

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA09-988

CINDY GILBOW

APPELLANT

V.

FRASER M. RICHARDS, M.D.

APPELLEE

Opinion Delivered April 14, 2010

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT
[CV-2006-418]

HONORABLE JOHN N.
FOGLEMAN, JUDGE

REBRIEFING ORDERED

DAVID M. GLOVER, Judge

Cindy Gilbow, as administratrix of the estate of Dub Sacridier, filed a wrongful-death action against Dr. Fraser Richards, Dr. Jack Havdala, and St. Bernards Hospital, Inc., d/b/a St. Bernards Regional Medical Center a/k/a St. Bernards Medical Center (St. Bernards). The complaint alleged that the doctors breached the standards of care of cardiologists and cardiovascular surgeons by proceeding with a coronary-bypass surgery on the decedent without first repairing the mitral valve, resulting in embolic stroke injuries, death, and other damages that would not have otherwise occurred, as well as mental anguish to the surviving spouse and daughters. The complaint further alleged that the hospital breached its duty of care by allowing methicillin resistant staphylococcus bacterial infection to exist in the hospital so as to constitute a contaminated field, which resulted in a massive infection, injury, death,

and damages to the decedent, as well as extreme mental anguish of the surviving spouse and daughters.

This appeal is from the order granting a directed verdict to Dr. Fraser Richards. On appeal, Gilbow argues that the trial court committed reversible error in permitting the doctor to interrupt the testimony of her medical expert and to file in open court a written motion in limine and brief excluding the expert's testimony, having failed to raise such motion during pretrial; that the trial court abused its discretion and committed reversible error by refusing to permit her expert witness to testify; and that the "same or similar locality rule" violates her right to fundamental fairness, due process of law, equal protection, and the right to a jury trial under state and federal constitutions. For the reason discussed below, we cannot address the merits of the case at this time and must remand for rebriefing.

Rule 4-2(a)(8) (2009)¹ of the Arkansas Rules of the Supreme Court provides that the addendum shall contain not only the order appealed from, but also "any other relevant pleadings, documents, or exhibits essential to an understanding of the case and the Court's jurisdiction on appeal." In this case, appellant has failed to include in her addendum the order granting summary judgment to St. Bernards or the order of dismissal without prejudice in favor of Dr. Havdala. These documents go to our court's jurisdiction and are therefore required by our rules to be included in the addendum.

¹We note that significant changes to Rule 4-2 were made pursuant to our supreme court's per curiam of October 29, 2009, and that the new provisions were effective on January 1, 2010. However, appellant's brief was filed in this case on November 19, 2009; therefore, the old version of the rule is applicable to this appeal.

We further note in ordering rebriefing that appellant has included almost 200 pages of abstracted testimony from the family and other witnesses that is irrelevant to the point on appeal of whether the expert medical witness presented sufficient evidence of the local standard of care in Jonesboro, Arkansas. Rule 4-2(a)(5) provides that the abstract shall contain an “impartial condensation . . . of only such material parts of the testimony . . . as are necessary to an understanding of all questions presented to the Court for decision.” In this case, only the medical expert’s testimony is necessary to determine the questions raised on appeal, and appellant should also comply with Rule 4-2(a)(5) upon rebriefing. Appellant shall have fifteen days to file a substituted abstract, addendum, and brief; if this is not done, we will summarily affirm for noncompliance with the rule.

Rebriefing ordered.

GLADWIN and KINARD, JJ., agree.