

NOT DESIGNATED FOR PUBLICATION

IN RE: MEDICAL REVIEW * **NO. 2003-CA-1732**
PANEL FOR THE CLAIM OF *
JOSEPH DAVIS, ON BEHALF * **COURT OF APPEAL**
OF GENEVA DAVIS AND * **FOURTH CIRCUIT**
JOSEPHINE SMITH * **STATE OF LOUISIANA**
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CONSOLIDATED WITH:

**JOSEPH DAVIS, JR.,
JOSEPHINE D. SMITH, IONA
H. BROUSSARD, ARTHUR
HESTER, IONA NORCISE,
GENEVA TERRELL,
BERNARD DIXON AND
JOSEPHINE DIXON, ON
THEIR OWN BEHALF AND AS
THE SURVIVING CHILDREN
OF GENEVA DAVIS**

CONSOLIDATED WITH:

NO. 2003-CA-1870

VERSUS

**TULANE UNIVERSITY
MEDICAL CENTER, DR.
EFRAIN CARRASQUILLO,
DR. SHUAIB MOHYRIDDIN
AND DR. DEBORAH HOADLY**

**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NOS. 96-6097 C/W 99-8594, DIVISION "J-13"
Honorable Nadine M. Ramsey, Judge**

* * * * *

Judge Dennis R. Bagneris, Sr.

* * * * *

(Court composed of Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr., and Judge Edwin A. Lombard)

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IN PROPER PERSON/APPELLANT

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EDUCATIONAL FUND D/B/A TULANE UNIVERSITY MEDICAL
CENTER, AND DR. SHUAIB MOHYRIDIN**

AFFIRMED

The Appellants, the surviving children of Geneva Davis, appeal the judgment of the district court denying their Motion for a Judgment Notwithstanding the Jury Verdict in favor of the Appellees, Dr. Shuaib Mohyuddin and the Administrators of the Tulane Educational Fund f/d/b/a Tulane University Medical Center. The judgment dismisses the Appellant's claim with prejudice. After thorough review of the record, we affirm the

judgment of the district court.

Facts and Procedural History

On March 5, 1995, Ms. Davis was admitted to Tulane University Medical Center (TUMC) with complaints of shortness of breath, coughing, fever and chills. Several physicians treated Ms. Davis during her stay; however, her condition continued to deteriorate. On March 9, 1995 a “code blue” was called and Ms. Davis subsequently passed away that same day.

The Appellants filed suit for Medical Malpractice in the Civil District Court for the Parish of Orleans in April 1996. In May 1999, the Appellants filed a Petition for Damages invoking survival and wrongful death actions. In their Petition for Damages the Appellants named TUMC and their mother’s treating physicians while at TUMC. On January 16, 2002, the district court transferred and consolidated the Appellant’s Petition for Damages and Medical Malpractice Claim. In January 2003, the Appellants voluntarily dismissed three treating physicians and two nurses reserving their rights against TUMC and Dr. Shuaib Mohyuddin. On January 13, 2003 the matter went to trial by jury and the case was dismissed with prejudice. The Appellants filed a Motion for Judgment Notwithstanding the Jury

Verdict that was denied on April 3, 2003. It is from that judgment that the Appellants take the instant appeal.

Standard of Review

Court of Appeal may not set aside a trial court's or a jury's finding of fact in the absence of manifest error or unless it is clearly wrong. *Burnett v. Lewis*, 2002-0020 (La.App. 4 Cir. 7/9/03) 852 So.2d 519. For a Court of Appeal to set aside a trial court's or a jury's finding of fact, appellate court must find from the record that a reasonable factual basis does not exist for the finding, and appellate court must further determine that the record establishes that the finding is clearly wrong.

Williams v. Louisiana Medical Mut. Ins. Co., 2003-1081 (La.App. 4 Cir. 1/14/04) 866 So.2d 306. Appellate court must determine if there exists a reasonable factual basis in the record for the jury's finding and whether the record establishes that the jury's finding is not clearly wrong. *Beaumont v. Exxon Corp.* 2002-2322 (La.App. 4 Cir. 3/10/04) 868 So.2d 976. Even if appellate court would arrive at a different conclusion given the evidence in the record, appellate court cannot reverse a finding of fact where there is a reasonable basis for the jury's finding. *Id.*

After determining that the trial [sic] correctly applied its standard of review as to the jury verdict, the appellate court reviews a judgment notwithstanding the verdict (JNOV) using the manifest error standard of review. LSA-C.C.P. art. 1811, *Torrejon v. Mobil Oil Co.* 2003-1426 (La. App. 4 Cir. 6/2/04) 876 So.2d 877.

