



Supreme Court of Georgia

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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Friday, April 12, 2019

**Special Session
Mercer University School of Law
Macon, Georgia**

10:00 A.M. Session

ROCKDALE HOSPITAL, LLC V. EVANS ET AL. (S18G1189)

EVANS ET AL. V. ROCKDALE HOSPITAL, LLC (S18G1190)

In this medical malpractice case, **Rockdale Hospital** is appealing a Georgia Court of Appeals ruling that orders a new trial in a lawsuit brought by a man whose wife suffered catastrophic injuries from an undiagnosed ruptured brain aneurysm. The husband, meanwhile, is appealing the Court of Appeals' finding that the new trial cannot be limited to damages alone.

FACTS: In January 2012, 60-year-old **Janice K. Evans** woke up one night with what she described as the worst headache she had ever experienced, along with vomiting. She believed it was food poisoning, although a severe "thunderclap" headache such as what she described, followed by nausea, are common symptoms of bleeding in the brain. When the symptoms did not subside, two days later her husband took her to the Rockdale Hospital emergency room where she complained of headache and nausea and told the nursing staff she might have gotten food

poisoning from a local restaurant. The triage nurse failed to document Evans's initial complaint of headache. The nurse did document her extremely high blood pressure, which can also signify bleeding on the brain, but nursing staff did not ask specific questions about her headache for which she requested medication. Evans was diagnosed with high blood pressure, nausea and vomiting with no specific cause identified. She was discharged from the hospital with instructions to follow up with her primary care physician, especially about her high blood pressure. Her husband made the first available appointment with a primary care physician but it was not until six days later. Throughout the week, her headache and vomiting continued. The day before her doctor's appointment, her husband called 911 after she began moving her mouth unnaturally and was unable to get up from the couch. An ambulance transported her back to the Rockdale emergency room where a CT scan showed a blood clot in her brain. She was transferred to Emory Hospital in Atlanta where further testing revealed that she had suffered several strokes as a result of a ruptured brain aneurysm. Subsequently, Evans underwent multiple surgeries and spent months in the hospital and at a rehabilitation facility. Today she is permanently and totally disabled, is incontinent, requires a feeding tube, cannot speak, has severe cognitive and other impairments, has a seizure disorder, and requires 24-hour care.

In August 2013, Evans's husband, as her guardian, sued Rockdale Hospital for medical malpractice and loss of consortium. During the trial, the parties disputed whether Evans suffered the ruptured aneurysm when she presented at the emergency room in January 2012, whether a diagnosis of a ruptured brain aneurysm on that date would have led to a better outcome, and whether the Rockdale emergency room nurses violated the standard of care. The hospital also argued that Evans's fault exceeded that of the hospital's because she had failed to obtain treatment for her longstanding, uncontrolled hypertension despite being aware of that condition.

Following trial, the jury awarded Evans the amount she had requested in damages to cover her medical expenses to date, which had come to \$1.2 million. But it awarded her zero damages for future medical expenses, past and future lost wages, and past and future pain and suffering. The jury awarded her husband \$67,555 for loss of consortium. On the jury form, the jury also apportioned fault among the parties, finding that Rockdale was 51 percent at fault and that Evans was 49 percent at fault. The trial judge then reduced the amount of damages awarded by the jury in proportion to the percentage of fault and entered judgment in favor of Evans in the amount of \$586,191.60 for past medical expenses and \$33,101.95 for loss of consortium.

The plaintiffs (i.e. the Evanses) filed a motion asking the court to increase the jury's award of damages or, in the alternative, granting a new trial on the amount of damages. The plaintiffs contended that any new trial ordered by the trial court should be limited to the issue of damages. Rockdale Hospital opposed the motion, arguing that the jury's damages award should not be disturbed and that any retrial could not be limited to the issue of damages because the case involved "comparative negligence." (Comparative negligence is the legal principle involved when a plaintiff's own negligence proportionally reduces the damages she can recover.) Following a hearing, the trial court denied the plaintiffs' motion, and the Evanses appealed to the Court of Appeals.

