

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

CHARLOTTE HENNEGAN, Individually	:	
and CHARLOTTE HENNEGAN, as the	:	C.A. No.: 07C-02-015 RBY
Executrix of the Estate of CHARLES T.	:	
HENNEGAN, III, and PATRICIA	:	
LITZENBERGER, ELIZABETH	:	
HOEFFLER, MARY PRUCHNIEWSKI,	:	
MARGARET MOSETTI, Daughters of	:	
Charles T. Hennegan, III,	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CARDIOLOGY CONSULTANTS, P.A.,	:	
and ALI DELBAKSHSH, M.D.,	:	
	:	
	:	
Defendants.	:	

Submitted: June 6, 2008

Decided: July 15, 2008

Upon Consideration of Defendants'  
Motion for Summary Judgment

***GRANTED***

**OPINION AND ORDER**

Stephen A. Hampton, Esq., Grady & Hampton, LLC, Dover, Delaware for Plaintiffs.

Michael B. Snyder, Esq., Snyder, Weltchek & Snyder, Baltimore, Maryland for Plaintiffs.

Dennis D. Ferri and Amy A. Quinlan, Esq., Morris, James, LLP, Wilmington, Delaware for Defendants.

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Defendants, Cardiology Consultants and Ali Delbakhsh, M.D., filed a Motion for Summary Judgment, pursuant to Superior Court Civil Rule 56 and 10 *Del. C.* §3724(e). This case has a substantial amount of history, spanning three separate case numbers and two distinct allegations of acts of medical negligence. The Defendants' Motion for Summary Judgment is **GRANTED** because the Defendants are entitled to judgment as a matter of law pursuant to both the wrongful death statute and the releases of the parties.

### ***Facts and Procedural History***

In December of 2003, Charles T. Hennegan, III ("the decedent") underwent a surgical procedure at Christiana Hospital. During the surgery, there was a fire that caused Mr. Hennegan significant burns to his upper body, face and airways. The decedent and his wife filed a medical malpractice suit on August 4, 2004 against Christiana Care Health Services, Inc., Christiana Hospital and/or Christiana Care Health System, Mary V. McVeigh, CRNA, Mitchell E. Zebrowski, M.D., Anesthesia Services and Piamsook Angkeow, M.D. This case continued until after Mr. Hennegan's death on February 24, 2005. Thereafter, the decedent's estate and daughters were substituted as plaintiffs. The complaint also was amended to include a wrongful death count. This case settled in December 2005, and all plaintiffs signed releases. Evidently, only Mrs. Hennegan actually received money from the settlement. The daughters, plaintiffs in their own right exclusively because of the wrongful death statutes, reportedly did not receive money directly from the

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settlement.<sup>1</sup> Money, of course, is not the only type of recognized consideration.

In February of 2005, Mr. Hennegan was admitted to Beebe Medical Center (“Beebe”) for surgery to remove plaque from an artery in his neck. The surgery took place on February 18<sup>th</sup>. While recovering from surgery, Mr. Hennegan died at Beebe on February 24, 2005.

In March 2006, Mrs. Hennegan and her four daughters filed suit against Beebe Medical Center, Inc. for medical malpractice.<sup>2</sup> That suit was dismissed voluntarily on February 21, 2007.

On February 12, 2007, the current suit was filed against Cardiology Consultants and Ali Delbakhsh, M.D. It is a medical malpractice action with a wrongful death component. The complaint alleges negligence at Beebe in February of 2005. The current Defendants filed a Motion for Judgment on the Pleadings, which was treated as a Motion for Summary Judgment because matters outside the pleadings were presented. It was denied without prejudice. In the denial, the Court said the “issue may be one that is presentable after unopposed affidavits or discovery on the topic or trial.”<sup>3</sup>

### ***Standard of Review***

A motion for summary judgment should be granted if the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to

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<sup>1</sup> Def. Mot. Ex. I-K.

<sup>2</sup> *Hennegan v. Beebe Medical Center, Inc.*, C.A. No. 06C-03-047, (Del. Super.).

<sup>3</sup> *Hennegan v. Cardiology Consultants, P.A.*, 2007 WL 4200811, at \*3 (Del. Super. Sept. 6, 2007).

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judgment as a matter of law.<sup>4</sup> The facts must be viewed in the light most favorable to the non-moving party.<sup>5</sup> When the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.<sup>6</sup> The burden of proof is initially borne by the moving party.<sup>7</sup> If the movant meets this burden, then the burden shifts to a non-moving party to demonstrate the existence of material issues of fact.

### ***Discussion***

#### *Wrongful Death Statute*

The wrongful death cause of action is a creature of statute.<sup>8</sup> Because it is foreign to common law, the statutes must be construed strictly.<sup>9</sup> Statutes in derogation of common law are so construed in order to avoid extending the statute any further than the Legislature intended.<sup>10</sup> However, statutes should not be construed so narrowly as to strip them of the intended meaning.<sup>11</sup>

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<sup>4</sup> Super. Ct. Civ. R. 56(c).

<sup>5</sup> *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. Ct. 1995).

