

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-14-930

ROCHELLE THOMPSON AND
TIMOTHY THOMPSON

APPELLANTS

V.

TYSON FOODS, INC.

APPELLEE

Opinion Delivered APRIL 15, 2015

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. CV-11-571]

HONORABLE JODI RAINES DENNIS,
JUDGE

REBRIEFING ORDERED

DAVID M. GLOVER, Judge

Appellants Rochelle and Timothy Thompson appeal from the Jefferson County Circuit Court’s grant of summary judgment to appellee Tyson Foods, Inc. On appeal, the Thompsons argue that Tyson was not entitled to summary judgment as a matter of law. For the reasons discussed below, this case must be rebriefed.

The Thompsons’ Complaint

The Thompsons asserted multiple allegations against Tyson. Initially, they alleged Timothy Thompson was employed by Tyson as a night-shift forklift operator; on September 30, 2008, at the end of his shift, he became ill as he was attempting to clock out and began exhibiting signs of a stroke; he fainted and fell to the floor unconscious; he was taken to the nurse’s station by other employees, where he was lethargic and unable to speak clearly; he informed the staff that he had “blanked out,” was dizzy, and did not know what had happened; and he could not write his name or state his address.

The Thompsons alleged Timothy was unable to operate a car at that time and was dependent on the help of the other employees to access medical treatment; Tyson had in effect policies that defined its duty as an employer to employees who fainted, suffered a stroke, or were dizzy; and Tyson did not follow these policies because an ambulance was not called, Timothy's vital signs were not checked, his pupillary response was not checked, and immediate transportation was not arranged. Instead, Timothy was required to submit to a urinalysis, even though he was confused, unstable, and disoriented as to time and place. The Thompsons alleged Rochelle received a call from a Tyson supervisor indicating that Timothy had an incident at the time clock and one of the supervisors would be driving him home; the driver dropped Timothy off in the driveway, leaving him to walk into the house on his own; Timothy could not speak and was just moving his mouth and waving his hand; and he was lethargic and not oriented as to time or place. Rochelle took his blood pressure and eventually took him to the hospital, where it was determined that he had suffered a stroke.

The Thompsons alleged that because of the delay in getting emergency treatment for Timothy, some medical procedures that would have helped him and ameliorated some of the side effects of the stroke could not be performed and, that around 6:00 a.m. on the morning of September 30, 2008, Timothy suffered a major stroke, resulting in paralysis on his right side, an inability to communicate, and an inability to take care of himself.

The Thompsons alleged that Tyson was negligent as to training, supervising, and monitoring its employees, contending that Tyson had a duty to abide by legal and medical standards, rules, and laws with respect to care and treatment of employees who are rendered

helpless as a result of a medical condition. They further alleged that Tyson breached these duties due to its failure to properly train, supervise, and monitor its employees concerning the care and treatment of employees who suffer injuries that render them helpless because Tyson's employees did not follow its policies and procedures when they failed to provide immediate care; failed to call 911; failed to take Timothy to a hospital; dropped Timothy off at his house and failed to help him in the front door; delayed by an hour treatment for Timothy's condition, which resulted in a major stroke; and failed to obtain and record vital signs, pupillary responses, blood pressure, and medical history. The Thompsons alleged that Tyson was negligent in failing to provide emergency medical treatment, failing to render medical aid to a sick employee necessary to save his life and prevent great injury, and, having undertaken the duty to provide medical assistance, was negligent in its acts and omissions in failing to provide the appropriate medical assistance.

The Thompsons alleged that Tyson breached an implied contractual obligation because Tyson contracted with its employees to follow the policy and procedures that it promulgated to provide qualified and trained medical personnel that would comply with Occupational Health Services policies and procedures and provide team members occupational health services, including injury and illness prevention. The Thompsons alleged that Tyson employed an LPN or an LVN and had written policies for a stroke, which call for immediate transfer to a hospital emergency department; dizziness, which call for referral to a personal physician if dizziness does not resolve within fifteen minutes; and also a fainting policy, which calls for transportation to a hospital emergency room. Finally, the Thompsons alleged that

Tyson failed to follow these policies, and as a result, the Thompsons were damaged.

Summary-Judgment Pleadings

Tyson answered and also moved for summary judgment. In its motion for summary judgment, Tyson contended that this was a medical-malpractice case governed by the Arkansas Medical Malpractice Act; that the Thompsons identified a registered nurse as their expert witness; that a registered nurse is not qualified to give expert opinion testimony as to the element of proximate causation in a medical malpractice case; and that Tyson was submitting the report of Dr. Hank Simmons, who was of the opinion that there was no causal connection between any act or omission of Tyson and the alleged medical injuries suffered by Timothy. The Thompsons resisted Tyson's motion, asserting that it was not an action for medical injury and thus the medical malpractice act did not apply; rather, it was an action for negligent training, supervision, and monitoring; breach of implied contract; negligence in failing to provide emergent medical treatment; and negligence in failing to provide appropriate medical assistance. The Thompsons stated that they had identified a registered nurse as an expert, but that after Tyson came forward with Dr. Simmons, they then identified Dr. Bob Gale, M.D., to respond to Dr. Simmons's testimony.

However, the Thompsons made no mention in either their response to Tyson's motion for summary judgment or their brief in support of their response stating what Dr. Gale's opinion was or how it contradicted Dr. Simmons's assertions that there was no causal connection between any act or omission by Tyson and Timothy's medical injuries. For some reason, Tyson filed a combined supplemental brief in support of summary judgment and

motion to strike plaintiffs' expert, Dr. Gale, to which it attached Dr. Gale's deposition, arguing that Dr. Gale was not qualified to provide the requisite expert testimony and, even if he was, he could not testify regarding the issue of causation within a reasonable degree of medical certainty. The motions were argued May 22, 2014. On July 21, 2014, the trial court entered an order granting Tyson's motion for summary judgment without explanation. The Thompsons then filed this appeal.

Rebriefing

Arkansas Supreme Court Rule 4-2(a)(5)(A) provides, in pertinent part, "All material parts of all hearing transcripts, trial transcripts, and deposition transcripts must be abstracted, even if they are an exhibit to a motion or other paper." Dr. Gale's deposition is in the record because Tyson attached it to its motion to strike plaintiffs' expert, Dr. Bob Gale. Due to the disposition of the case on Tyson's motion for summary judgment, there was never any action taken on the other portion of Tyson's "combined" motion, i.e., the motion to strike Dr. Gale as an expert. Notably, the Thompsons did not submit Dr. Gale's deposition with their own response to Tyson's motion for summary judgment or with their brief in support of their response to the motion for summary judgment; in fact, aside from identifying Dr. Gale and his credentials, the Thompsons did not mention or rely on anything concerning him or his opinion. But, the deposition is contained in the addendum, and as such, it is required by our rules to be abstracted.

Rebriefing ordered.

GLADWIN, C.J., and HOOFFMAN, J., agree.

Willard Proctor, Jr., P.A., by: *Willard Proctor, Jr.*, for appellants.

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., by: *Benjamin D. Jackson* and *Brian A. Pipkin*, for appellee.