The Court of Appeals reversed the trial court's ruling, finding that the award of zero damages for Evans's past pain and suffering "rendered the award of damages so clearly inadequate under a preponderance of the evidence as to shock the conscience and necessitate a new trial" under Georgia Code § 51-12-12 (b). "However, because this case involves issues of

comparative negligence, the retrial on remand cannot be limited to the issue of damages and instead must encompass all issues,” the appellate court ruled. Rockdale Hospital now appeals the first part of the ruling to the Georgia Supreme Court, while the Evanses appeal the second part of the ruling.

ARGUMENTS (S18G1189): Attorneys for the hospital are asking the high court to reverse the decision of the Court of Appeals and reinstate the jury’s verdict. Georgia Code § 51-12-12 (a) allows a *trial court* to interfere with a jury verdict “in two opposite situations – where the award is so inadequate or so excessive as to be contrary to the preponderance of the evidence. Once the trial court approves a jury’s verdict, however, the review process set forth in § 51-12-12 is complete, and a presumption of correctness attaches to the trial court’s decision,” the attorneys argue in briefs. Once the trial court denies a motion under § 51-12-12, an appellate court is obliged to affirm the trial court’s decision if there is “any evidence” to support it. Here, the Court of Appeals applied the *trial court’s* legal standard of review rather than the “any evidence” *appellate court’s* standard of review, the attorneys argue. The Court of Appeals “substituted its judgment for that of the jury **and** the trial judge” in concluding that the jury’s award of more than \$1.2 million was “so clearly inadequate” as to “shock the conscience.” “The Court of Appeals’s entire analytical approach to this appeal was improper” and requires reversal. Reversal also is required because under the “any evidence” appellate standard of review, there is ample information to support the jury’s award and the trial court’s denial of the new trial motion filed by the Evanses. For example, there is little question that the amount awarded by the jury to the Evanses “represented a compromise verdict between jurors who wanted to return an outright defense verdict and jurors who wanted to award at least some damages to a severely-injured, sympathetic plaintiff,” the hospital’s attorneys argue. “Yet, in its opinion, the Court of Appeals never even mentioned or acknowledged that juror compromise was a potential explanation for the damage award, nor did the court discuss or mention the other evidence cited by Rockdale which supports the jury’s award of damages.”

Attorneys for the Evanses argue the Court of Appeals correctly ruled that the jury’s verdict in this case failed the “shock the conscience” test that historically has been used to protect against grossly inadequate or highly excessive awards. The jury found the hospital liable for Evans’s catastrophic brain injury and awarded her 100 percent of her past medical expenses. It was undisputed Evans will need around-the-clock care for the rest of her life. “Yet the jury awarded **no** future medical costs, **no** lost wages, and – most shockingly – **no** compensation whatsoever for past or future pain and suffering,” the attorneys argue in briefs. “And as to Mr. Evans’s claim for loss of consortium, the jury awarded only the estimated cost of renovating the couple’s home to accommodate Ms. Evans’s disability.” Even the hospital does not “seriously attempt to explain these irrational findings as the application of law to the evidence at trial.” The Georgia Supreme Court “should vacate the jury’s arbitrary and inadequate verdict and should order a new trial on damages only,” the Evanses’ attorneys argue.

ARGUMENTS (S18G1190): The Court of Appeals correctly reversed the jury’s award of damages as inadequate, attorneys for the Evanses argue. For more than a century, the general rule in Georgia has been that where correct portions of a judgment can be separated from erroneous portions, “the court will not set aside the entire judgment, but only that portion which is erroneous.” However, in its 1997 decision in *Bridges Farms v. Blue*, the Georgia Supreme Court ruled that “reversal of the judgment entered on a general verdict returned for the plaintiff

