

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**

BRIEF FOR PLAINTIFF-APPELLANT

OF COUNSEL FOR PLAINTIFF-APPELLANT

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ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate for possible disqualification or recusal:

1. Abner K. Northrop, Jr., Plaintiff-Appellant;
2. Floyd J. Logan, Attorney for Plaintiff-Appellant;
3. Thomas P. Letard, M.D., Defendant-Appellee;
4. Davis R. Hutto and Stanley Turner, Defendants-Appellees
5. Memorial Hospital at Gulfport, Defendant-Appellee;
6. Patricia Simpson, Franke, Rainey and Salloum, attorney for Defendants-Appellees, Memorial Hospital at Gulfport, Stanley Turner and Davis R. Hutto;
7. Douglas Vaughn, Allen, Vaughn and Hood, attorney for Defendant-Appellee, Thomas P. Letard, M.D.

**OF COUNSEL FOR PLAINTIFF-
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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 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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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 Appeal Brief and would respectfully show unto the Court as follows, to-wit:

STATEMENT OF THE FACTS

Nature of the Case and Course of the Proceedings Below

This is an action for medical malpractice filed in the Circuit Court for the First Judicial District of Harrison County, Mississippi. Following discovery activity, Defendants filed a Motion for Summary Judgment before Judge Kosta Vlahos. Judge Vlahos retired without ruling on the Motions and the Defendants supplemented their motions and the case was re-argued before Circuit Judge Lisa Dodson. Judge Dodson sustained the Defendants' Motions for Summary Judgment and dismissed this action as to all Defendants. It is from this ruling that Plaintiff appeals to this Court.

Statement of the Facts

On March 2, 1999, Abner K. Northrop was admitted to Memorial Hospital at Gulfport by his urologist, Dr. Ronald Brown, for surgery for prostate cancer. Brown testified it was his plan to first perform a lymph node dissection to be sent to the lab for frozen section to determine if there is any metastatic cancer spread to the lymph nodes. Following this he was to proceed with

a radical prostatectomy which consists of surgical removal of the prostate gland. The procedure takes 3 ½ to 4 hours to complete. (R.461,462)¹ Dr. Thomas Letard, the defendant, was the anesthesiologist assigned to the case and was the director and supervisor of the administration of anesthesia to Mr. Northrop during the procedure. (R.466) The nurse anesthetists or CRNAs under Letard's supervision were the defendants, Davis Hutto and Stanley Turner. The CRNAs provided the maintenance of the anesthesia throughout the case under Letard's supervision. (R.445) Prior to surgery, while Northrop was in the holding room, 18-gauge peripheral IV lines were placed in Mr. Northrop's right and left arms. The IV in the left hand was used for maintenance and ongoing loss of fluids. (R.469)

Northrop was taken to the operating room at 7:25 a.m. Letard placed a central IV catheter in the right internal jugular vein on the right side of the neck to monitor central venous pressure. There was a catheter placed in the radial artery on the right side to monitor the blood pressure, and there was an epidural catheter placed by Letard in the lumbar back for postoperative pain control. (R. 487,488,470) A blood pressure cuff was placed on Northrop's upper left arm above the peripheral IV. Northrop's arms were placed on pads and taped. Hutto also placed a Bair Hugger warmer and a blanket on top of the Bair Hugger which was taped to the arm boards. Hutto testified that at 8:40 a.m., the blood pressure cuff on Northrop's upper left arm above the peripheral IV was used to confirm the accuracy of the blood pressure monitor in the catheter in the radial artery prior to the operation. This blood pressure cuff was not utilized during the operative procedure, although it remained on Northrop's left arm above the peripheral IV throughout the procedure. (R.449-451;472-473) Hutto intubated Northrop and placed him on a ventilator. Following this, Letard left

¹References to the Record will be "R. "#")

the operating room and Hutto was responsible for monitoring the patient.(R.447,448) Letard testified that even though he was not physically present in the operating room during the entire procedure, he was still in charge of the anesthesia procedure throughout the entire case and that the CRNA continued to monitor the patient in his absence. (R.474) Hutto testified that at no time did he visually check the IV site from 8:00 a.m. when the Bair Hugger mattress and the blanket were placed on the patient until he was relieved for lunch at 11:05 a.m. (R.452)

