

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
NOVEMBER 18, 2003 Session

**PATRICIA ARCHARD DELL, Admrx. Of the Estate of James A. Archard v.
CECELIA PAYNE WRIGHT, Personal Representative of Earnest Payne, Jr.,
Deceased**

**Direct Appeal from the Circuit Court for Shelby County
No. 71312-3 T.D. Karen R. Williams, Judge**

No. W2003-00461-COA-R3-CV - Filed April 27, 2004

Plaintiff brought suit alleging that Defendant committed medical malpractice in the treatment of Plaintiff's deceased father. Upon conclusion of the trial, the jury found that Plaintiff knew or should have known that Defendant's negligence caused injury to her father more than one year prior to commencement of Plaintiff's suit. Consequently, the trial court entered judgment on the verdict for Defendant, finding that Plaintiff's action is barred by the applicable one-year statute of limitations. Plaintiff appeals the verdict of the jury. For the following reasons, we affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed

ALAN E. HIGHERS, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and DAVID R. FARMER, J., joined.

Leonard E. Van Eaton, Memphis, TN, for Appellant

Bruce A. McMullen, Craig C. Conley, Memphis, TN, for Appellee

OPINION

Facts and Procedural History

On June 25, 1994, James A. Archard ("Mr. Archard") was admitted to St. Joseph's Hospital for treatment of his foot, which suffered from vascular insufficiency and gangrene. Dr. Earnest Payne ("Defendant"), became Mr. Archard's attending physician upon admission. Defendant ordered tests that indicated Mr. Archard was suffering from renal dysfunction. However, despite these results, Defendant did not call for a nephrological consult. Instead, he ordered that Mr. Archard be put on a series of antibiotics. Two days later, Dr. Rodney Martin ("Dr. Martin"), a surgeon,

amputated the fourth and fifth toes of the gangrenous foot and debrided some necrotic tissue. Following surgery, Mr. Archard was alert and able to both walk and communicate.

Mr. Archard's daughter, Patricia Archard Dell ("Plaintiff"), met with Dr. Hugh Williams ("Dr. Williams"), a nephrologist, on July 4, 1994. Dr. Williams had been called in for a consult by the surgeon, Dr. Martin. Dr. Williams explained to Plaintiff that her father was suffering from renal failure and would have to begin dialysis treatments immediately. Mr. Archer began dialysis on July 6 and was attended daily by Drs. Williams and Martin. Defendant no longer treated Mr. Archard after this point. Despite his dialysis treatment, Mr. Archard declined in health and died on July 29 from sepsis.

On July 20, 1995, Plaintiff, as administratrix of her father's estate, instituted a medical malpractice action against Defendant, Dr. Martin, and St. Joseph's Hospital. As part of his answer, Defendant asserted a statute of limitations defense. He maintained that Tenn. Code Ann. § 29-26-116 (2000), which places a one-year limit on medical malpractice claims, had already run by July 20, 1995. Dr. Martin and the hospital were both voluntarily dismissed from the action, and the case proceeded to trial by jury beginning September 16, 2002. After hearing arguments, the jury concluded that "on or before July 19, 1994, Patricia Archard Dell, knew or reasonably should have known that an injury had occurred to Mr. James A. Archard through the negligence of defendant, Earnest Payne, M.D." The trial court then entered judgment on the jury's verdict, ruling that Plaintiff's cause of action is barred by the applicable statute of limitations. Plaintiff then filed a motion for a new trial, which was denied on January 21, 2003. Plaintiff thereafter filed this appeal challenging the judgment entered below.

Issues

Plaintiff raises one issue, as we perceive it, for our consideration:

Whether the jury erred in finding that Plaintiff knew or should have known that Mr. Archard had suffered an injury on or before July 19, 1994, where there was no identifiable injury prior to the death of Mr. Archard on July 29, 1994.

