

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

---

COMPLETE TITLE OF CASE:

JEFFREY ALLEN JOHNSON AND  
TAMMY ELAINE JOHNSON,

Appellant-Respondents

v.

MEDTRONIC INC.,

Respondent-Appellants

---

DOCKET NUMBER WD73382 and WD73429

DATE: March 6, 2012

---

Appeal From:

Circuit Court of Clay County, MO  
The Honorable Shane Terril Alexander, Judge

---

Appellate Judges:

Division One  
Alok Ahuja, P.J., Thomas H. Newton, and James Edward Welsh, JJ.

---

Attorneys:

Richard McLeod, Kansas City, MO

Counsel for Appellant-Respondents

---

Attorneys:

Patrick Lysaught, Kansas City, MO

Counsel for Respondent-Appellants

---

**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**JEFFREY ALLEN JOHNSON AND TAMMY ELAINE  
JOHNSON, Appellant-Respondents, v. MEDTRONIC INC.,  
Respondent-Appellants**

**WD73382 and WD73429**

**Clay County**

Before Division One Judges: Ahuja, P.J., Newton, and Welsh, JJ.

Jeffrey Allen and Tammy Elaine Johnson appeal the circuit court's grant of summary judgment in favor of Medtronic, Inc., in regard to the Johnsons' product liability claims for failure to warn and product defect. The Johnsons claimed that a defibrillator used on Jeffrey Johnson was unreasonably dangerous and in a defective condition because it automatically reverted to an asynchronous mode after each synchronized shock, permitted a user to give an asynchronous shock where a synchronized shock was medically indicated, and lacked any audible warning or other notice while using the defibrillator to alert the operator of the change from synchronized to asynchronous mode. They also claimed that Medtronic did not give adequate warning of this dangerous condition. The circuit court found that, as a matter of law, the instructions accompanying the defibrillator were adequate, that Medtronic's affirmative defense of the learned-intermediary doctrine applied to the failure to warn claim, and that the physician's use of the defibrillator in violation of the appropriate standard of care could not constitute a reasonably anticipated use by Medtronic. The Johnsons appeal, asserting that the circuit court erred in granting summary judgment because (1) genuine issues of material fact precluded summary judgment on their failure to warn claim, (2) the circuit court misapplied the law on the learned intermediary doctrine in regard to the failure to warn claim, and (3) genuine issues of material fact precluded summary judgment on their product defect claim. Medtronic also filed a cross-appeal asserting that the circuit court erred in failing to expand its basis for granting summary judgment because it failed to include that the Johnsons were unable to make a submissible case because (1) their only two liability experts should be excluded, (2) their usability study should be excluded, and (3) they could not establish causation.

**AFFIRMED IN PART AND REVERSED IN PART**

**Division One holds:**

(1) The circuit court did not err in granting summary judgment for Medtronic on the Johnsons' failure to warn claim. Medtronic established a right to summary judgment by showing that Medtronic's alleged failure to warn or alleged inadequate warning was not the proximate cause of Jeffrey Johnson's injuries.

(2) Given our conclusion that summary judgment was proper because the Johnsons were not able to produce sufficient evidence to establish that Jeffrey Johnson was damaged as a result of the LifePak 9P's being sold without an adequate warning, we need not address the Johnsons' point on appeal concerning whether the circuit court misapplied the learned intermediary doctrine to the failure to warn claim in this case.

(3) The circuit court erred in granting summary judgment for Medtronic on the Johnson's product defect claim. The Johnsons have raised a genuine issue of material fact as to whether the defibrillator was then in a defective condition and unreasonably dangerous when put to a reasonably anticipated use and whether the physician's actions constituted a "reasonably anticipated use" of the device. For the same reasons, we deny Medtronic's cross claim contending that the circuit court should have expanded its basis for granting summary judgment to include that the Johnsons were unable to make a submissible case on causation because Jeffrey Johnson would not have been injured had Dr. Hahn followed the standard of care.

(4) Although the circuit court expressed "significant concerns" as to the admissibility of their testimony, it court did not rule on Medtronic's motion to exclude the Johnsons' liability experts. Similarly, with respect to the usability study, the circuit court ruled that the Johnsons would be prohibited from referencing the study in *voir dire* or opening statement and that the court would further consider the issue in the context of an offer of proof. Given that the circuit court failed to make definitive rulings concerning the evidentiary issues raised by Medtronic in its cross-appeal, it would be inappropriate for this court to address these fact-bound questions in the context of this appeal. These issues--as to which the circuit court expressed "significant concerns"--remain open to further litigation on remand.

Opinion by James Edward Welsh, Judge

March 6, 2012

\* \* \* \* \*

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**