



Supreme Court of Georgia

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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, May 19, 2020

10:00 A.M. Session

JOHNS ET AL. V. SUZUKI MOTOR CORPORATION ET AL. (S19G1478)

A man who was severely injured in a motorcycle crash is appealing the apportionment of the \$12.5 million verdict that was in his favor but reduced after the jury found him 49 percent at fault for the wreck.

FACTS: **Adrian Johns** was seriously injured in August 2013 when the front brakes on his Suzuki motorcycle suddenly failed. In February 2014, he and his wife filed a lawsuit in **Douglas County** State Court against the motorcycle's manufacturer, Suzuki Motor Corporation, and its American distributor, Suzuki Motor of America, Inc. Johns's claims for "strict product liability" were based on a design defect, breach of a continuing duty to warn, and negligent recall. The evidence at trial showed that the brake failure was caused by a design defect in the front brake master cylinder that created a corrosive condition, which in turn led to a total leak of brake fluid; that about two months after Johns's wreck, Suzuki issued a recall warning about a

safety defect in the front brake master cylinder; that Suzuki had notice of the issue months before it issued the recall notice and before Johns's wreck; and that Suzuki had received reports of similar accidents prior to Johns's wreck. The evidence also showed that Johns had never changed the brake fluid, contrary to the instructions in the owner's manual.

A jury ruled in the Johnses' favor and against Suzuki on all claims and awarded \$10.5 million to Johns and \$2 million to his wife for "loss of consortium," also known as "loss of companionship." But under Georgia's apportionment statute, Georgia Code § 51-12-33 (a), the jury apportioned 49 percent of the fault to Johns and 51 percent to Suzuki, reducing Johns's award to \$6.375 million after finding that Johns was "comparatively negligent." Suzuki Motor Corp. and Suzuki Motor of America, Inc. then appealed the verdict and Johns appealed the apportionment to the Georgia Court of Appeals, the state's intermediate appellate court, which upheld both judgments. Johns now appeals the apportionment to the Georgia Supreme Court.

ARGUMENTS: Attorneys for the Johnses argue that the Court of Appeals and trial court erred because apportionment based on a plaintiff's fault does not apply to strict liability claims. Negligence considerations have never been part of strict product liability law since the statute was enacted in 1968, the attorneys argue. "The trial court incorrectly reasoned that negligence had been engrafted onto strict product liability claims by the legislature's 2005 enactment of changes to Georgia's apportionment law, so that comparative negligence was now a defense to a strict product liability claim under § 51-1-11. The trial court acknowledged that 'there is no language in the statute' that required that result, but so concluded regardless because 'Plaintiff Adrian Johns's damages in the instant case are subject to *apportionment*.' The trial court's logic is flawed because 'apportionment' and 'comparative negligence' are completely separate legal considerations. The presence of the former says nothing at all about the applicability of the latter." The Court of Appeals "followed the same mistaken path," the attorneys argue. Both courts "erred in using the unrelated change in apportionment law as a justification to bootstrap negligence considerations into strict product liability law."

Attorneys for Suzuki argue that both the trial court and the Court of Appeals correctly ruled that the apportionment statute applies to all the claims asserted by the Johnses, including strict product liability. Although the Johnses argue that the courts' rulings are "radical" and "fundamentally changed the basic structure of Georgia's strict product liability law," that "is not true," the attorneys argue in briefs. "These holdings did not supplant the common law. The Georgia General Assembly did that nearly 15 years ago when it changed the apportionment statute, bringing Georgia in step with a prevailing trend in tort reform." Today, "most jurisdictions that have adopted the doctrine of comparative negligence or fault apply comparative fault principles to strict liability," the attorneys argue. More than 30 states have extended comparative negligence principles to strict products liability, they contend. "Although the Georgia Supreme Court has not yet specifically applied the apportionment statute to a damages award based, in part, on strict liability claims, the Court has issued multiple decisions that unmistakably show apportionment is applicable to strict liability cases," the attorneys argue. "Indeed, the plain language of the statute, the intent of the General Assembly, and all well-reasoned legal precedent point to the same conclusion: Plaintiffs' award must be reduced in accordance with the jury's assessment of fault." Suzuki's attorneys urge this Court to uphold the judgment by two courts that the Johnses' award is subject to apportionment.

Attorneys for Appellants (Johnses): R. Randy Edwards, John Sherrod, David Walbert, Jennifer Coalson

Attorneys for Appellees (Suzuki): Chilton Varner, Susan Clare

PREMIER HEALTH CARE INVESTMENTS, LLC DOING BUSINESS AS FLINT RIVER HOSPITAL V. UHS OF ANCHOR, L.P. DOING BUSINESS AS SOUTHERN CRESCENT BEHAVIORAL HEALTH SYSTEM (S19G1491)

A hospital in Montezuma, GA is appealing a Georgia Court of Appeals ruling that it was required to obtain a “certificate of need” before it reconfigured beds for its psychiatric/substance abuse patients.

