

SUPREME COURT OF MISSISSIPPI

Charles Norman, Jr., Individually and on Behalf of All Wrongful
Death Beneficiaries of Charles Norman, Sr., and the Estate of Pat
Norman v. Anderson Regional Medical Center

262 So. 3d 520 (Miss. 2019) · No. 2017-CA-00153-SCT · Decided January 24, 2019

SUMMARY

The Supreme Court of Mississippi affirmed summary judgment for Anderson Regional Medical Center in a medical-malpractice and breach-of-contract action arising from an alleged delay in recognizing and treating a stroke. The court held that the plaintiffs’ expert testimony lacked sufficient foundation under Mississippi Rule of Evidence 702 and failed to establish the greater-than-50-percent loss-of-chance causation standard. The court also declined to replace Mississippi’s existing loss-of-chance framework with a reduced-likelihood approach.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Waller, Chief Justice; Waller, C.J.; Randolph, P.J.; Maxwell, J.; Beam, J.; Ishee, J.; Kitchens, P.J.; King, J.; Coleman, J.; Chamberlin, J. (not participating)
JURISDICTION	Mississippi
DECIDED	January 24, 2019
DOCKET	2017-CA-00153-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed the Lauderdale County Circuit Court's exclusion of their medical experts and grant of summary judgment for Anderson Regional Medical Center in a medical-malpractice and breach-of-contract action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, with evidence viewed in the light most favorable to the nonmoving party. The exclusion of expert testimony under Mississippi Rule of Evidence 702 is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published binding precedent

PARTIES

Charles Norman, Jr., individually and on behalf of all wrongful-death beneficiaries of Charles Norman, Sr., and the Estate of Pat Norman v. Anderson Regional Medical Center

TOPICS

medical malpractice

expert testimony

summary judgment

standard of review

contracts

PRACTICE AREAS

medical malpractice

health law

evidence

contracts

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court properly excluded the plaintiffs' medical experts under Mississippi Rule of Evidence 702 and granted summary judgment because the expert opinions lacked sufficient foundation in the medical literature and failed to establish causation under Mississippi's loss-of-chance standard.
2. Whether the plaintiffs' breach-of-contract claim was merely a medical-malpractice claim sounding in tort and therefore properly resolved by summary judgment for failure to prove causation.
3. Whether Mississippi should replace its greater-than-fifty-percent loss-of-chance causation standard with a reduced-likelihood approach allowing recovery for a lost chance below fifty percent.

HOLDINGS

1. The trial court properly excluded the plaintiffs' medical experts because their opinions lacked sufficient support in reliable medical data and properly granted summary judgment because the plaintiffs failed to prove that timely recognition of the stroke and administration of tPA would more probably than not have produced a substantially better outcome.
2. The trial court properly granted summary judgment on the breach-of-contract claim because, viewed as a whole, the claim was merely a medical-malpractice claim sounding in tort and the plaintiffs failed to establish causation.
3. The court declined to overrule Mississippi's longstanding greater-than-fifty-percent loss-of-chance causation standard and held that the standard is consistent with Mississippi's pure comparative-negligence framework.

KEY QUOTATIONS

“For Norman to recover under our loss-of-chance causation standard, he must prove a greater than 50 percent chance of a substantially better outcome had Anderson Regional timely recognized and reported his stroke and administered tPA.” (§10)

“where a theory has been studied in the medical literature and an expert’s opinion is challenged for being contrary to the medical literature, there must be some support in the medical literature for a medical expert’s opinion or some basis for believing that the medical literature is wrong.” (§16)

“The trial court, in its discretion, properly excluded Norman’s experts and granted summary judgment in Anderson Regional’s favor.” (¶39)

FACTUAL BACKGROUND

Charles Norman, Sr., was admitted to Anderson Regional Medical Center for cardiac catheterization and stent placement. He suffered an ischemic stroke overnight, and nursing staff documented his wife's report of stroke symptoms but did not notify a physician until approximately seven and one-half hours later, after the effective treatment window for tPA had passed. The hospital stipulated that the nursing staff breached the applicable standard of care and that the delay prevented possible tPA administration, but disputed whether Norman was a suitable tPA candidate and whether timely treatment would probably have produced a substantially better outcome.

PROCEDURAL HISTORY

Charles Norman, Sr., sued Anderson Regional Medical Center, alleging that its nursing staff negligently failed to recognize and report stroke symptoms, thereby preventing timely consideration of tPA treatment. After Norman and his wife died, their estates were substituted as plaintiffs. Anderson Regional stipulated that its nurses breached the applicable standard of care and that the delay prevented possible tPA administration, but disputed causation. The circuit court excluded the plaintiffs' experts for lack of reliable support in the medical literature and granted summary judgment to the hospital. The Mississippi Supreme Court affirmed en banc.

DISPOSITION

affirmed

CASES CITED

- Kilhullen v. Kan. City S. Ry., 8 So. 3d 168, 174-75 (Miss. 2009)
- Mem'l Hosp. at Gulfport v. White, 170 So. 3d 506, 508-09 (Miss. 2015)
- Hubbard v. Wansley, 954 So. 2d 951, 957 (Miss. 2007)
- Clayton v. Thompson, 475 So. 2d 439, 444-45 (Miss. 1985)
- Ladner v. Campbell, 515 So. 2d 882, 889 (Miss. 1987)
- Kramer Serv., Inc. v. Wilkins, 184 Miss. 483, 497, 186 So. 625, 627 (1939)
- Ill. Cent. R.R. v. Cathey, 70 Miss. 332, 338, 12 So. 253 (1892)
- Griffith v. Entergy Miss., Inc., 203 So. 3d 579, 589 (Miss. 2016)
- King v. Singing River Health Sys., 158 So. 3d 318, 320, 326-29 (Miss. Ct. App. 2014)
- Hill v. Mills, 26 So. 3d 322, 330, 332-33 (Miss. 2010)
- Cox v. St. Joseph's Hospital, 71 So. 3d 795, 797-801 (Fla. 2011)
- Bus. Commc'ns, Inc. v. Banks, 90 So. 3d 1221, 1225 (Miss. 2012)
- Warwick v. Matheney, 603 So. 2d 330 (Miss. 1992)
- Murray v. University of Pennsylvania Hospital, 490 A.2d 839, 843 (Pa. Super. Ct. 1985)

- Hutchinson v. Smith, 417 So. 2d 926 (Miss. 1982)
- McMichael v. Howell, 919 So. 2d 18, 23 (Miss. 2005)
- Leard v. Breland, 514 So. 2d 778, 782 (Miss. 1987)
- Matsuyama v. Birnbaum, 890 N.E.2d 819, 823, 830-34 (Mass. 2008)
- Smith v. Providence Health & Servs.-Or., 393 P.3d 1106, 1119 (Or. 2017)
- Hye v. State, 162 So. 3d 750, 755 (Miss. 2015)
- Caves v. Yarbrough, 991 So. 2d 142, 151 (Miss. 2008)
- Tallahatchie Gen. Hosp. v. Howe, 49 So. 3d 86, 93 (Miss. 2010)

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