At 11:00 a.m., Stanley Turner, CRNA, relieved Hutto as the attending anesthetist for lunch break. Approximately 3.5 to 5 minutes after Turner relieved Hutto, the surgery was ending and Turner began to remove the drapes and coverings that Hutto had placed on the patient. (R.442) As Turner removed the blanket and Bair Hugger from the patient's upper body, he discovered the left peripheral IV had infiltrated or extravasated into Northrop's left arm. Northrop's arm was swollen and had blisters on the arm from about the level of the wrist to the upper biceps, or upper arm.(R.442) When Turner discovered the extravasation, the IV was still dripping and he turned it off. Turner disconnected the IV tubing from the IV catheter, removed the catheter, and covered the IV site with sterile gauze. He then called Dr. Letard.(R.443)

Letard testified that two liters of IV fluid and one liter of blood were administered through the left peripheral IV site during the operative procedure.(R.471,472) Hutto testified that two liters of blood were administered through the left peripheral IV site between 10:15 to 10:45 a.m.(R.453)

When Letard arrived on the scene, he consulted with Dr. Brown and Dr. Lobrano and the decision was made to call in Dr. Alton Dauterive, a vascular surgeon, for a consult. Dauterive concluded that an emergency fasciotomy was necessary to remove the pressure that had built up from the extravasation of the fluids from the IV into the left arm. (R.457,458) During the fasciotomy procedure two incisions were made in Northrop's left arm to relieve pressure from the fluid and to

prevent permanent damage to the nerves in Northrop's left arm. (R.455) On March 8, 1999, Dauterive performed an operative procedure to close the incisions. On March 12 he performed a skin graft from Northrop's thigh to his left arm, the lower fasciotomy site.(R.459) Photos of the condition of Northrop's left arm as a result of the extravasation and corrective surgical procedures show the injury to Northrop's arm as a result of the negligence of the anesthesiology team. The photos were attached to the Response to the Motion for Summary Judgment. (R.486,487)

SUMMARY OF THE ARGUMENT

The trial court found that Defendants exercised constant vigilance, disagreeing with Dr. Urdanetta, Plaintiff's expert. The trial court found that there was no failure of the Defendants which proximately caused any injuries to Northrop. The trial court further found that Plaintiff failed to prove how or when the extravasation occurred, and thus failed to prove that the Defendants' violation of the standard of care caused any injury or damage to Northrop.

The trial court erred in granting summary judgment as the Plaintiff's expert, Dr. Urdanetta has testified that the standard of care in surveillance of an IV site in an unconscious patient is constant vigilance, which consists of actually visualizing the IV site constantly, and feeling the unconscious patient's arm. The testimony is undisputed that the Defendant's failed to do this even one time during a three hour operation. As a result, the extravasation began at some point and continued undetected by the Defendants until the end of the procedure, a period of 3.5 to 4 hours. As a result of the extravasation, the patient's left arm became extremely swollen and blistered from the fluid within thereby necessitating surgery to drain the fluid. Had Defendants not breached their duty under the standard of care that they owed the Plaintiff, his injury would have been minimized or completely avoided. Pain and suffering, additional and costly medical bills and hospitalization would have been avoided. Defendants' breach was the proximate cause

of the damages and injuries suffered by the Plaintiff. The trial court erred by trying the factual issues instead of determining whether there were material factual issues to be tried.

ARGUMENT OF THE LAW

A. The Standard of Review

On appeal, this Court reviews *de novo* the trial court's disposition of a summary judgment motion. Therefore, the question is whether the appellant is entitled to relief as a matter of law. Dailey v. Methodist Medical Center, 790 So.2d 903 (C.A. Miss. 2001).

