



MISSOURI SUPREME COURT HOLDS NON-ECONOMIC DAMAGE CAP IS UNCONSTITUTIONAL IN MEDICAL NEGLIGENCE CLAIM

DEBORAH WATTS AS NEXT FRIEND FOR NAYTHON KAYNE WATTS v. LESTER E. COX MEDICAL CENTERS D/B/A FAMILY MEDICAL CARE CENTER, LESTER E. COX MEDICAL CENTERS, MELISSA R. HERRMAN, M.D., MATTHEW P. GREEN, D.O., AND WILLIAMS S. KELLY, M.D.
No. SC 91867, DECIDED JULY 31, 2012

Overruling its decision in *Adams By and Through Adams v. Children's Mercy Hosp.*, 832 S.W.2d 898 (Mo. banc 1992), the Missouri Supreme Court in a 4 to 3 decision held that section 538.210 RSMo 2000 is unconstitutional to the extent that it infringes on the jury's constitutionally protected purpose of determining the amount of damages sustained by an injured party. The Court further held that section 538.220 RSMo 2000 gives the trial judge the authority to determine the manner in which future damages shall be paid, including what portion should be paid in periodic installments as to both medical and other future damages, rejecting the defendants' argument that all future damages must be paid in a lump sum.

The underlying facts involved allegedly negligent health care provided to Deborah Watts, which resulted in catastrophic brain injuries to her child, Naython Watts. On October 30, 2006, Mrs. Watts, who was 39 weeks pregnant, went to a clinic associated with defendant Lester E. Cox Medical Centers because she was experiencing cramping and had detected decreased fetal movement. At trial, plaintiff presented evidence that defendant Dr. Melissa Herrman examined Watts but did not perform appropriate tests, failed to notify Watts of the significance of decreased fetal movement, and failed to perform any further diagnostic monitoring. On November 1, 2006, Mrs. Watts was admitted to the defendant hospital due to a lack of fetal movement. Plaintiff's expert testified that fetal monitoring done at 9:10 a.m. indicated fetal hypoxia and acidosis and that the standard of care required immediate Caesarean-section delivery. The c-section delivery, however, was not begun until 10:45 a.m., and Naython Watts was born with catastrophic brain injuries.

The jury returned a verdict in favor of plaintiff and awarded \$1.45 million in non-economic damages and \$3.371 million in future medical damages, which the jury reduced to a present value of \$1,747,600. Defendant Cox requested it be permitted to pay the future damages in periodic payments pursuant to section 538.220, and the trial court entered a payment schedule under which half of the future damages would be paid immediately in a lump sum and half would be paid over a 50-year period at a statutorily required interest rate of 0.26 percent. The trial court also entered judgment reducing plaintiff's non-economic damages to \$350,000 as required by section 538.210.

Plaintiff appealed, asserting that the section 538.210 cap on non-economic damages violates the right to trial by jury, among other provisions of the Missouri Constitution, and that the section 538.220 periodic payment schedule entered by the trial court was arbitrary and unreasonable in that it did not assure full compensation due to the low interest rate applied and the 50-year schedule. Defendant Cox cross-appealed, asserting that the trial court erred in awarding half the future medical damages in a lump sum because section 538.220 requires all future medical damages to be paid pursuant to a periodic payment schedule regardless of when the need for the medical damage payments will arise.

Section 538.210 violates the right to trial by jury and is, therefore, unconstitutional.

The Court began its analysis of the constitutionality of the non-economic damages cap with Article I, section 22(a) of the Missouri Constitution, which provides, "the right of trial by jury as heretofore enjoyed shall remain inviolate..." Based on this section, the Court noted the issue of whether the non-economic damages cap of section 538.210 is constitutional turns on two questions: (1) whether plaintiff's medical negligence action and claim for



(Continued from Page 1)

non-economic damages is included within “the right of trial by jury as heretofore enjoyed;” and (2) whether the right to trial by jury “remain[s] inviolate” when a statutory cap requires courts to reduce the jury’s verdict.

In answering the first question, the Court noted that “heretofore enjoyed” means that “[c]itizens of Missouri are entitled to a jury trial in all actions to which they would have been entitled to a jury when the Missouri Constitution was adopted” in 1820. In other words, if Missouri common law entitled a plaintiff to a jury trial on the issue of non-economic damages in a medical negligence action in 1820, then plaintiff has a state constitutional right to a jury trial on her claim for damages for medical malpractice.

In answering the second question, the Court noted “inviolate” means “free from change or blemish, pure or unbroken.” In other words, if the statutory cap changes the common law right to a jury determination of damages, the right to a trial by jury does not “remain inviolate” and the cap is unconstitutional.

