

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2009-CA-00672

**MANDA GRIFFIN, INDIVIDUALLY AND AS A
WRONGFUL DEATH BENEFICIARY, AND
ON BEHALF OF ALL OTHER WRONGFUL
DEATH BENEFICIARIES OF GRACIE M. STEPHENS,
DECEASED** **APPELLANT**

V.

NORTH MISSISSIPPI MEDICAL CENTER **APPELLEE**

APPEAL FROM THE CIRCUIT COURT OF LEE COUNTY

APPELLANT'S REPLY BRIEF

ORAL ARGUMENT REQUESTED

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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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

Manda Griffin

Appellant

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Attorneys for Appellant

North Mississippi Medical Center

Appellee

John Wheeler
Mitchell, McNutt & Sams

Attorneys for Appellee

Hon. Paul S. Funderburk

Circuit Judge, Lee County, Mississippi

SO CERTIFIED, this the 29 day of April,
2010.

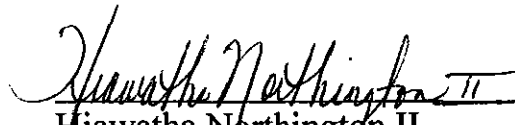

Hiawatha Northington II
Counsel for Appellant

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STATEMENT REGARDING ORAL ARGUMENT

The Appellant, Manda Griffin, respectfully submits that oral argument is necessary in this case, as it concerns the application of a legal principle which could impact future cases before the court involving medical negligence claims. The application of the issue also warrants treatment by the Supreme Court and potentially could affect parties beyond the litigants herein. It is submitted that oral argument would aid the Court in rendering an opinion in this matter.

STATEMENT OF ISSUE

- I. The Circuit Court of Lee County erred in granting a directed verdict to North Mississippi Medical Center.

STATEMENT OF THE CASE

Nature of the Case, Course of Proceedings, and Disposition in Court Below

This is an appeal from an order of the Circuit Court of Lee County, Mississippi granting a directed verdict to the Appellee, North Mississippi Medical Center in a medical negligence wrongful death case brought by the Appellant, Manda Griffin, individually and on behalf of the wrongful death beneficiaries of Gracie Stephens, as a result of negligence in the treatment of Gracie Stephens, her natural mother.

Gracie Stephens, a sixty-one-year-old woman with end stage renal disease, was admitted to North Mississippi Medical Center on December 29, 2000 for removal of an abdominal dialysis catheter and placement of a chronic catheter in her neck. The procedure was scheduled for January 4, 2001. During this surgical procedure, the surgeon, Dr. Terry Pinson, punctured the anterior and posterior walls of the jugular vein, and subsequently perforated the carotid artery. Fluoroscopy revealed the injuries to the blood vessels, and Dr. Pinson repaired the injuries, reinserted the catheter and closed the surgical site.

Ms. Stephens had been administered the drug Heparin, an anti-coagulant, during repair of her blood vessels. When she arrived in the

recovery room, her blood pressure was very low. Ms. Stephens's hypotension persisted, along with oozing of blood from the incision in her neck. A large amount of blood also accumulated in the neck tissue, and Ms. Stephens subsequently experienced respiratory distress. Ms. Stephens was transferred to the operating room eventually, but before re-exploration of her neck could occur, she developed circulatory compromise. Although she was eventually resuscitated, Ms. Stephens suffered a severe brain injury, leaving her ventilator dependent in a non-responsive comatose state. She died approximately one week later on January 11, 2001.

Ms. Griffin filed suit against North Mississippi Medical Center on January 30, 2002, (R. at 222) and North Mississippi Medical Center responded to the Complaint, denying that it, through its staff, breached any duty owed to Ms. Stephens during the course of its treatment of her. (R. at 260). Discovery ensued, and the matter proceeded to trial beginning on March 23, 2009.

At trial, Ms. Griffin presented testimony from two expert witnesses. First, Ms. Griffin offered Patricia Ross, a registered nurse with approximately forty years of experience as practicing nurse in the United States Army, including time in the medical/surgical arena and a legal nurse consultant for both plaintiffs and defendants. (T. at 126-29). Ms. Ross

testified, inter alia, that in this case, the nursing staff (specifically Nurse Sherry Crenshaw) at North Mississippi Medical Center charged with the care of Gracie Stephens on January 4, 2001, failed to comply with the applicable standard of care in several respects: 1) failure to timely report changes to and deterioration of Gracie Stephens's condition to her primary physician; 2) failure to consistently and accurately assess and document Ms. Stephens's overall response to the surgical procedure; 3) failure to evaluate and document Ms. Stephens's pulse pressure to determine how much bleeding was occurring; 4) failure to recognize, assess and or treat the signs and symptoms of hemorrhagic shock exhibited by Ms. Stephens; 5) failure to timely and properly assess Ms. Stephens's neck wound site for bleeding. (T. at 149-181).