In reviewing a JNOV on appeal, a two-part inquiry is imposed. First, the appellate court must determine if the trial judge erred in granting the JNOV. This is done by using the same criteria that the trial judge applies in deciding whether to grant the motion or not, *i.e.* do the facts and inferences point so strongly and overwhelmingly in favor of the moving party that reasonable persons could not arrive at a contrary verdict? If the answer to that question is in the affirmative, then the trial judge was correct in granting the motion. If, however, reasonable persons in the exercise of impartial judgment might reach a different conclusion, then it was error to grant the motion and the jury verdict should be reinstated. Second, "[a]fter determining that the trial correctly applied its standard of review as to the jury verdict, the appellate court reviews the JNOV using the manifest error standard of review." *Torrejon v. Mobil Oil Co.* 2003-1426 (La. App. 4 Cir.

6/2/04) 876 So.2d 877, *citations omitted*.

Argument

The Appellants assert that the judgment appears clearly contrary to the law and evidence and that newly discovered evidence affords them a new trial since their Judgment Notwithstanding the Jury Verdict was denied by the district court. The Appellees contend that the Appellants failed to establish a prima facie case in order to prove their damages were caused by the alleged errors and omissions of the Appellees in accordance with *Martin v. East Jefferson General Hospital*, 582 So.2d 1272, 1276 (La. 1991).

The Appellants maintain that their mother's medical treatment while at TUMC fell below the standard of care. The Appellants argue specifically that the proper medical tests were not ordered for their mother; that the recorded "code blue" documents were inadequate and inconsistent; that the cause of death is questionable on the death certificate; that a specific doctor (who was noted at being at their mother's bedside) never existed and that their mother was "killed" at TUMC.

What the appellate court reviews is the decision of the trial judge, who has attempted to balance the great deference afforded to the jury's verdict

against his obligation to insure that substantial justice was accomplished.

Thus, in reviewing the trial court's determination regarding whether to grant a JNOV or new trial, the appellate court's review is limited to whether the trial court committed manifest error in its denial of the motions. *Chisholm v. Clarendon Nat. Ins. Co.*, 37,022, (La.App. 2 Cir. 7/9/03) 850 So.2d 1070.

Discussion

La. Revised Statute 9:2794 provides, in pertinent part:

A. In a malpractice action based on the negligence of a physician licensed under R.S. 37:1261 et seq.... the plaintiff shall have the burden of proving:

(1) The degree of knowledge or skill possessed or the degree of care ordinarily exercised by physicians...to practice in the state of Louisiana and actively practicing in a similar community or locale and under similar circumstances; and where the defendant practices in a particular specialty and where the alleged acts of medical negligence raise issues peculiar to the particular medical specialty involved, then **the plaintiff has the burden of proving the degree of care ordinarily practiced by physicians...within the involved medical specialty.**

(2) That the **defendant either lacked this degree of knowledge or skill or failed to use reasonable care and diligence**, along with his best judgment in the application of that skill.

(3) **That as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that**

would not otherwise have been incurred.
(*emphasis added*)

The Appellants presented the testimony of Dr. Fortune A. Dugan who is board certified in the area of internal medicine and cardiology. The purpose of Dr. Dugan's testimony was to establish that he was familiar with the standard of care required when a "code blue" is called. Dr. Dugan testified at trial that it would be a deviation from the standard of care not to have administered shock treatment immediately to Ms. Davis "assuming the rhythms are correct."

The Appellants are of the opinion that the documentation of the "code blue" by Dr. Mohyuddin indicates that medical treatment was not administered timely and that there was a lapse of time, amounting to minutes, in which their mother's life could have been saved. This was rebutted on cross-examination when Dr. Dugan testified that it is customary to write down the doctor's rendition or interpretation of the events that took place during the code once the "code blue" is complete. He testified that Dr. Mohyuddin met the standard of care in documenting his understanding and/or interpretation of what took place during the code after the event.