Because the English common law as of 1607, upon which Missouri’s common law is based, recognized medical negligence as one of five types of “private wrongs” that could be redressed in court, the Court held plaintiff’s action for medical negligence, including her claim for non-economic damages, is the same type of case which was recognized at common law when the Missouri Constitution was adopted in 1820. Further, the Court noted that in pre-1820 jurisprudence, statutory caps on damage awards simply did not exist and were not contemplated by the common law. Plaintiff, therefore, has a right to trial by jury on her claim for non-economic damages caused by medical negligence and this “heretofore enjoyed” right as it existed before the adoption of the Missouri Constitution is not subject to legislative limits on damages.

As to whether the non-economic damages cap of section 538.210 allows the right to jury trial to remain inviolate, the Court looked to what has long been recognized to be one of the jury’s primary functions: to determine the plaintiff’s damages. According to the Court, once the right to a trial by jury attaches, as it found it did in this case, the plaintiff must have the full benefit of that right free from the reach of hostile legislation. Section 538.210, however, imposes a cap on the jury’s award of non-economic damages that operates wholly independent of the facts of the case, and, as such, directly curtails the jury’s determination of damages. As a result, it necessarily infringes on the right to trial by jury when applied to a cause of action to which the right to a jury trial attaches at common law, and is, therefore, unconstitutional.

The Court went on to hold its decision in the *Adams* case from 1992 violates the right to a jury determination of damages. *Adams* held that section 538.210 does not violate the right to trial by jury because the cap is applied by the trial court after the jury completes its constitutional task of determining the amount of plaintiff’s economic and non-economic damages. With the current opinion, however, the Court found the reasoning of the *Adams* opinion to be flawed in that it fundamentally misconstrued the nature of the right to trial by jury, specifically permitted legislative limitation of an individual constitutional right, and reached its conclusion without relying on any applicable Missouri law. *Adams*, therefore, is overruled to the extent it holds that the section 538.210 caps on non-economic damages do not violate the right to trial by jury.



(Continued from Page 2)

Section 538.220 affords the trial court discretion to determine what portion of future medical damages will be paid in a lump sum and what portion will be subject to a periodic payment schedule.

As to the periodic payment schedule set out in section 538.220, the Court held the statute grants the trial court discretion as to whether to award future medical damages wholly in periodic payments or in part in a lump sum, which in turn permits the trial court to consider the needs of the plaintiff and the facts of the particular case in deciding what portion, if any, of future medical damages will be paid in a lump sum. The Court further held that the use of a 50-year payment schedule and 0.26 % interest rate in this case virtually guaranteed that inflation in health care costs would result in Naython Watts having insufficient funds to pay his future medical costs, thereby affording plaintiff none of the financial security intended by the statute. On remand, the Court instructed that the trial court should enter a new periodic payment schedule that, consistent with the goal of reducing medical malpractice costs, also will ensure that Naython will receive the benefit of the jury's award of future medical care.

Chief Justice Richard Teitelman delivered the opinion of the Court, in which Justices Stith, Draper, and Midkiff joined. Justice Mary Russell concurred in the opinion as to section 538.220, but dissented as to section 538.210. Justices Breckenridge and Price concurred in the opinion of Justice Russell.

Justice Russell dissented insofar as the majority opinion overruled the *Adams* decision. In her dissenting opinion, Justice Russell finds *Adams* to be well-reasoned and controlling. The dissenting opinion argues section 538.210 does not prevent the jury from assessing damages because it is only after the jury assesses damages that the trial court applies section 538.210. Because the trial court does not apply the law of section 538.210 until after the jury has performed its constitutional fact-finding function, the statute does not violate the constitutional right to a trial by jury under Article I, Section 22(a) of the Missouri Constitution.

It is interesting to note the Court's majority opinion did not mention its own opinion from early April 2012, wherein it rejected a constitutional challenge to section 538.210 in the context of a wrongful death case. *Sanders v. Ahmed*, 364 S.W.3d 195 (Mo. banc 2012). In that case, the Court rejected the plaintiff's argument that section 538.210 violates the right to trial by jury, noting 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. With these two opinions, it seems the Supreme Court has drawn clear lines between what limits may be placed on statutorily created causes of action and those originating in the common law. Also, unanswered in the Watts opinion is the issue of scope of the decision. The statutory non-economic damages caps originally addressed in *Adams* date back to 1986. The current opinion does not address what effect, if any, its holding will have on cases in which the now-unconstitutional caps have been applied. Finally, the opinion does not address whether any and all types of legislative limits on any type of damages in common law cases would be prohibited by the inviolate right to trial by jury.

SUBMITTED BY

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