Ms. Griffin also tendered William Truly, M.D. as an expert witness. Dr. Truly, a physician with over thirty-five years of experience in medicine, including the hospital setting and care of post-surgical patients and patients with end-stage renal disease and other systemic maladies, testified that the breaches identified by Nurse Ross were the proximate cause of the death of Gracie Stephens.

At the close of the plaintiff's case in chief, North Mississippi Medical Center moved for a directed verdict, arguing that the plaintiff, Ms. Griffin,

failed to make out a prima facie case of medical negligence. The trial court considered the motion and agreed, granting the motion on March 26, 2009, (T. at 334-35) and entered judgment in favor of North Mississippi Medical Center on April 13, 2009. (R. at 932-33). It is from this final judgment that Ms. Griffin appeals.

SUMMARY OF THE REPLY ARGUMENT

Ms. Griffin is entitled to a reversal of the Circuit Court's order granting a directed verdict to the Appellee, North Mississippi Medical Center. In this case, Ms. Griffin established a prima facie case of medical negligence by showing that breaches in the applicable standard of care by the nurses employed at North Mississippi Medical Center proximately caused the death of Gracie Stephens. The matter should have been submitted to the jury, as reasonable jurors could find a basis for the plaintiff's recovery. The trial court's failure to recognize this constitutes error which must be reversed and remanded for trial.

Contrary to the averment of North Mississippi Medical Center, this case was not a "loss of chance of recovery" case. This was a wrongful death case, meaning that the negligence of North Mississippi Medical Center proximately caused the death of Gracie Stephens. It is precisely the failure of the nurses of North Mississippi Medical Center which was alleged to have caused the death of Gracie Stephens, and it was the essence of the testimony of the expert witnesses proffered by Manda Griffin at trial. Griffin's expert on causation quite unequivocally stated that the breaches by the nurses of North Mississippi Medical Center led to the bleeding which ultimately proximately caused Ms. Stephens's death. The trial court having found the

plaintiff's experts competent to testify, then, afforded the plaintiff sufficient basis to overcome the defendant's motion for directed verdict. Accordingly, this matter should be reversed and remanded for a new trial.

REPLY ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING A DIRECTED VERDICT TO NORTH MISSISSIPPI MEDICAL CENTER.

North Mississippi Medical Center has predictably relied on the theory that evidence of “loss of chance of recovery” was required in this case for Manda Griffin to overcome the motion for directed verdict. Such reliance, however, is misplaced, and North Mississippi Medical Center’s argument must fail.

North Mississippi Medical Center relies on the case of *Causey v. Sanders*, 998 So. 2d 393, 410 (Miss. 1998), to bolster its argument that the instant case falls into the realm of “loss of chance of recovery” cases. However, as pointed out in our Appellant’s Brief, the Causey Court focused in the inapplicability of loss of chance of recovery instructions where the cause of action alleges that the medical provider’s actions did not cause injury or death. Such was not the case here, as Griffin alleged that the death was proximately caused by the negligence of North Mississippi Medical Center. (R. at 222).

North Mississippi Medical Center’s entire argument is premised on its forced assumption that Griffin argues that the inaction of the nurses merely hindered Gracie Stephens’s recovery. That assumption is belied by the

entirety of the record and the evidence adduced at trial from Griffin's expert witnesses, Nurse Patricia Ross and Dr. William Truly, the substance of which was conveyed in the Appellant's Brief.

Moreover, the cases relied upon by North Mississippi Medical Center are distinguishable. *Harris v. Shields*, 568 So. 2d 269, 273 (Miss. 1990), dealt with an alleged failure to take a patient's blood pressure which led to a cerebral hemorrhage. Similarly, *Hubbard v. Wansley*, 954 So. 2d 951 (Miss. 2007), referenced by North Mississippi Medical Center in its brief, indicated that the plaintiff's expert, during his deposition, not only was reluctant to state whether the absence of the alleged breach would have resulted in a substantial improvement to the plaintiff's condition, but also admitted that the injury could have resulted anyway. *Id.* at 955. Moreover, the allegation in *Hubbard* again was an alleged failure to timely treat a hemorrhage to avoid brain damage. Both of the plaintiffs in those cases particularly alleged that the patients' condition *worsened* as a result of negligent care, implying that the condition could have been improved. In the case *sub judice*, however, Griffin alleged that Gracie Stephens *died* as a result of nursing negligence, not that she was denied a chance at recovery from a imminently safe medical procedure.

It is wholly inconsistent for North Mississippi Medical Center to argue that the framing of the plaintiff's pleadings has no effect on the fundamental nature of the claim, when in point of fact, the testimony and evidence presented by Griffin is wholly consistent with the pleadings made all along. Clearly the Supreme Court contemplates, as recognized in Causey, that loss of chance of recovery cases are a specific subset of medical negligence claims. The reality is that the pleadings and proof by Griffin in this case demonstrate that the instant case does not fall within that subset.

