

IN THE SUPREME COURT FOR THE STATE OF MISSISSIPPI

ABNER K. NORTHROP, JR

PLAINTIFF-
APPELLANT

VERSUS

CAUSE NUMBER: NO. 2007-TS-00355

THOMAS P. LETARD, M.D., DAVIS R. HUTTO,
STANLEY TURNER and MEMORIAL
HOSPITAL AT GULFPORT

DEFENDANTS-
APPELLEES

*Appeal from the Circuit Court for the First Judicial District
of Harrison County, Mississippi*

REPLY BRIEF FOR PLAINTIFF-APPELLANT

OF COUNSEL FOR PLAINTIFF-APPELLANT

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ORAL ARGUMENT REQUESTED

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STATEMENT OF ISSUES

Appellants raise one issue on this appeal which was decided adversely to him:

1. Whether the trial court erred, as a matter of law, in ruling on a Motion for Summary Judgment by making factual findings on the disputed issue of whether the Defendants' violation of the standard of care proximately caused the injuries to the Plaintiff.

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REPLY BRIEF FOR PLAINTIFF-APPELLANT

COMES NOW the Plaintiff-Appellant, ABNER K. NORTHROP, JR (hereinafter "Northrop") by and through his attorney of record, Floyd J. Logan, and file this his Reply Brief and would respectfully show unto the Court as follows, to-wit:

ARGUMENT OF THE LAW

An examination of the testimony before the trial court on the Motion for Summary Judgment demonstrates that the trial court failed to following the prevailing case law. Before reviewing the testimony, a revisit of some of the cases cited in Appellant's original brief is relevant. The court should resolve all factual inferences in favor of the non-movant. Foldes v. Hancock Bank, 554 So.2d 319, 321 (Miss.1989). The trial court should grant a motion for summary judgment only if it determines, beyond a reasonable doubt, that the plaintiff is not able to prove any facts supporting his claim. Davidson v. North Central Parts, Inc., et al., 737 So.2d 1015 (Miss. Ct. App. 1999) "The reasonableness of an expert's opinion and the weight to be accorded thereto are questions of fact for a jury." Daniels v. GNB, Inc., 629 So.2d 595, 602 (Miss. 1993). "Proximate cause" is further a question for the jury. Drummond v. Buckley, 627 So.2d. 264 (Miss. 1993)

In sustaining the Motions for Summary Judgment, the trial court made factual findings on two disputed material issues: (1) The trial court determined that Defendants exercised "constant and

overall vigilance” with respect to the IV administration of fluids and blood; and (2) that the alleged failure to exercise vigilance of the IV site did not proximately cause the injuries to Northrop.

B. The Standard of Care

The following are relevant excerpts from Dr. Urdaneta’s testimony concerning the standard of care and compliance by the Defendants applicable to the facts of this case.

Q. Do you have an opinion specifically who failed to monitor the IV fluids in this case as you’ve just said? You mentioned the anesthesia team, but can you be specific as to who you’re talking about?

A. Whoever was involved in the anesthesia care of Mr. Northrop I think failed. So I’m not going to put any—I don’t think that because you were there for a certain period of time you should have more blame. I think it’s the whole team. And Dr. Letard, being the head of the team, should also be responsible for that.

Q. And I’m going to ask you specifically, then, in the monitoring of the IV fluids.

A. Yes, sir. (R.433)

Q.What did the CRNAs do that breached the standard of care?

A.They did not recognize that an infiltration occurred until they (un)draped the arm from—with the Bair Hugger and the surgical drapes.

Q. How were they supposed to have recognized that it occurred before they removed the drape...in this particular case?

A. First of all, you always have to suspect that something may go wrong for one thing. So basically vigilance, feeling the extremity, would have been one of the ways that I would have said that I would inspect the patient under anesthesia. (R.438)

Q.....The CRNAs are nurses; correct?

A. They are nurses, correct.

Q. They are not held to the medical standards of a doctor; correct?

A. You’re talking in general or are you talking about anesthesia?

Q. Standards of care.

A. They have the same anesthesia standards of care as a doctor. They still have to do the same things that we do as a physician, yes. (R.435)

Q. ...What is the standard of care the CRNAs breached in this case?

A. They did not recognize the fact that an infiltration had occurred at some point in the surgery until the end of the case. (R.437)

Dr. Urdaneta clearly articulated the standard of care applicable to Dr. Letard and the CRNAs in this case. In cases where the IV site is accessible such as this case, the standard of care is regular and

constant visualization of the IV site as well as feeling the arm for swelling or other symptoms.