The law governing the grant or denial of a motion for summary judgment is familiar and well established. Fruchter v. Lynch Oil Co., 522 So.2d 195, 198 (Miss. 1988). In Clark v. Moore Memorial United Methodist Church, 538 So.2d.760 (Miss. 1989) the Court explained:

The trial court must review carefully all of the evidentiary matters before it—admissions in pleadings, answers to interrogatories, depositions, affidavits, etc. The evidence must be viewed in the light most favorable to the party against whom the motion has been made. If, in this view the moving party is entitled to judgment as a matter of law, summary judgment should forthwith be entered in his favor. Otherwise, the motion should be denied. Issues of fact sufficient to require denial of a motion for summary judgment obviously are present where one party swears to one version of the matter in issue and another says the opposite. 457 So.2d at 944.

In addition, the burden of demonstrating that no genuine issue of fact exists is on the moving party. That is, the non-movant should be given the benefit of every reasonable doubt. Smith v. Sanders, 485 So.2d 1051, 1054 (Miss.1986). Short v. Columbus Rubber and Gasket, 535 So.2d [61] at 63 [(Miss.1988)]. 538 So.2d at 762.

The court should resolve all factual inferences in favor of the nonmovant. 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)

B. The Standard of Care.

Plaintiff designated as his expert witness, Dr. Felipe Urdaneta. Dr. Urdaneta is a licensed practicing anesthesiologist on the staff at the Veterans Administration Hospital in Gainesville, Florida and Associate Professor of anesthesiology at the University of Florida Medical School, teaching both medical students and CRNAs. (R.591) A copy of Dr. Urdaneta's curriculum vitae is attached to the Response to the Motion for Summary Judgment. (R.475-485)

Dr. Urdaneta testified that the anesthesiology team violated the standard of care in failing to exercise due care to monitor the IV site in the left arm where the extravasation occurred.(R.432,434,436,437,438) Dr. Urdaneta referenced several recognized professional publications in support of his opinions on the standard of care in his deposition. (R. 1050-1053; 640-641,642-643, 645, 652, 658-659, 686;706)

The standard of care is the same for anesthesiologists and nurse anesthetists.(R.435,441) The standard of care in monitoring an IV site that is infusing IV fluids and medications is one of constant vigilance. It involves the monitoring of the fluids and where they are going.(R.424) Infiltration or extravasation of IV sites is a common occurrence when you are dealing with an unconscious patient under general anesthesia. (R.424,600; 458,459). The IV site should receive a regular visual inspection for signs of extravasation or other problems.(R.429,430) Basic vigilance is actually looking at the extremity where the IV is placed and feeling the extremity. (R.438) The failure of the anesthesia team to discover the infiltration into the left arm until the end of the procedure was a violation of the standard of care.(R.423,432,433,437,439) The presence of the Bair hugger mattress and blanket was not a reason to fail to visually observe the IV site in the left hand. It is a simple matter to raise the blanket and view the IV site. This is not a violation of the sterile field and both

Dr. Brown and Stanley Turner agreed that it is not.(R.431,434,440;482,483;444) Simply monitoring the IV drip in the sight glass does not comply with the standard of care. (R.424) The fact that the tube is dripping and passing IV fluids does not assure that the fluids are not extravasating or simply escaping from the IV line onto the patient's bed.(R.425;465) Also monitoring the patients vital signs to assure the medications are being infused does not meet the standard of care.(R.425-427,428)

C. Proximate Cause

The trial court ruled that Plaintiff did not prove the cause of the extravasation or when it occurred. The trial court in its Order granting summary judgment to the Defendants found:

There is nothing in this record to indicate that Defendants did not maintain constant and overall vigilance, except the argument that they did not visualize the IV site as Dr. Urdaneta would have done personally, but which he admits is not required by any rules, regulations, treatises, etc. There is nothing in the record to show that any failure of the Defendants proximately caused any injuries to Northrop. There is no one and no document which can say how or when the extravasation occurred, and thus no way to say that any failure of Defendants to visualize the site caused any injury or damage to Northrop. (R.1081-1082)

This finding on a motion for summary judgment is error as a matter of law.