We find that this testimony of Dr. Dugan reiterates that because Dr. Mohyuddin recorded the events after the "code blue", a customary

procedure, it cannot be established by the preponderance of the evidence that shock treatment wasn't administered timely and that Dr. Mohyuddin's treatment fell below the standard of care.

The Appellants' witness, Dr. Bergman, an infectious disease expert, answered positively when asked if Ms. Davis' death related to improper treatment of her infectious process. The witness testified on cross-examination that since 1990 he "gave up" his certification in Advance Cardiac Life Support (ACLS) and had not "run codes" in the past 15 years. Dr. Bergman also testified that he was uncomfortable explaining what the ACLS protocol was in 1995.

In an effort to rebut the testimony of Dr. Bergman, the Appellees presented Dr. Shuaib Mohyuddin, Ms. Davis' treating physician during the "code blue". Dr Mohyuddin explained his qualifications in depth:

DR. MOHYUDDIN:

Let me clarify board certified as opposed to ACLS certification. ACLS is basically a four and a half day course open to actually anyone, EMT's, even a lay person if he so chooses and he passed the CPR, BLS course can do an ACLS course [sic]. So that's different from a board certification which mandates that you have to finish your filed residence. You can be board certified in Internal Medicine, which takes three years. Then you take your board, or you can be certified in surgery, which takes five years of residency and then you take that particular board.

So, I was board certified in Internal

Medicine since 1997, since the year after I finished my residency.

Dr. Jan Cooper, who is board certified in Internal Medicine, also testified on behalf of the Appellees. Dr. Cooper testified that she treated Ms. Davis after consultation that Ms Davis should be admitted to the hospital on March 6, 1995. She further testified that although Ms. Davis suffered from dementia, Ms. Davis was alert, smiling and laughing despite her extremely high fever. It was at this time Dr. Cooper ordered antibiotics, chest x-rays and specified cultures in an effort to rule out certain infections.

The testimony presented at trial is put there for the jury to develop its own opinion based upon what is before them. In the instant case, both parties presented thorough testimony regarding the timing of shock administered during the “code blue”; the medical tests ordered in an effort to find out what was wrong with Ms. Davis; the whereabouts of a doctor that the Appellants argue was never at their mother’s bedside; the adequacy of the patient’s records and the discrepancy of Ms. Davis’ death certificate. It goes without saying that testimony is going to be contradictory in any case, especially one so complex as a medical malpractice claim. However, the jury is the finder of fact and reviewing the testimony and evidence, this Court cannot conclude that the jury’s findings were clearly contrary to the law and

the evidence or that the jury failed to have a reasonable basis for its finding.

Even though an appellate court may feel its own evaluations and inferences are more reasonable than those of the factfinder, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. *Williams v. Louisiana Medical Mut. Ins. Co.* 2003-1081 (La.App. 4 Cir. 1/14/04).866 So.2d 306.

The Appellants had the burden of proving at trial that Dr. Mohyuddin and TUMC lacked the degree of knowledge or skill or failed to exercise reasonable care with Ms. Davis. *La. Rev. Statute 9:2794*. Further, this Court must find that the jury's verdict was unreasonable in light of the evidence presented at trial and that the district court committed manifest error in denying the Appellants Judgment Notwithstanding the Jury Verdict. The record does not support this finding.

Ms. Davis was 83 years old when she was admitted to TUMC. Ms. Davis' medical history was not without blemish, however we do not suggest that she did not deserve the best medical treatment possible. All this Court has to rely on, as did the jury, is the testimony of witnesses who were either there with Ms. Davis or who have worked in the areas of medicine in question. We find, as the jury did, that the evidence and testimony presented

failed to establish by the preponderance of the evidence that there was a deviation from the standard of care by TUMC or Dr. Mohyuddin. We will not disturb the jury's findings on appeal.

Decree

For the reasons stated herein, we find that there was no manifest error by the district court in denying the Appellants' Judgment Notwithstanding the Jury Verdict in favor of TUMC and Dr. Mohyuddin. We further find that there is nothing in the record to support a Motion for New Trial.

AFFIRMED