

SUPREME COURT OF OHIO

Branch v. Cleveland Clinic Foundation

Branch v. Cleveland Clinic Found., 134 Ohio St. 3d 114, 2012-Ohio-5345 (2012) · No. 2011-1634 · Decided November 21, 2012

SUMMARY

The Supreme Court of Ohio reversed the Eighth District Court of Appeals and reinstated a jury verdict for the Cleveland Clinic Foundation in a medical-malpractice action arising from a stroke during deep-brain stimulation surgery. The court held that the trial court did not abuse its discretion by admitting late-produced demonstrative evidence, limiting closing-argument references to the clinic's failure to retain a surgical plan, or giving a different-methods medical-malpractice jury instruction.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	McGee Brown, J.; O'Connor, C.J.; Lundberg Stratton, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.; Pfeifer, J.
JURISDICTION	Ohio
DECIDED	November 21, 2012
DOCKET	2011-1634
DISPOSITION	reversed
PROCEDURAL POSTURE	The Cleveland Clinic Foundation appealed the Eighth District Court of Appeals' reversal of a jury verdict in its favor in a medical-malpractice action.
STANDARD OF REVIEW	Evidentiary rulings and the boundaries of closing argument are reviewed for abuse of discretion; an appellate court should not substitute its judgment for that of the trial court absent an abuse of discretion, and rulings that are unreasonable, arbitrary, or unconscionable are not entitled to deference.
PRECEDENTIAL VALUE	Published, binding Ohio Supreme Court opinion
PARTIES	Cleveland Clinic Foundation v. Margaret Branch

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by allowing the clinic to use a three-dimensional demonstrative exhibit disclosed to Branch's counsel shortly before the testifying expert used it.
2. Whether the trial court abused its discretion by limiting Branch's closing argument concerning an adverse inference from the clinic's failure to preserve a computerized surgery plan.
3. Whether the trial court properly instructed the jury that using one acceptable medical approach rather than another does not necessarily constitute negligence.

HOLDINGS

1. The trial court did not abuse its discretion by allowing the clinic to use the three-dimensional computer simulation because Branch had access to the same underlying surgical notes and an adequate opportunity to cross-examine the clinic's doctors concerning the exhibit.
2. The trial court did not abuse its discretion by restricting Branch's closing argument concerning the missing surgery plan because the clinic produced written surgical records, the plan was deleted pursuant to the clinic's standard practice rather than shown to have been willfully destroyed, and Branch had already referred to the missing records repeatedly.
3. The trial court properly gave the different-methods instruction because the evidence showed that more than one medical approach to planning and performing the surgery was acceptable or potentially preferable, and the dispute required the jury to evaluate competing medical methods rather than merely decide whether the surgeon struck the ventricle.

KEY QUOTATIONS

“We held in Pesek that the different-methods charge is appropriate only if “there is evidence that more than one method of diagnosis or treatment is acceptable for a particular medical condition.”” (¶ 26; 134 Ohio St. 3d at 119)

“Based on the foregoing, we conclude that the trial court did not abuse its discretion in any of the three rulings at issue. Accordingly, we reverse the decision of the Eighth District Court of Appeals, and we reinstate the jury verdict for the clinic.” (¶ 30; 134 Ohio St. 3d at 120)

FACTUAL BACKGROUND

Margaret Branch underwent deep-brain-stimulation surgery at the Cleveland Clinic for cervical dystonia and suffered a stroke during the procedure. She alleged that the clinic's surgeon struck a ventricle and caused permanent brain and cognitive injuries. At trial, the clinic used a three-dimensional simulation based on retained surgical notes, while Branch challenged the clinic's failure to preserve an electronic brain-mapping image and presented expert testimony about alternative surgical planning and techniques.

PROCEDURAL HISTORY

After Margaret Branch suffered a stroke during deep-brain-stimulation surgery, she sued the Cleveland Clinic Foundation for medical negligence. A jury returned a verdict for the clinic. The Eighth District reversed and ordered a new trial based on three claimed trial-court abuses of discretion involving late-produced demonstrative evidence, restrictions on an adverse-inference argument concerning a missing surgery plan, and a different-methods jury instruction. The Supreme Court of Ohio reversed the appellate judgment and reinstated the jury verdict for the clinic.

DISPOSITION

reversed

CASES CITED

- Vogel v. Wells, 57 Ohio St. 3d 91, 95, 566 N.E.2d 154 (1991)
- State v. Cowans, 87 Ohio St. 3d 68, 73, 717 N.E.2d 298 (1999)
- Blakemore v. Blakemore, 5 Ohio St. 3d 217, 450 N.E.2d 1140 (1983)
- Cherovsky v. St. Luke's Hosp. of Cleveland, 8th Dist. No. 68326, 1995 WL 739608, *7 (Dec. 14, 1995)
- Signs v. Ohio Dept. of Rehab. & Corr., 10th Dist. No. 94AP105-628, 1994 WL 663454, *2 (Nov. 22, 1994)
- Pang v. Minch, 53 Ohio St. 3d 186, 559 N.E.2d 1313 (1990)
- Pesek v. Univ. Neurologists Assoc., Inc., 87 Ohio St. 3d 495, 498-499, 721 N.E.2d 1011 (2000)
- Branch v. Cleveland Clinic Found., 8th Dist. No. 95475, 2011-Ohio-3975