On a motion for summary judgment, the lower 'court is prohibited from trying the issues; it may only determine whether there are issues to be tried.'(cite) The fact that the expert was unable to give a definite opinion established that there was sufficient testimony to create a jury question regarding the causal connection. 'Summary judgment is not a substitute for trial regarding disputed issues of fact.' Dailey v. Methodist Medical Center, supra at p. 914, citing Palmer v. Anderson Infirmary Benevolent Association, 656 So.2d.790 (Miss. 1995)

Since the standard of care requires vigilance to discover the extravasation, plaintiff is not required to prove the cause of the extravasation, he need only prove that the Defendants' failure to visually check and feel the patient's left arm caused his injuries. Dailey v. Methodist Medical Center, supra.

The trial court noted in its findings that "All of the doctors, including Northrop's expert, agree that a known potential complication with any IV is an extravasation or infiltration." (R. 1078)

Knowledge of the foreseeability of an injury gives rise to a duty on the part of the Defendants to exercise reasonable care to discover and prevent the injury.

An element or test of proximate cause is that an ordinarily prudent man should reasonably have foreseen that some injury might probably occur as a result of his negligence, it is not necessary to foresee the particular injury, the particular manner of the injury, or the extent of the injury. Mississippi Model Jury Instruction No. 36.03, Proximate Cause, Foreseeability; See also: Marshall Durbin, Inc. v. Tew, 362 So.2d 601 (Miss. 1978); Tri-State Transit Co. v. Martin, 179 So. 349 (Miss 1938)

Dr. Letard testified that two liters of IV fluid and one liter of blood were administered through the left peripheral IV site during the operative procedure.(R.471,472) Hutto testified that two liters of blood were administered through the left peripheral IV site between 10:15 to 10:45 a.m.(R.453) It is undisputed that the extravasation of the left peripheral IV occurred some time between 8:00 a.m., when it was inserted in the left arm, and 11:10 a.m., when it was discovered. Hutto, the CRNA who was in charge of the administration of anesthesia during the procedure, admitted that the left peripheral IV site was not visually checked even one time in this three hour period. (R.452) Dr. Urdaneta testified that this failure to observe the IV site was a violation of the standard of care of both anesthesiologists and nurse anesthetists. Proximate cause arises when omission of a duty contributes to an injury. Richardson v. Methodist Hospital, 807 So.2d.1244 (Miss. 2002); Drummond v. Buckley, 627 So.2d. 264 (Miss.1993); Clayton v. Thompson, 475 So.2d. 439 (Miss. 1985) Had the anesthesia team visually checked the IV site, the injury to Northrop's arm from the extravasation could have been prevented or at least minimized. Dr. Dauterive, the vascular surgeon, testified that the extravasation caused the injury to Northrop's left arm. (R.454-456) It is undisputed that the IV in Northrop's left arm extravasated and caused significant injury to his left arm. (R.486,487) Simply put, the extravasation caused the injury to Plaintiff's left arm, and the

anesthesia team, the Defendants, failed to exercise reasonable care to discover it for over 3 hours during which they were in control of and responsible for the administration of anesthesia and IV fluids to Northrop. "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) In Daniels the Supreme Court held that circumstantial evidence of a material fact was sufficient to defeat a motion for summary judgment.

The trial court erred in making factual findings on disputed issues of material fact in ruling on Defendants' Motion for Summary Judgment.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Plaintiff 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 30 day of July, 2007.

ABNER K. NORTHROP, JR, PLAINTIFF-
APPELLANT

By:


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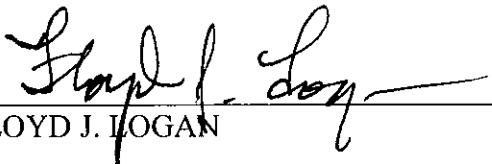
I do hereby certify that I have served a copy of the foregoing Brief for Plaintiff-Appellant to the following by United States Mail, properly addressed and postage prepaid:

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Hon. Lisa P. Dodson
Circuit Court Judge
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This the 20th day of July, 2007.



FLOYD J. LOGAN

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CERTIFICATE

I, Danielle Bordes, do hereby certify that I have this day, the 30th day of July, 2007,
forwarded one (1) original and three (3) copies of the foregoing Brief for Plaintiff-Appellant, via
United States First Class Mail, postage prepaid, to the Clerk of the Supreme Court.

Dated this the 30th day of July, 2007.


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