

SUPERIOR COURT
OF THE
STATE OF DELAWARE

Mary M. Johnston
Judge

New Castle County Courthouse
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Wilmington, DE 19801-3733
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September 12, 2005

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Re: *Warrick v. Sowa*
C.A. No. 01C-08-026 MMJ

Dear Counsel:

Following the three-day trial in this case ending on July 27, 2005, I have again reviewed all of the exhibits and my extensive notes taken during trial testimony. As I stated at the conclusion of the trial, counsel are to be commended for excellent advocacy and professional comportment in the best traditions of the Delaware Bar. As the finder of fact, my conclusions are as follows.

I found all of the parties to be credible witnesses. While the Court is prohibited from rendering any decision based upon sympathy for either party, Wessie Warrick clearly has suffered a great deal and it is undisputed that she has permanent impairment to her hand and wrist. While testifying, it is

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understandable that her resulting emotional state exacerbated certain gaps in her recollection of events and details. Nevertheless, I found Mrs. Warrick to be an honest person, not prone to exaggeration. To the extent Mrs. Warrick was unable to remember important facts, Charles Warrick's testimony cured the problem. He was present at virtually all relevant events and appeared to have good recall. Mr. Warrick, a former police officer and currently an investigator, obviously is trained in observation and was well able to complete the plaintiffs' factual record. David T. Sowa, M.D. also presented himself as a trustworthy witness, whose testimony was consistent throughout the proceedings in all substantive areas of defendants' case.

The threshold issue is whether Dr. Sowa's conduct was consistent with the applicable standard of care. Specifically, should Dr. Sowa have diagnosed and treated Mrs. Warrick for an infection on October 21 and 25, 1999? The essential basis of my decision is my assessment of competing expert opinions. In short, I found defendants' medical expert witness more persuasive.

Defendants' expert testified in great detail in support of his opinion that

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infection should not have been the primary diagnosis on the relevant dates. Dr. Sowa's examination procedure was appropriate. His referral of Mrs. Warrick to Pramod Yadhati, M.D., for treatment of what appeared to be Reflex Sympathetic Dystrophy, was consistent with the relevant standard of care. The fact that in hindsight the infection could have been treated sooner, and the extent of injury potentially lessened, does not mean that Dr. Sowa's conduct on October 21st and 25th was negligent.

Plaintiffs' expert testimony was not sufficient to demonstrate that Dr. Sowa breached the standard of care. I found particularly unconvincing the opinions that the patient can "never lose" by erring on the side of performing surgery; that neither the emergency room doctor nor the family doctor were capable of diagnosing this type of infection; and that the presence of infection should have been obvious to Dr. Sowa.

In conclusion, Plaintiffs did not establish by a preponderance of the evidence that Defendants breached the applicable standard of care. My decision is for Defendants. This case is hereby **DISMISSED WITH PREJUDICE**.

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IT IS SO ORDERED.

Sincerely,

Mary M. Johnston

MMJ/jk
oc: Prothonotary