North Mississippi Medical Center's argument regarding the need for the "greater than fifty percent chance of survival" language, while eloquent, is squarely contradicted by the standard of review applicable to this case.

North Mississippi Medical Center's argument that Dr. Truly's testimony as to proximate causation was conclusory is just that – conclusory. It argues that Dr. Truly's testimony about the causative aspect of the nursing negligence is completely devoid of any medical analysis with respect to medical matters it deems relevant. However, North Mississippi Medical Center cannot escape the fact that Dr. Truly simply showed no reluctance in stating that the breaches alleged by Manda Griffin were the cause of Ms. Stephens's death.

Dr. Truly testified that Ms. Stephens bled to death as a result of profound hypotension over a period of a couple of hours with no intervention. (T. at 237). More specifically, Dr. Truly stated that the breaches, as elaborated by Nurse Ross, were the proximate cause of Ms. Stephens's death, absent the surgical intervention to repair the blood loss. (T. at 265-267).

Q: Please share that opinion with the jury.

A: My opinion is that the – that the negligence on behalf of the hospital contributed and proximately caused her death by the mere fact that there was – one, there was a failure to recognize the significance of a falling blood pressure, couple with a falling hematocrit, couple with a patient who is uncooperative and restless, coupled with the change in her status, coupled with air hunger.

So there was a failure of the hospital to respond to these changes of a falling blood pressure and a falling hematocrit or hemoglobin.

(T. at 272).

Throughout its brief, North Mississippi Medical Center suggests that case law does not require that a defendant has no affirmative duty to cross-examine plaintiff's experts or otherwise raise issues in its own case-in-chief. While the plaintiff bears the ultimate burden of persuasion and proof, North Mississippi Medical Center can point to no case which requires a plaintiff to establish anything more than its prima facie case to overcome a motion for

directed verdict. The points raised by North Mississippi Medical Center simply are irrelevant to the establishment of Griffin's prima facie case.

Accordingly, this appeal, with the proof presented at trial viewed in the light most favorable to Ms. Griffin, clearly must be resolved in favor of Ms. Griffin, given that the sole medical expert witness, Dr. Truly, established that the breach of North Mississippi Medical Center proximately caused the fatal condition of the decedent.

CONCLUSION

As stated in the Appellant's Brief, plaintiffs are required to meet their burden of proof in medical negligence cases, **but they are not required to disprove all potentially negative inferences which are not raised by defendants.** A plaintiff has no affirmative burden to prove matters beyond what the elements of a cause of action require, unless there is evidence presented to challenge the proof of those matters. Only at that point is the plaintiff obligated to provide such evidence to meet its burden.

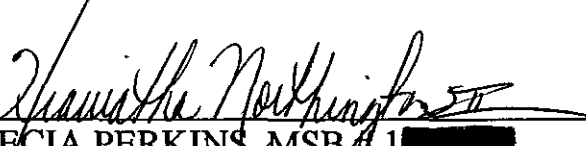


Despite the protestations of North Mississippi Medical Center to the contrary, the fact remains that Manda Griffin pleaded a case of wrongful death directly attributable to the negligence of the nurses employed by North Mississippi Medical Center. Moreover, Griffin satisfied the elements of a prima facie case of medical negligence through evidence at trial which was

sufficient to preclude a directed verdict in favor of North Mississippi Medical Center. Accordingly, taking all facts and reasonable inferences therefrom in the light most favorable to the Manda Griffin, it is submitted that a directed verdict in favor of North Mississippi Medical Center was not appropriate in this case.

It is respectfully submitted that the circuit court below erred in granting a directed verdict to the Appellee, North Mississippi Medical Center. Accordingly, this Court should REVERSE the decision of the circuit court below, and REMAND this matter to the Circuit Court of Lee County for retrial by jury.

RESPECTFULLY SUBMITTED,

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AND ON BEHALF OF ALL OTHER
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GRACIE M. STEPHENS, DECEASED**

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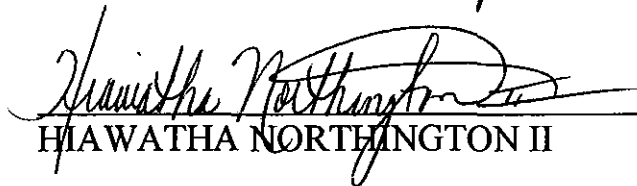
CERTIFICATE OF SERVICE

I, Hiawatha Northington II, hereby certify that I have this day caused to be mailed by United States mail, postage pre-paid, a true and correct copy of the above and foregoing instrument to the following:

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Hon. Paul Funderburk
Circuit Court of Lee County
P.O. Drawer 1100
Tupelo, MS 38802

SO CERTIFIED this 29 day of April, 2010.



HIAWATHA NORTHINGTON II