

COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO

Las Palmas Medical Center and El Paso Healthcare System, Ltd.
d/b/a Las Palmas Medical Center v. Fernando Rodriguez,
Individually and on Behalf of the Estate of Carmen Rodriguez,
Deceased

Las Palmas Medical Center v. Rodriguez · No. 08-07-00016-CV · Decided January 30, 2009

SUMMARY

The Texas Court of Appeals, Eighth District, affirmed a judgment awarding damages in a medical malpractice wrongful-death and survival action against Las Palmas Medical Center. The court held that evidence of the decedent's agonal breathing, together with expert testimony, was legally sufficient to support the jury's finding that she consciously experienced physical pain and mental anguish before her death.

CASE DETAILS

COURT	Court of Appeals of Texas, Eighth District, El Paso
WRITING FOR THE COURT	David Wellington Chew, Chief Justice; McClure, Justice; Carr, Justice
JURISDICTION	Texas
DECIDED	January 30, 2009
DOCKET	08-07-00016-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Las Palmas appealed a judgment awarding damages in a wrongful-death and survival medical-malpractice action after a jury found that its negligence proximately caused Carmen Rodriguez's death.
STANDARD OF REVIEW	The court reviewed the legal-sufficiency challenge by considering the evidence in the light most favorable to the verdict, indulging every reasonable inference supporting it, deferring to the jury's credibility determinations and resolution of conflicting evidence, and asking whether the evidence would enable reasonable and fair-minded people to reach the verdict.
PRECEDENTIAL VALUE	published and precedential

PARTIES

Las Palmas Medical Center, El Paso Healthcare System, Ltd. d/b/a Las Palmas Medical Center v. Fernando Rodriguez, individually and on behalf of the Estate of Carmen Rodriguez, deceased

TOPICS

medical malpractice

wrongful death

personal injury

standard of review

damages

PRACTICE AREAS

medical malpractice

wrongful death

survival action

appellate legal sufficiency review

damages

QUESTIONS PRESENTED

1. Whether the evidence was legally sufficient to establish that Carmen Rodriguez was conscious for purposes of an award of damages for conscious physical pain.
2. Whether the evidence was legally sufficient to establish that Carmen Rodriguez was conscious for purposes of an award of damages for mental anguish.

HOLDINGS

1. Evidence that Carmen Rodriguez was trying to breathe and experiencing agonal respirations, together with expert testimony that those circumstances indicated consciousness and pain, was legally sufficient to support the jury's award of damages for conscious physical pain and mental anguish.

KEY QUOTATIONS

"If the evidence at trial would enable reasonable and fair-minded people to differ in their conclusions, then jurors must be allowed to do so." (at 822)

"We find that Dr. Poindexter's testimony coupled with the testimony of the nurse expert concerning the demeanor of one experiencing agonal breathing is legally sufficient to support the jury's award of damages."

FACTUAL BACKGROUND

Carmen Rodriguez was hospitalized with multiple serious medical conditions, including diabetes, hypertension, prior strokes, a hip fracture, and severe decubitus ulcers. On October 23, 2001, she stopped breathing after returning from hyperbaric oxygen treatment, but her heart continued beating and she exhibited agonal respirations for approximately forty minutes before her death from mucus plugs in her lungs. Hospital personnel stopped the resuscitation effort after a physician purportedly obtained a telephone agreement from her son not to resuscitate, although the hospital policy did not permit acceptance of a telephonic do-not-resuscitate order and the son denied receiving the call. Expert testimony supported findings that the nursing care breached the standard of care and that Rodriguez's agonal breathing and efforts to breathe supported an inference that she consciously experienced pain.

PROCEDURAL HISTORY

Fernando Rodriguez brought wrongful-death and survival claims against Las Palmas. After the first trial, the trial court granted a mistrial and ordered a new trial. At the second trial, the jury found negligence and awarded damages for Carmen Rodriguez's conscious physical pain, mental anguish, and burial expenses; the trial court reduced the burial-expense award and otherwise rendered judgment on the verdict. Las Palmas challenged the legal sufficiency of the evidence supporting the conscious-pain and mental-anguish damages.

DISPOSITION

affirmed

CASES CITED

- City of Keller v. Wilson, 168 S.W.3d 802, 810-11, 819-22, 827 (Tex. 2005)
- SunBridge Healthcare Corp. v. Penny, 160 S.W.3d 230, 248 (Tex. App.—Texarkana 2005, no pet.)
- Lee Lewis Construction, Inc. v. Harrison, 64 S.W.3d 1, 14 (Tex. App.—Amarillo 1999), *aff'd*, 70 S.W.3d 778 (Tex. 2001)
- Wellborn v. Sears, Roebuck & Co., 970 F.2d 1420, 1428 (5th Cir. 1992)
- Yanez v. Byrnes, 480 S.W.2d 241, 244 (Tex. Civ. App.—El Paso 1972, no writ)
- Phillips v. Bramlett, 258 S.W.3d 158, 172 (Tex. App.—Amarillo 2007, pet. granted)