in a case in which comparative negligence will be an issue on retrial necessarily mandates that the retrial encompass both the issues of damages and liability.” Attorneys for the Evanses argue that the “time has come for this Court to abandon the categorical rule of *Bridges Farms* and its progeny.” For one thing, the rule has been superseded by the legislature’s 2005 enactment of the apportionment statute (Georgia Code § 51-12-33), which allows for the apportionment of damages among the liable parties based on their degree of fault. As the state Supreme Court has ruled, “the concept of ‘fault’ in the apportionment statute subsumes the common-law doctrine of comparative negligence,” the attorneys argue. “But rather than allowing the jury to reduce an award for comparative negligence, the apportionment statute requires that the jury make separate and express findings of the total damages and the percentage of fault of the plaintiff.” Allocating fault is a “distinct second step” from determining the total damages. “No longer are the questions of total damages and comparative fault ‘inextricably joined;’ instead, the jury is required to make separate findings on each issue, and it is the job of the trial judge to reduce the total damages by the plaintiff’s percentage of fault.” “There is no reason why the categorical rule of *Bridges Farms* should continue to exist after its legal and practical foundations have been eliminated,” the attorneys argue, and *Bridges Farms* should be overruled.

Although the Court of Appeals granted the Evanses a new trial, it properly rejected their request for a retrial on damages only, the hospital’s attorneys argue. Now the Evanses ask the Supreme Court to reverse that decision, arguing that passage of the apportionment statute in 2005 “somehow rendered obsolete multiple decisions from this Court which hold categorically that a retrial only on damages is not permitted where (as here) comparative fault is an issue. There is no legitimate reason for this Court to revisit those decisions, and Rockdale therefore asks this Court to affirm the Court of Appeals’ decision that, if a retrial is to occur, it must encompass the issues of liability and damages.” “Rather than superseding or abrogating existing comparative negligence law, this Court unambiguously has held that the apportionment statute in fact *codified* the doctrine of comparative negligence and accomplishes the ‘same ends’ as the comparative fault rules that existed before the statute was passed,” the hospital’s attorneys argue. “There simply is no material difference between the process that applied to comparative fault cases before 2005 and the process that applies now, and thus there is no ‘legal or practical’ reason to abandon the prior controlling decisions of this Court.” In this case, the jury “obviously compromised on the issues of liability and damages, resulting in a verdict for the Evanses but a monetary award well below the amount they requested,” the attorneys contend. “Thus, the jury in this case obviously considered the issues of liability and damages to be ‘inextricably joined,’ and its decision demonstrates that a limited retrial on damages in this case would be extraordinarily unfair to Rockdale.”

Attorneys for Rockdale Hospital: Daniel Huff, R. Page Powell, Jr., Sharonda Barnes

Attorneys for Evanses: Leighton Moore, Lawrence Schlachter, Lloyd Bell, James Wilson, Jr.

MITCHUM V. THE STATE (S19A0554)

A man convicted of murder is appealing a **Bryan County** court’s denial of his motion requesting a new trial. In his “extraordinary motion for new trial,” he argues he learned only after he was tried that officials prosecuting and presiding over his trial may have had improper communications with the jury that ultimately convicted him.

FACTS: As background, generally a motion for new trial must be filed within 30 days of the judgment. Motions filed after that 30-day period are called “extraordinary motions for new trial.” Such motions are not favored by the courts and are granted only when “good reason” is shown as to why the motion was not made within the 30-day period. A “good reason” necessary to justify the filing of an extraordinary motion for new trial may be “newly discovered evidence.” A stricter rule is applied to extraordinary motions for new trial. Under the Georgia Supreme Court’s 1980 decision in *Timberlake v. State*, the party seeking a new trial based on newly discovered evidence must show: 1) that the evidence has come to his knowledge since the trial; 2) that failure to discover the evidence earlier was not because of lack of due diligence; 3) that the evidence is so “material” that it probably would have produced a different verdict; 4) that it is not merely cumulative; 5) that if affidavits were required, they were obtained; and 6) that the new evidence does not operate solely to impeach the credibility of a witness.

