

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO.2008-CA-01834

SHAWN LEE DUNCAN

APPELLANT

VS.

2008-CA-01834

SATISH VERMA

APPELLEE

STATEMENT OF ISSUES

The trial court was in error in holding as a matter of law that Dr. Satish Verma, as a treating physician owed no duty to the Appellant after consulting with another specialist on the care of his patient.

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate potential disqualifications or refusal.

1. Shawn Lee and April Duncan, Appellant;
2. Satish Verma, M.D. Appellee;
3. Tommie Williams, Esq., Counsel for Defendant/Appellee, Satish Verma; and
4. Dana J. Swan, Counsel for Plaintiff/Appellant Shawn Duncan



Dana J. Swan

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IN THE SUPREME COURT OF MISSISSIPPI

BRIEF OF APPELLANT

COMES NOW Shawn Lee Duncan, and April Duncan and files this their Brief of Appellant and would show unto the Court the following, to-wit:

I.

COURSE OF PROCEEDING BELOW

This is a medical malpractice action filed against Sathis Verma, M.D.(Verma) for treatment of infant Duncan, deceased (Duncan). Suit was brought by April Duncan and Shawn Lee Duncan parents of infant Duncan, deceased in a wrongful death action filed in DeSoto County Mississippi. (R. 9-14). An answer was filed by Verma on or about July 27, 2001. After discovery was completed, Trial was set for October 7, 2008. Verma moved for Summary Judgment on July 17, 2008. A hearing was held on September 19, 2008. On October 2, 2008, the trial Court granted summary judgment. (R. 427-431). From that judgment, this appeal was taken.

II.

FACTS

Infant Duncan was born on or about July 16, 1999 in Baptist Memorial Hospital DeSoto. His treating physician was Dr. Verma. (R. 9-14). Dr. Verma is a pediatrician. Shortly after birth, Duncan began experiencing severe problems breathing. Once the child was born, he started having some grunting and asymmetry of the chest wall and he was then transferred to the nursery, where it was subsequently discovered that he had a bilateral spontaneous pneumothorax. On the morning of July 18, 1999, the baby started having decreased oxygen saturation and, later that morning, the baby was transferred to Baptist East where he died that day. Duncan alleges through his expert, Dr. Shane Bennoch, that the transfer by his pediatrician to Baptist East should have been made shortly after birth. Although Verma consulted with a neonatologist, as a treating physician he is ultimately responsible for the care of his patient.

III.

SUMMARY OF ARGUMENT

Although Verma consulted with a neonatologist, as a treating physician and pediatrician, he is ultimately responsible for the care and treatment of his patient. Whether a physician owes a duty is a question of law. *Scafide v. Bazzone*, 962 So.2d 585 (Miss. App. 2007). The trial court was in error in holding that Verma owed no duty to the Appellant. A prima facie case for medical malpractice must be made by proving the following elements: (1) the existence of a duty by the defendant to conform to a specific standard of conduct for the protection of others against an unreasonable risk of injury; (2) a failure to conform to the required standard; and (3) an injury to the plaintiff proximately caused by the breach of such duty by the defendant. *Drummond v. Buckley*, 627 So.2d 264, 268 (Miss.1993). The failure of Verma to conform to the standard of care was articulated by Duncan's expert, Dr. Shane Bennoch. Dr. Bennoch is both a pediatrician and a neonatologist, and is therefore familiar with the standard of care.

IV.

ARGUMENT

Verma argued, and the trial court agreed, that Verma's duty to Duncan ended when he consulted with a neonatologist. Whether a physician owes a duty is a question of law. *Scafide v. Bazzone*. 962 So.2d 585 (Miss App 2007). The standard of review is *de novo*. However, as treating physician and pediatrician, he remained responsible for the care of his patient. The patient-physician relationship was formed and existed during the treatment of Duncan. Dr. Bennach, a pediatrician and neonatologist, testified that the standard of care was violated by Verma by not promptly transferring to another hospital who had the facilities to treat the seriousness of his condition. According to Dr. Bennach's opinion.

Based on the Apgars, the respiratory difficulty and the possible sepsis entertained by nurse practitioner Gilliand, the appropriate minimum standard of care for Dr. Verma would be to transfer this baby shortly after birth to a hospital with a neonatal intensive care unit. If this course of action had been followed then his subsequent problems would have been handled almost in a routine manner in the neonatal unit.

(R. 233). As a matter of law, this satisfies the requirement of stating the standard of care. The trial court erred in concluding that Verma satisfied the standard of care upon his consulting with the neonatologist. A prima facie case for medical malpractice must be made by proving the following elements: (1) the existence of a duty by the defendant to conform to a specific standard of conduct for the protection of others against an unreasonable risk of injury; (2) a failure to conform to the required standard; and (3) an injury to the plaintiff proximately caused by the breach of such duty by the defendant. *Drummond v. Buckley*, 627 So.2d 264, 268 (Miss.1993). The failure of Verma to conform to the standard of care was articulated by Duncan's expert, Dr. Shane Bennach. As a matter of law, this satisfied the standard of care. As a treating physician, he cannot escape his duty by requesting a consultation. The trial court was incorrect as a matter of law in concluding otherwise.

V.

CONCLUSION

The trial court erred by concluding as a matter of law that Dr. Verma satisfied the standard of care by requesting a consultation with a neonatologist. The Appellant would respectfully request that this cause be remanded to the Circuit Court of DeSoto County, Mississippi for a trial on the merits.

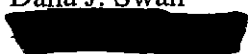
THIS, the 14th day of May, 2009.

Respectfully submitted,

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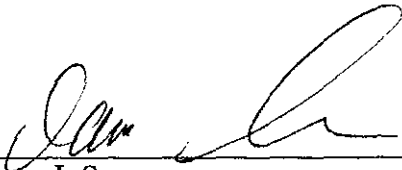
CERTIFICATE OF SERVICE

I, Dana J. Swan, do hereby certify that I have this day faxed a true and correct copy of the foregoing Appellant's Brief to:

Honorable Robert P. Chamberlin
Circuit Court Judge
P. O. Box 280
Hernando, MS 38632-0280

Tommie Williams, Esquire
Upshaw, Williams, Biggers, Beckham & Riddick, LLP
Post Office Drawer 8230
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This the 14th day of May, 2009.



Dana J. Swan