<sup>6</sup> *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

<sup>7</sup> Super. Ct. Civ. R. 56(e); *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979)(citing *Ebersole v. Lowengrub*, 180 A.2d 476 (Del. 1962)).

<sup>8</sup> 10 *Del. C.* §§3721-3725.

<sup>9</sup> *Saunders v. Hill*, 202 A.2d 807 (Del. 1964), *Magee v. Rose*, 405 A.2d 143, 146 (Del. Super. Ct. 1979).

<sup>10</sup> 73 *Am. Jur.* 2d *Statutes* § 191.

<sup>11</sup> *Id.*

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Delaware’s Wrongful Death Act has limited availability. “Only 1 action under the subchapter lies in respect to the death of a person.”<sup>12</sup> This subsection does not appear to be vulnerable to disparate meanings. “When statutory language is clear, unambiguous, and consistent with other provisions of the same legislation, the court must give effect to its intent.”<sup>13</sup> Further: “A court may not engraft upon a statute language which has been clearly excluded therefrom.”<sup>14</sup> The word “action” means “a civil or criminal judicial proceeding.”<sup>15</sup>

In enacting the Wrongful Death Act, the Legislature had the opportunity to elaborate in this subsection, had that been the intent. However, the Legislature undertook a different intent. In the section entitled “Purpose”, it said, “[t]he purpose of this subchapter is to permit the recovery of damages not limited to pecuniary losses by persons injured as the result of the death of another person.”<sup>16</sup> When read together, the Legislature instructs that the Wrongful Death Act is to allow the pursuit of recovery of damages resulting from the death of another person, but to allow such pursuit only one time. The statutes create but one cause of action. Notably, the Legislature does not limit the suit in any other way, which might give more room for

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<sup>12</sup> 10 *Del. C.* §3724(e).

<sup>13</sup> *In re Adoption of Swanson*, 623 A.2d 1095, 1097 (Del. 1993)(citing *Seth v. State*, 592 A.2d 436, 440 (Del. 1991)).

<sup>14</sup> *Id* (citing *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982)).

<sup>15</sup> Black’s Law Dictionary (8th ed. 2004). “[I]t is defined to be any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree. The action is said to terminate at judgment.”

<sup>16</sup> 10 *Del. C.* §3725.

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interpretation. For instance, the statute does not describe the limit as “one recovery, one judgment or one success.” The Court is not permitted to infer language that does not appear in the statute. When the Plaintiffs amended the first suit to include a wrongful death component, and then settled that suit, the opportunity for recovery bestowed by the Legislature was exhausted.

The cases interpreting this statute have not faced this precise issue. Rather, earlier cases have involved multiple plaintiffs suing the same defendant in separate suits. Certainly, limited case law does not necessarily designate a single legislative intent when a broader interpretation is warranted as well.

However, Plaintiffs’ attempt to explain away the wrongful death component of the complaint fails. In arguments, Plaintiffs’ attorney suggested that the incident at Christiana did not give rise to an appropriate wrongful death claim. He stated that a wrongful death action did not lie against the defendants in the first suit. Nevertheless, that suit was settled, dismissed in its entirety with prejudice, containing the wrongful death claim. The benefit of hindsight, however convenient, does not cure the presence of the wrongful death claim in the original action.

Additionally, the second amended complaint of the first action specifically alleges that the incident at Christiana was the proximate cause of the decedent’s death,<sup>17</sup> alleging it as a necessary wrongful act for statutory purposes. Plaintiffs’

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<sup>17</sup> *Hennegan v. Christiana Care Health Services, Inc., et. al.*, C.A. No. 04C-08-006 JTV (Del. Super. 2004) 2<sup>nd</sup> Am. Compl. ¶40.

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then-experts supported this allegation with initial causation opinions.<sup>18</sup> Plaintiffs' first theory of the case wove the two allegedly negligent acts together. Clearly, there was a wrongful death component in the first action at the time of settlement. The Plaintiffs are not in a position now to repudiate the propriety of that wrongful death component.

Finally, no new facts arose between the signing of the release and the filing of this suit. The decedent died almost eight months before the releases were signed. Plaintiffs had access to all of the necessary information, including the wrongful death statute, to make a well-informed decision before the resolution of the first case.

In making this determination, the Court is cognizant of an earlier decision by President Judge Vaughn regarding this same death. President Judge Vaughn for purposes of that prior proceeding, and on the basis of the information then available to him, found the wrongful death statute did not bar Plaintiffs' claims against Beebe Medical Center, the defendant in the second case. At this point, though, the Court has more information before it, including a third suit, on which to base this decision. Additionally, President Judge Vaughn's decision was in the case where Beebe was the only defendant. He relied on the belief that Beebe was not suffering from a harm 10 *Del. C.* §3724(e) sought to prevent. Conversely, under the same analysis, Cardiology Consultants is suffering from such harm.

#### *Releases*

The parties spent considerable time, in the arguments and the briefs, discussing

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<sup>18</sup> This was stated by the attorneys in the oral argument on this Motion. I assume these opinions were found in the Affidavit of Merit.

