

MSC Opinion: Edry v. Adelman

23. July 2010 By Julie Lam

Plaintiff filed this medical malpractice action against her OB/GYN, claiming a decrease in her chance of survival due to a year-and-a-half delay in diagnosing her breast cancer, after a node was detected during a routine examination in June 2003. The parties' experts agreed that Plaintiff would have had a 95% chance of survival if she had been diagnosed in June 2003. Plaintiff's expert testified that her survival rate had decreased to 20% by the time she was actually diagnosed in February 2005.

The trial court found that Plaintiff's expert's opinion was not sufficiently reliable to be admissible under MRE 702 and excluded it because it was not based on reliable principles or methods, was contradicted by published literature on the subject, and was not supported by any literature other than inapposite Internet material. The trial court granted Defendants' motion to dismiss, which argued that without Plaintiff's expert's testimony, she could not meet her burden of proof to show a greater than 50% loss of the opportunity to survive, as required by MCL 600.2912a(2).

In a 5-2 [opinion](#) issued on July 22, 2010, the Michigan Supreme Court affirmed the Court of Appeals judgment that the trial court did not abuse its discretion by excluding Plaintiff's expert's testimony, and that because Plaintiff failed to provide sufficient evidence to support her claims, summary disposition was proper. Further, the Michigan Supreme Court determined that the exclusion of Plaintiff's expert's testimony was dispositive of the outcome in this case, and declined to revisit its decision in *Wickens v. Oakwood Healthcare System*, 465 Mich 53; 631 NW2d 686 (2001), which held that "a living person may not recover for loss of an opportunity to survive."

Justices Hathaway and Weaver dissented. The dissent argued that the trial court focused only on one enumerated criterion of MCL 600.2955 to evaluate the reliability of Plaintiff's expert.

Disclaimer: WNJ submitted an *amicus curiae* brief on behalf of the Michigan Health & Hospital Association in support of the prevailing Appellees in this case.