Standard of Review

The standard of review for judgments based on jury verdicts is well-settled: Our review of the judgment entered on the jury's verdict is governed by rule 13(d) of the Tennessee Rules of Appellate Procedure, which provides that "[f]indings of fact by a jury in civil actions shall be set aside only if there is no material evidence to support the verdict." Tenn. R. App. P. 13(d). Under this standard of review, we "are not at liberty to weigh the evidence or to decide where the preponderance lies, but are limited to determining whether there is material evidence to support the verdict." *Crabtree Masonry Co. v. C & R Constr., Inc.*, 575 S.W.2d. 4, 5 (Tenn. 1978). In making this determination, we are "required to take the strongest legitimate

view of all the evidence in favor of the verdict, to assume the truth of all that tends to support it, allowing all reasonable inferences to sustain the verdict, and to discard all to the contrary.” *Id.* If the record contains any material evidence to support the verdict, we must affirm the trial court’s judgment. *See id.; accord Forrester v. Stockstill*, 869 S.W.2d 328, 329 (Tenn. 1994).

Mills v. Solomon, 43 S.W.3d 503, 507-08 (Tenn. Ct. App. 2001).

Law and Analysis

In this appeal, Plaintiff challenges the jury’s finding of fact regarding Defendant’s statute of limitations defense. In Tennessee, medical malpractice actions are governed, in part, by Tenn. Code Ann. § 29-26-116, which provides:

- (a)(1) The statute of limitations in malpractice actions shall be one (1) year as set forth in § 28-3-104.
- (2) In the event the alleged injury is not discovered within the said one (1) year period, the period of limitation shall be one (1) year from the date of such discovery.

Under subsection two of this provision, the period of limitation is tolled until the plaintiff “discovers” the injury giving rise to a cause of action. The Tennessee Supreme Court has interpreted this discovery rule to mean that “the statute of limitations commences to run when the patient ‘discovered, or reasonably should have discovered, (1) the occasion, the manner, and the means by which a breach of duty occurred that produced [the patient’s] injuries; and (2) the identity of the defendant who breached the duty.’” *Shadrick v. Coker*, 963 S.W.2d 726, 733 (Tenn. 1998) (quoting *Stanbury v. Bacardi*, 953 S.W.2d 671, 677 (Tenn. 1997)). Plaintiff challenges the jury’s finding, pursuant to the discovery rule, that Plaintiff knew or should have known by July 19, 1994 that Mr. Archard had sustained an injury due to the negligence of Defendant. Plaintiff argues that there was no identifiable injury prior to Mr. Archard’s death on July 29, 1994 and, consequently, that the period of limitation could not have started until that date.

As we conduct our analysis, we are mindful of the strong presumption of correctness enjoyed by jury verdicts. We may only set aside a jury’s finding of fact if no material evidence supports the verdict. Tenn. R. App. P. 13(d). In making our determination, we are “required to take the strongest legitimate view of all the evidence in favor of the verdict, to assume the truth of all that tends to support it, allowing all reasonable inferences to sustain the verdict, and to discard all to the contrary.” *Mills*, 43 S.W.3d at 507-08 (quoting *Crabtree Masonry Co.*, 575 S.W.2d at 5). In light of this exacting standard of review, we cannot say that the jury erred in finding that “on or before July 19, 1994, Patricia Archard Dell, knew or reasonably should have known that an injury had occurred to Mr. James A. Archard through the negligence of defendant, Earnest Payne, M.D.” As an initial matter, deposition testimony was read to the jury, in which Plaintiff admitted that, in her mind, she knew Defendant had committed malpractice in his care of Mr. Archard as of July 17, 1994. In addition, there was evidence from which the jury could find that Mr. Archard suffered an

identifiable injury prior to his death. There was the expert testimony of Dr. Richard M. Work that Defendant's negligence caused an injury by worsening Mr. Archard's renal failure in the days prior to his death, as well as testimony that Mr. Archard suffered increasing weakness throughout his stay at St. Joseph's Hospital, which could be construed to give notice of his injury. Although we sympathize with Plaintiff's loss, by allowing all reasonable inferences from the evidence to sustain the verdict, we cannot hold that the jury erred in its factual finding.

Conclusion

For the foregoing reasons, we affirm the verdict of the jury below. Costs of this appeal are taxed to the Appellant, Patricia Archard Dell, and her surety, for which execution may issue if necessary.

ALAN E. HIGHERS, JUDGE