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Supreme Court rules on exclusion of expert witness affidavit in malpractice case

SANTA FE – The state Supreme Court ruled today that a trial court acted properly in striking a sworn statement of an expert witness in a medical malpractice case because it was filed months after a court-imposed deadline for submitting such evidence.

In a unanimous opinion, the Court concluded that the district court in Bernalillo County “properly exercised its inherent authority to enforce its scheduling order” that governed when certain events must occur in the case.

The justices rejected arguments that the trial court had effectively imposed a sanction of dismissal of the case by its decision to exclude the affidavit from an expert witness for Suzanne Burns, a Sandoval County woman who sued Presbyterian Healthcare Services (PHS) and Dr. Navjeet Kaur.

The affidavit by the expert witness, Dr. Walid Arnaout, sought to establish that Burns’ injuries were caused by a bile leak that went undiagnosed before her initial discharge.

Burns alleged in her lawsuit that she suffered injuries and damages because of negligent medical treatment after gallbladder surgery in 2014. Dr. Kaur discharged her from Presbyterian Hospital in Albuquerque a day after the surgery despite abnormal test results for liver function.

Burns returned to the hospital’s emergency room three days after her surgery and was treated for pneumonia and a blockage in arteries in both lungs. She was discharged six days later, but returned again to the emergency room in two days with abdominal pain. She was then diagnosed with a bile leak and remained in the hospital for several weeks undergoing treatment.

In a pretrial deposition responding to questions from PHS, Dr. Arnaout said he did not know when the bile leak occurred and whether it was diagnosable before Burns was initially discharged.

After the deadline for the parties to share evidence and witnesses, the defendants filed a motion for summary judgment and contended there was no evidence to prove their treatment caused Burns’ injuries. The next day, Burns filed an amended expert witness disclosure stating that Dr. Arnaout would testify that the medical providers caused her injuries and damages by discharging her initially without following up on the abnormal test results.

Burns followed up by filing a response to the summary judgment motion. Attached to the response was an affidavit by Dr. Arnaout stating that he believed to a “reasonable degree of medical probability” that the bile leak occurred before Burns’ initial discharge from the hospital and that it would have been detected by “any reasonable investigation” into the cause of the liver function test results.

The defendants asked the court to strike Dr. Arnaout’s affidavit, arguing that it provided new and contradictory evidence about the doctor’s expert opinion. The court granted the request after a hearing. The court also granted summary judgment in the case in favor of the defendants because there was no admissible evidence to show the medical providers’ alleged negligence caused Burns’ injury.

Burns appealed. The state Court of Appeals held that the trial court did not abuse its discretion in striking the affidavit as a sanction for its late disclosure. Burns again appealed.

The Supreme Court affirmed the Court of Appeals’ decision on different legal grounds.

“In the present case, the record shows the district court did not impose a sanction but instead exercised its authority to enforce a scheduling order by granting Defendants’ motion to strike the expert’s untimely affidavit,” the Court wrote in an opinion authored by Eleventh Judicial District Court Judge Curtis R. Gurley, who was designated to serve on the Supreme Court panel for the case.

“Specifically, the district court found the affidavit – which was meant to supplement the expert disclosure – was filed over three months after the scheduling order deadline. While trial courts may amend a scheduling order when a party shows good cause, Plaintiff never sought to amend the scheduling order.”

The district court found that the late-offered affidavit was prejudicial to the defendants, the Court explained. Had the affidavit been allowed after the time for exchanging evidence, the defendants would have needed to conduct new dispositions of witnesses, refile certain pretrial motions and it would have delayed a scheduled jury trial.

Because the trial court’s decision “was not ‘without logic or reason,’ there was no abuse of discretion in making this determination,” the Court concluded.

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To read the decision in *Burns v. Presbyterian Healthcare Servs.*, No. S-1-SC-40434, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/537787/index.do>

