



SANDERS V. AHMED, 364 S.W.3D 195 (Mo. Banc 2012)
DECIDED APRIL 3, 2012

In a recent opinion, the Missouri Supreme Court rejected constitutional challenges to several provisions pertaining, among others, to wrongful death medical malpractice actions, explained the discretion afforded a trial judge in terms of allowing periodic payments for future damages, and clarified a general point regarding preservation of error and motions for directed verdicts.

Plaintiff Sanders filed a wrongful death medical malpractice action against a neurologist and the neurologist's employer based on prescription of a medication which allegedly caused his wife's death. After the jury returned a verdict awarding \$9.2 million in non-economic damages, the trial court entered judgment reducing the non-economic damages to \$1,265,207.64 in accordance with the non-economic damages caps of § 538.210, RSMo 2000, which was in effect at the time of the alleged negligence. Defendants appealed the judgment, as well as the denial of a reduction pursuant to § 537.060 and the denial of periodic payments for future damages under § 538.220. Plaintiff challenged the constitutionality of the damages caps of §538.210 and the periodic payments under § 538.220.

Plaintiff's constitutional challenge to § 538.210 included that the statute violates the right to trial by jury and separation of powers. In rejecting Plaintiff's right to trial by jury argument, the Court noted that Missouri does not recognize a common-law claim for wrongful death. Thus, since the legislature has the power to and did create the cause of action for wrongful death, it also has the power to define the remedy available, including putting caps or limits on that remedy.

As to separation of powers, Plaintiff argued the non-economic damages limitation interferes with the judiciary's performance of its constitutionally assigned power to render judgments in conformity with the jury's verdict and to enforce judgments upon the verdict because it prevents the collection of the amount of damages that the jury found to be fair and appropriate. In rejecting this argument, the Court again focused upon the fact that the wrongful death cause of action is a statutory creation. Thus, the cap of § 538.210 neither interferes with the jury's ability to render the verdict nor with the judge's task of entering judgment; rather, it informs these duties.

As for periodic payments pursuant to § 538.220, the Defendants argued the trial court erred in refusing to order that the future damages awarded by the jury could be made in periodic payments pursuant to § 538.220. Plaintiff responded that § 538.220 is unconstitutional in that, among other things, it infringes upon the right of trial by jury and separation of powers. The Court again rejected the constitutional arguments on the basis that the legislature may define remedies for statutory causes of action and may place limits on those statutorily created remedies. The Court also held, however, that no error had been committed in the trial court's refusal to grant periodic payments of future damages. The jury's verdict designated \$7.5 million in future non-economic damages and \$1.7 million in past non-economic damages. The application of § 538.210.1 reduced the amount of recoverable non-economic damages to \$1,265,207.64. Since the amount of non-economic damages recoverable after applying the caps is less than the total amount of past non-economic damages determined by the jury, it was within the trial court's discretion to assign the entire \$1,265,207.64 as past non-economic damages, thereby making them immediately payable.

The Defendants also argued the trial court erred in denying their motion for reduction of the verdict by the amounts of settlements with joint tortfeasors pursuant to §537.060. Plaintiff countered that in order



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to be entitled to such a reduction, Defendants must plead and prove a medical malpractice action against each settling defendant for whose payment they claim a reduction. In rejecting Plaintiff's argument, the Court noted that for purposes of statutory reduction, a rebuttable presumption of joint liability for the same injury or wrongful death can arise from the plaintiff's pleadings and the ensuing settlement. Once that presumption arises, it falls to the plaintiff to show that the injuries are divisible. Here, Plaintiff alleged the Defendants to be jointly and severally liable and that, along with the later settlement with some of the Defendants, raised a rebuttable presumption that the settlement and suit pertained to the same injury or wrongful death for purposes of § 537.060. Despite the existence of the presumption, however, the burden still remains on the Defendants to plead and prove the existence and applicability of the settlement and the amount paid thereunder.

Finally, the Court addressed a preservation of error issue upon which there have been conflicting court of appeals opinions: whether a motion for directed verdict at the close of plaintiff's evidence is a prerequisite to preserving points on appeal which are later re-raised in a motion for directed verdict at the close of all the evidence. After noting the conflicting opinions, the Court held a motion for directed verdict at the close of plaintiff's case is necessary only if defendant seeks to have the case determined at that point without introduction of additional evidence. If defendant chooses to then put on evidence, the state of the record changes and the case is decided on all the evidence. A motion for directed verdict at the close of all the evidence then becomes the meaningful motion in terms of preservation for appeal. After verdict, a motion for judgment notwithstanding the verdict remains necessary to preserve the issues raised for appeal.

SUBMITTED BY

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