C. Proximate Cause

The following are relevant excerpts from the testimony of Dr. Alton Dauterive, Dr. Thomas Letard and Dr. Felipe Urdaneta concerning the proximate causation issue applicable to the facts of this case.

Dr. Alton Dauterive, a vascular surgeon, testified:

Q. I notice that you also, in your dictation of this operative report, indicated that you felt a fasciotomy was necessary.

A. Correct.

Q. And I think your statement was, it was necessary to prevent neurological vascular compromise?

A. Correct.

Q. What is that in laymen's terms, Doctor?

A. Well, when an IV infiltrates, or for a number of reasons, such as an injury of an artery or a vein that bleeds extensively underneath the skin, the pressure inside the arm can get so tight that it can actually cause direct injury to the nerves. It can also impair a blood flow to the distal bed, in this case being the left hand. And if that were to occur, then permanent damage could be done to the nerves in that hand, and the patient could have a long-term neurologic deficit to the hand. (R.455-456)

When asked about what caused the injury to Northrop's arm, Dr. Letard testified:

Q. Okay. Did you arrive at an opinion as to how it occurred?

A. I arrived at an opinion that it was most likely from an IV infiltrating.

Q. And how did you come to that conclusion?

A. Because there was an IV in that arm, and the arm was swollen. (R. 307).

Dr. Urdaneta testified concerning the result of failing to promptly discover the infiltration from the IV:

Q. ...If you don't know how much fluid had accumulated, then how do you know the extravasation occurred earlier?

A. I already told you that I don't know if it occurred earlier or not. I'm saying that the more time there is extravasation, then the more chances of more edema occurring. And that's what appeared to have happened to Mr. Northrop....

Q. Okay. Well, then can you explain to me exactly the CRNAs failed to exercise due care in the surveillance of the intravenous catheter?

A. They did not notice that the IV at some point infiltrated. So the fluids or blood

or whatever medication did not make it to the vascular compartment. They actually made it to the interstitial compartment, which was not the intended goal when the fluids, blood or drugs were given.

Q. Okay. So if I understand you correctly, it is your opinion within a reasonable medical certainty that –because the IV infiltrated, that was a breach of the standard of care?

A. No, not because it was infiltrated. Because they did not notice it.

Q. Okay. How was the standard of care breached.

A. They did not monitor the place or the fluids or the drug going to the patient. When they noticed it, it was already when the fluid had extravasated outside the vascular structures. That's what I am referring to.(R.1059-1060)

The foregoing testimony when viewed in the light most favorable to the Plaintiff together with reasonable inferences therefrom demonstrate genuine issues of material fact on the issue of the violation of the applicable standard of care and the proximate result of such violation. Daniels v. GNB, Inc., 629 So.2d 595 (Miss. 1993). It is respectfully submitted that the trial judge erred as a matter of law in making factual findings on these material disputed issues in order to grant summary judgment to the Defendants.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Plaintiff-Appellant prays that the Judgment of the Circuit Court be reversed and that this case be remanded to the Circuit Court for trial on the merits.

RESPECTFULLY SUBMITTED this the 18 day of October, 2007.

ABNER K. NORTHROP, JR, PLAINTIFF-
APPELLANT

By:


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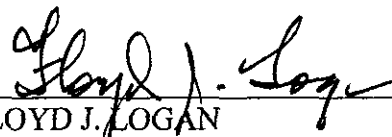
I do hereby certify that I have served a copy of the foregoing Reply Brief for Plaintiff-Appellant to the following by United States Mail, properly addressed and postage prepaid:

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Hon. Lisa P. Dodson
Circuit Court Judge
P.O. Box 1461
Gulfport, Ms 39502

This the 18 day of October, 2007.



FLOYD J. LOGAN

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CERTIFICATE

I, Danielle Bordes, do hereby certify that I have this day, the 17th day of October, 2007,
forwarded one (1) original and three (3) copies of the foregoing Reply Brief for Plaintiff-
Appellant, via United States First Class Mail, postage prepaid, to the Clerk of the Court of
Appeals.

Dated this the 18th day of October, 2007.


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