FACTS: In 2010, Premier Health Care Investments, LLC obtained a certificate of need (CON) to establish a new 12-bed adult psychiatric/substance abuse program at its Flint River Hospital, an acute care hospital licensed for 49 beds. As the program has grown, Flint River has been using up to 30 of its beds for psychiatric/substance abuse patients, although it has never exceeded its total licensed capacity of 49 beds. In 2016, a competitor – Southern Crescent Behavioral Health System – wrote to the Georgia Department of Community Health, alleging that Flint River was violating its certificate of need by having more than 12 psychiatric/substance abuse beds. The department investigated and sent a letter to Flint River ordering it to cease-and-desist from offering services beyond the 12 beds the certificate of need authorized. However, after Flint River appealed, the Commissioner of the Department of Community Health issued a final decision in which the Commissioner reversed the hearing officer’s decision. The Commissioner reasoned that Flint River had prior authority through the certificate of need to offer psychiatric/substance-abuse beds; that the reconfiguration of other beds for that authorized use did not exceed Flint River’s licensed bed capacity; and that the reconfiguration did not otherwise trigger the need for a new certificate of need. Southern Crescent subsequently appealed to the Fulton County Superior Court, but that court upheld the Commissioner’s decision. Southern Crescent then appealed to the Court of Appeals, the state’s intermediate appellate court, which reversed the trial court’s decision, ruling that Flint River was required to obtain a new certificate of need because it had redistributed beds for psychiatric/substance abuse patients beyond the number authorized in its certificate of need. Flint River now appeals to the Georgia Supreme Court, which has agreed to review the case to determine whether the Court of Appeals erred in deciding that the Department of Community Health was authorized to promulgate a rule to create a category of “institutional health services” requiring a certificate of need that is not listed in Georgia Code § 31-6-40 (a).

ARGUMENTS: Attorneys for Flint River argue that the Court of Appeals erred. In Georgia Code § 31-6-40 (a) (1)-(8), “the General Assembly provided an *exclusive* list of ‘new institutional health services for which a health care provider must obtain a certificate of need prior to offering those services,’” the attorneys argue in briefs. Under the statute, “new institutional health service” means a clinical health service that was not offered in the prior 12-month period or “any increase in the bed capacity of a health care facility.” “It is undisputed that at all times Flint River had CON approval for the clinical health services it offered and had CON approval for its total bed capacity” Flint River ‘redistributed’ beds among its approved clinical services (namely medical/surgical services and psychiatric services) but without ever increasing its total bed capacity. Because ‘bed redistribution’ is not covered by Georgia Code § 31-6-40 (a),

Flint River was not required to obtain a new CON prior to redistributing beds among previously approved services.” Furthermore, although prior to 1983, the General Assembly required CON approval prior to bed redistribution among approved categories of clinical services, the General Assembly removed that requirement in 1983 and never reintroduced it. The Court of Appeals erred in finding that the department could add by administrative rule a new category of “new institutional health service” that was not specifically authorized by § 31-6-40 (a). That rule, called the Psychiatric Rule, appears to require CON approval for bed reconfiguration. “If read in this manner, the Psychiatric Rule creates a new category of ‘new institutional health services’ that directly conflicts with § 31-6-40 (a),” and the Department may not promulgate a rule that is contrary to a controlling statute, the attorneys argue. “The Court of Appeals ignored the plain language of §31-6-40 (a) and its statutory history, this Court’s prior decisions regarding statutory history and agency authority, and the Department’s own determination that Flint River did not need to obtain a CON. In so doing, the Court of Appeals elevated a rule over a statute and judicially resurrected a CON requirement the General Assembly purposefully abandoned in 1983.” “The Court of Appeals opinion should thus be reversed.”

Attorneys for Southern Crescent argue the Court of Appeals made the right decision. The appellate court ruled that Flint River’s “reconfiguration” of beds violates the Department of Community Health’s own Rule 111-2-2-.26 (1) (a), known as the “Psychiatric Rule,” which requires CON authorization for an addition of inpatient psychiatric beds. “In fact, Flint River provides essentially no general hospital services at all, only treating psychiatric patients that it recruits from across the state,” the attorneys contend. The sole question here is whether the Department was authorized to promulgate the Psychiatric Rule in the first place. The answer is yes, the attorneys argue, and this Court should affirm the Court of Appeals decision. First, the certificate of need statute, Georgia Code § 31-6-1, grants the Department of Community Health broad authority to promulgate rules, particularly in the area of psychiatric services. Second, the list of “new institutional health services” provided under § 31-6-40 (a) is not exclusive, Southern Crescent’s attorneys argue, because the list is introduced with the word “include.” Third, another statute, Georgia Code § 31-6-41 (a) necessitates the Psychiatric Rule, the attorneys argue. “Under that statute, a CON is valid only for its defined ‘scope’ as ‘approved by the Department of Community Health.’ The Psychiatric Rule...is not merely *consistent* with this statute, it is required by it.” Finally, when the Department promulgated the Psychiatric Rule, it first sent the rule to legislative counsel, where it received no objection. “Under Georgia law, such acquiescence establishes that the General Assembly agreed that the Psychiatric Rule is consistent with the CON statute,” attorneys for Southern Crescent argue. “For these reasons, this court should AFFIRM the Court of Appeals order.”

Attorneys for Appellant (Flint River): Christopher Anulewicz, Austin Alexander
Attorneys for Appellee (Southern Crescent): Robert Threlkeld, Ryan Burke