In this case, **Robert E. Mitchum** was indicted by a Bryan County grand jury for malice murder, felony murder and aggravated assault for the 1998 beating death of Charles Howell. During his 1999 trial, Mitchum argued self-defense. His trial attorney failed to give proper notice of his intention to present evidence of Howell’s past violence and therefore was precluded from doing so. Mitchum subsequently was acquitted of malice murder but found guilty of felony murder and aggravated assault. He was sentenced to life in prison. His attorney filed a motion for new trial and at a 2000 hearing, Mitchum testified about what he knew about Howell’s propensity toward violence. The trial court denied Mitchum’s motion for a new trial, he appealed, and in 2001, the Georgia Supreme Court upheld his convictions and sentence.

In 2016, Mitchum – acting “pro se,” or without a lawyer – filed an extraordinary motion for new trial alleging he had “newly discovered evidence.” With the motion, he submitted two affidavits stating that the evening following the completion of jury selection, the prosecutor, judge, and lead investigator in the case, along with the prosecutor’s father who was a senior superior court judge in the county, ate dinner with the jurors at a restaurant in Pembroke, GA. The affidavits further alleged that on the second day of trial, the presiding judge and senior judge again joined jurors for lunch at the same restaurant, shortly before the jury returned its verdict. Mitchum alleged in his extraordinary motion that he did not learn of the “jury contamination” until years after the conclusion of his trial. The trial court denied his extraordinary motion, and Mitchum now appeals to the Georgia Supreme Court.

ARGUMENTS: Mitchum’s attorneys argue he properly raised his jury contamination claim in an extraordinary motion for new trial. “This Court has recognized since the 19th century that an extraordinary motion for new trial requires evidence of an unusual situation – a situation that would not typically occur in the orderly pursuit of justice,” the attorneys argue in briefs. “By their very nature, most jury contamination claims present issues that were not discovered during trial. Instead, these issues involve post-trial discoveries that tend to vitiate a verdict and are only viable through an extraordinary motion more than 30 days after the trial court’s judgment.” When litigants discover evidence of jury contamination after a verdict has been rendered, as happened here, their claims may be brought through an extraordinary motion for new trial, the attorneys contend. And “where an extraordinary motion raises facts that, if true and timely presented, authorize the grant of a new trial, judges have the duty to meaningfully consider these facts to ensure that ends of justice are achieved,” the attorneys argue. “Questions about the credibility and materiality of Mr. Mitchum’s evidence have been left unresolved.” Because his

jury contamination claim undermines confidence in the verdict, he is entitled to a hearing on the evidence as “the extent to which state officials may have influenced the jury has not yet been weighed or determined by a finder of fact.” The Supreme Court should reverse the denial of his extraordinary motion for new trial and remand the case to Bryan County for a hearing on the new evidence, Mitchum’s attorneys argue.

The State, represented by the District Attorney’s and Attorney General’s offices, argues that the trial court correctly denied Mitchum’s extraordinary motion for new trial as the evidence he claims as “newly discovered” “could have been discovered through the exercise of due diligence and raised in the original motion for new trial.” “Georgia law has long recognized that extraordinary motions for a new trial, in both criminal and civil cases, ‘are not favored, and a stricter rule is applied to an extraordinary motion for a new trial based on the ground of newly discovered evidence than to an ordinary motion on that ground,’” the State’s attorneys argue in briefs. Under *Timberlake*, the failure to show one of the six requirements is sufficient to deny the extraordinary motion for new trial, and here, Mitchum’s “jury contamination” claim could have been discovered early enough through due diligence to have been raised in his original motion for new trial. His arguments also ignore “the existence and the availability of habeas corpus as a means by which a defendant may challenge his convictions.” (Habeas corpus is a civil proceeding that gives convicted prisoners another chance to challenge their case on constitutional grounds in the county where they’re in prison.) “A claim of improper contact with jurors is an issue that has traditionally been raised in habeas corpus cases as well,” the State argues.

Attorneys for Appellant (Mitchum): Sarah Gerwig-Moore, Mercer Habeas Project, Meagan Hurley, E. Addison Gantt, Matthew Gilbo

Attorneys for Appellee (State): J. Thomas Durden, Jr., District Attorney, Billy Nelson, Jr., Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.