

Summary of SC89318, *Kenneth Sundermeyer Individually and as Personal Representative for Elva Elizabeth Sundermeyer, Deceased v. SSM Regional Health Services d/b/a Villa Marie Skilled Nursing Facility*

Appeal from the circuit court of Cole County, the Honorable Thomas J. Brown III.

Attorneys: Sundermeyer was represented by Anthony L. DeWitt and Edward D. Robertson Jr. of Bartimus, Frickleton, Robertson & Gorny PC in Jefferson City. The nursing facility was represented by Jeffery T. McPherson, Robert J. Foley and Cynthia A. Petracek of Armstrong Teasdale LLP in St. Louis.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The trial court entered summary judgment against a man who brought a wrongful death suit against a nursing facility where his mother lived before she died. In a 7-0 decision written by Judge Mary R. Russell, the Supreme Court of Missouri reversed the trial court's judgment, holding that summary judgment should not have been entered because there was evidence demonstrating a genuine issue of material fact about whether the nursing facility's negligence caused the mother's death. The case is remanded (sent back) to the trial court for further proceedings.

Facts: Elva Elizabeth Sundermeyer lived for approximately 13 months at Villa Maria Skilled Nursing Facility, during which time she was noted to have a lot of falls, bruises and skin tears. She later was hospitalized and then entered a different nursing facility. She died 25 days after leaving Villa Marie. Her son brought a wrongful death suit against Villa Marie, arguing the nursing facility's negligence caused his mother's death. Villa Marie moved for summary judgment, arguing there was no evidence of causation. The trial court entered summary judgment in the nursing home's favor, and the son appeals.

REVERSED AND REMANDED.

Court en banc holds: (1) Appellate review of summary judgment examines whether the case involves a genuine dispute about the essential facts in a case. The facts are viewed in the light most favorable to the party against whom judgment was entered.

(2) In an action for wrongful death arising from medical negligence, the plaintiff must prove that the defendant failed to meet a required medical standard of care, that the defendant acted negligently and that the defendant's actions caused the death. In a medical malpractice case, proof of causation requires a certain degree of expertise, and the plaintiff must present expert testimony to establish causation. In wrongful death actions, plaintiffs must establish that, but for the defendant's actions or inactions, the patient would not have died. The Supreme Court has observed that, under Missouri's approved jury instructions, the jury is asked to determine whether the defendant's

conduct directly caused or directly contributed to cause the plaintiff's injury.

(3) Under the standard of review for summary judgment, the son's medical expert's testimony provided the evidence required for the son's claims to survive summary judgment on the issue of causation. The expert's testimony was not "mere speculation," and he agreed that it was offered to a "reasonable degree of certainty." The trial court's judgment against the son is reversed, and the case is remanded.