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the releases. Particularly, the parties looked at two sections. Plaintiffs point to a section which purportedly allows the current suit. Defendants point to the introductory language releasing Cardiology Consultants from all claims.

In contract enforcement, Courts will enforce the intent of the parties as it is expressed in the language of a release.<sup>19</sup> Ambiguity in a contract is one reason courts might not enforce a contractual language.<sup>20</sup> However, “[a] contract is not rendered ambiguous simply because the parties do not agree upon its proper construction. Rather, a contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings.”<sup>21</sup> When the intent of a contract is questioned, it should be read as a whole, reconciling all provisions when possible.<sup>22</sup>

The release at issue is entitled *Joint Tort Feasor Release and Confidentiality Agreement*.<sup>23</sup> It was signed by all of the plaintiffs on October 20, 2005. The first paragraph says that the Plaintiffs,

release and forever fully and completely discharge Piamsook Angkeow, M.D., his employer Cardiology Consultants, P.A. and all their agents and employees . . . from all past, present and future claims . . . of whatever nature and particularly on account of all injuries and damages, known and unknown, both

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<sup>19</sup> *Fox v. Christina Square Assoc., LP*, 1994 WL 146023 (Del. Super. Apr. 5, 1994).

<sup>20</sup> *Kaiser Aluminum Corp. v. Matheson*, 681 A.2d 392, 395 (Del. 1996).

<sup>21</sup> *Id* (citing *Rhone-Poulenc Basic Chems. Co. v. American Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992)).

<sup>22</sup> *Kaiser Aluminum Corp.*, 681 A.2d at 395.

<sup>23</sup> Def. Mot. Ex. F.



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to person and property which resulted or may in the future develop from medical care rendered to Charles Hennegan on or about December 18, 2003, which claim is set forth in the Complaint filed in the Superior Court of the State of Delaware, in and for Kent County, designated C.A. No.: 04C-08-006 JTV.<sup>24</sup> (Emphasis added)

This is unambiguous language releasing Cardiology Consultants, P.A. and its employees without equivocation. It is not susceptible to any other meanings. While the referenced complaint does not allege negligence at Beebe, it does deal with the decedent's death.

Plaintiffs attempt to negate this clear language by reference to the following paragraph in the release.

Releasors and Releasees agree that this Joint Tortfeasor Release and Confidentiality Agreement does not restrict or prevent the Releasors from pursuing any claims of negligence and/or medical malpractice against Beebe Medical Center and/or any health care provider who provided care to Mr. Hennegan subsequent to his admission to Beebe Medical Center on or about February 18, 2005, unless and until Beebe Medical Center is determined to be a joint tortfeasor with the Releasees.<sup>25</sup>

Plaintiffs claim this language can only mean an allowance to sue the current defendants in subsequent litigation. Plaintiffs claim no other meaning would be reasonable.<sup>26</sup> However, it is more reasonable to believe the language was intended to mean other defendants, who were not named elsewhere in the release document.

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<sup>24</sup> *Id.*

<sup>25</sup> *Id* at 4.

<sup>26</sup> Pl. Resp. at ¶2.

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Plaintiffs' interpretation is in direct contravention to the document as a whole. Throughout, the release states a desire to be a final resolution terminating all claims. This provision can be reconciled with the rest of the document only if it refers to unnamed healthcare providers.

Additionally, though – because of the foregoing – this is not critical to the decision herein, this language appears to be an attempt to circumvent the clear language in the Wrongful Death Act. An attempted circumvention of law is invalid and unenforceable.<sup>27</sup> When a statute is in conflict with a contract provision, the statute will override the contract.<sup>28</sup> Further, while parties can contract to limit rights, they cannot contract with each other to provide more rights than are offered by statute. For example, the courts will enforce contract provisions which shorten a statute of limitations period. However, provisions attempting to lengthen statutes of limitations will not be enforced.<sup>29</sup>

Similarly, the parties at bar, according to Plaintiffs' version of the release's meaning, attempted to grant the Plaintiffs a second opportunity to bring a wrongful death suit based on one death. This is in contravention of the statute and public policy. A contract cannot bestow upon Plaintiffs' rights they did not have statutorily.

### ***Conclusion***

The Defendants' Motion for Summary Judgment is GRANTED. There are no

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<sup>27</sup> *Shaw v. Aetna Life Ins. Co.*, 395 A. 2d 384, 387 (Del. 1978), *Thayer v. Tandy Corp.*, 533 A.2d 1254 (Del.1987) (TABLE).

<sup>28</sup> *Thayer*, 533 A. 2d at 1254.

<sup>29</sup> *Shaw v. Aetna Life Ins. Co.* 395 A.2d 384, 387 (Del. 1978).

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disputed facts. The parties only argued the application of the law. Both the statute and the release support Defendants' position that the Plaintiffs have already exhausted the one statutory opportunity to pursue a wrongful death suit regarding the decedent's death. Defendants were released from all claims related to the death of the decedent.

SO ORDERED.

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J.

RBY/sal

oc: Prothonotary

cc: Opinion Distribution