co. v. First Natl. Bank, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990)
- Gunter v. Murphy's Lounge, LLC, 141 Idaho 16, 27, 105 P.3d 676, 687 (2005)

- Newberry v. Martens, 142 Idaho 284, 287, 127 P.3d 187, 190 (2005)
- Craig Johnson, LLC v. Floyd Town Architects, P.A., 142 Idaho 797, 800, 134 P.3d 648, 651 (2006)
- Van Brunt v. Stoddard, 136 Idaho 681, 686-687, 39 P.3d 621, 626-627 (2001)
- Hudelson v. Delta Intl. Mach. Corp., 142 Idaho 244, 248, 127 P.3d 147, 151 (2005)
- Collins v. Jones, 131 Idaho 556, 558, 961 P.2d 647, 649 (1998)
- Quick v. Crane, 111 Idaho 759, 769, 727 P.2d 1187, 1197 (1986)
- Dinneen v. Finch, 100 Idaho 620, 625-626, 603 P.2d 575, 580-581 (1979)
- Smallwood v. Dick, 114 Idaho 860, 865, 761 P.2d 1212, 1217 (1988)
- Hayden Lake Fire Protec. Dist. v. Alcorn, 141 Idaho 307, 314, 109 P.3d 161, 168 (2005)
- West Wood Invs., Inc. v. Acord, 141 Idaho 75, 88, 106 P.3d 401, 414 (2005)
- Inama v. Brewer, 132 Idaho 377, 384, 973 P.2d 148, 155 (1999)
- Fish v. Smith, 131 Idaho 492, 494, 960 P.2d 175, 177 (1998)
- Win of Michigan, Inc. v. Yreka United, Inc., 137 Idaho 747, 754, 53 P.3d 330, 337 (2002)
- Bingham v. Montane Resource Assocs., 133 Idaho 420, 427, 987 P.2d 1035, 1042 (1999)