

SUPREME COURT OF LOUISIANA

Montz v. Williams

188 So. 3d 1050 (La. 2016) · Decided April 8, 2016

SUMMARY

The Louisiana Supreme Court held that plaintiffs in a medical malpractice informed-consent action bore the burden of proving the specific information and steps required to obtain valid consent for the procedure at issue. Because the jury’s choice between competing expert opinions was reasonably supported by the evidence, the court reversed the Court of Appeal and reinstated the district court judgment.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Per curiam
JURISDICTION	Louisiana
DECIDED	April 8, 2016
DISPOSITION	reversed
PROCEDURAL POSTURE	After a five-day medical-malpractice jury trial, the jury found that the plaintiffs failed to prove the applicable informed-consent standard of care. The Louisiana Court of Appeal, Fifth Circuit, reversed on manifest-error grounds. The Supreme Court of Louisiana granted writ, reversed the Court of Appeal, and reinstated the district court judgment.
STANDARD OF REVIEW	Manifest-error review applies to the factual determination whether a medical-malpractice plaintiff proved the applicable standard of care. The finding may not be reversed unless there is no reasonable factual basis for it and the record establishes that it is clearly wrong.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; precedential.

TOPICS

- informed consent
- medical malpractice
- standard of care
- expert testimony
- appellate procedure

PRACTICE AREAS

- medical malpractice
- health law
- appellate procedure
- evidence

QUESTIONS PRESENTED

1. Whether the jury's finding that plaintiffs failed to prove the applicable informed-consent standard of care was manifestly erroneous or clearly wrong.
2. Whether plaintiffs had to prove merely that informed consent was required, or instead had to prove the specific steps and information required to obtain valid consent for the procedure at issue.

HOLDINGS

1. The jury's finding was not manifestly erroneous or clearly wrong because the evidence presented permissible competing views concerning the applicable informed-consent standard, and the jury was entitled to credit the defendant's experts.
2. Because the requirement of informed consent was undisputed, plaintiffs were required to prove what steps and information the physician had to provide to obtain valid consent for the particular procedure under the circumstances.

KEY QUOTATIONS

“However, expert witnesses often disagree on the applicable standard, and when two permissible views are presented to the jury, the factfinder’s choice between them cannot be manifestly erroneous or clearly wrong.”
(188 So. 3d at 1050-51)

“It follows, therefore, plaintiffs in the present case bore the burden of proving not that informed consent was required, which was undisputed and explained in the jury charge, but what steps and information were required of the physician to obtain valid consent for the particular procedure at issue.” (188 So. 3d at 1052)

FACTUAL BACKGROUND

The case involved a medical-malpractice claim concerning the informed consent required for a particular medical procedure. At trial, experts for both sides and a medical-review-panel opinion addressed informed consent, but the evidence reasonably contested what information and steps the physician was required to provide under the circumstances. The jury credited the defendant's experts and found that plaintiffs failed to prove the applicable standard of care.

PROCEDURAL HISTORY

The district court entered judgment after the jury found that plaintiffs had not met their burden of proving the applicable standard of care for informed consent. The Court of Appeal, Fifth Circuit, concluded that the jury's finding was clearly wrong and reversed. The Supreme Court granted writ, held that the jury's choice among permissible evidentiary views was not manifestly erroneous, reversed the Court of Appeal, and reinstated the district court judgment.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The judgment of the district court was reinstated; no additional remand instructions were stated.

CASES CITED

- Montz v. Williams, 182 So. 3d 1149 (La. Ct. App. 2015)
- Stobart v. State, through DOTD, 617 So. 2d 880, 882 (La. 1993)
- Samaha v. Rau, 977 So. 2d 880, 884 (La. 2008)
- Rosell v. ESCO, 549 So. 2d 840, 844 (La. 1989)
- Bellard v. American Central Insurance Co., 980 So. 2d 654, 672 (La. 2008)
- Hondroulis v. Schuhmacher, 553 So. 2d 398, 401-02 (La. 1988)

OPINION

PER CURIAM.

PER CURIAM. In this medical malpractice action after a five-day jury trial, the jury found plaintiffs failed to prove the applicable standard of care for informed consent. The Court of Appeal, Fifth Circuit, reversed, concluding the jury's finding was clearly wrong and without any reasonable factual basis on the record because "sufficient evidence, particularly through the expert testimony of both sides and the" medical panel opinion, was presented to the jury to establish that the standard of care... was informed consent." Montz v. Williams, 15-221 (La.App.

5 Cir. 12/23/15), 182 So.3d 1149. The burden in all medical malpractice cases falls on the plaintiff to establish by a preponderance of the evidence the degree of care ordinarily exercised by licensed physicians actively practicing in the particular specialty in a similar community under-similar circumstances.' La.Rev.Stat. § 9:2794. Whether the plaintiff has met his/her burden is a question of fact, the resolution of which is subject to manifest error review and should not be reversed unless no factual basis exists for the finding'and the record establishes the finding is clearly wrong.

Stobart v. State, through DOTD, 617 So.2d 880, 882 (La.1998). The need for expert testimony has long been recognized to aid the factfinder in determining the applicable standard of care for a particular specialty at a certain time and locale as well as under similar circumstances. Samaha v. Rau, 07-1726, pp. 5-6 (La.2/26/08), 977 So.2d 880, 884.

However, expert witnesses often disagree on the applicable standard, and when two permissible views are presented to the jury, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. Rosell v. ESCO, 549 So.2d 840, 844 (La.1989). Likewise, where the fact-finder's determination is based on its decision to credit the testimony of one of two or more witnesses, its finding can virtually never be manifestly erroneous.

Bellard v. American Cent. Ins. Co., 07-1335, p. 27 (La.4/18/08), 980 So.2d 654, 672. Louisiana Uniform Consent Law, as well as our jurisprudence, requires informed consent for medical

treatment. *1052La.Rev.Stat. § 40:1157.1;1 see also *Hondroulis v. Schuhmacher*, 553 So.2d 398, 401-02 (La.1988). It follows, therefore, plaintiffs in the present case bore the burden of proving not that informed consent was required, which was undisputed and explained in the jury charge, but what steps and information were required of the physician to obtain valid consent for the particular procedure at issue.

Although the Court of Appeal found all the experts agreed informed consent was mandated, the issue of what requirements constituted the standard of informed consent under the circumstances presented was reasonably contested.

Therefore, the jury could not have been manifestly erroneous in choosing to accept the testimony of defendant's experts and finding, plaintiffs'.failed to carry their burden of proof as to this issue. |,qAccordingly, for the foregoing reasons, the writ is granted.

The judgment of the Court of Appeal is reversed, and the judgment of the District Court is hereby reinstated. JOHNSON, C.J., would grant and docket. WEIMER, J., would grant and docket. HUGHES, J., would grant and docket.. Formerly La.Rev.Stat. § 40:1299.40, which was in effect at the time of plaintiff's injury, and La.Rev.Stat. § 40:1299.39.5, redesignated as La.Rev.Stat. § 40:1157.1 effective June 12, 2012.