

Summary of SC89762, *Edgar T. Edgerton v. Stephen K. Morrison, M.D., et al.*
Appeal from the Greene County Circuit Court, Judge Thomas E. Mountjoy

Attorneys: Morrison was represented by Gary Cunningham and Darynne L. O’Neal of Lathrop & Gage LLP in Springfield, (417) 886-200; and Edgerton was represented by David W. Ransin of David W. Ransin PC in Springfield, (417) 881-8282.

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: A cardiothoracic surgeon challenges a judgment entered on a jury’s verdict finding him liable for damages after the sternum of a man on whom he had performed a cardiac bypass surgery deteriorated and ultimately had to be removed in large part. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the trial court’s judgment. The verdict-directing instruction, verdict form and damages instruction were proper, and the evidence of causation was sufficient to support the verdict.

Facts: Following a heart attack, Edgar Edgerton underwent cardiac bypass surgery during which cardiothoracic surgeon Dr. Stephen Morrison cut and spread Edgerton’s sternum so he could operate on Edgerton’s heart. He then rewired the sternum. During two postoperative examinations in the weeks after he was discharged from the hospital, Edgerton complained of a rash over the surgical wound, a “gritting” in his chest and chest pains. Morrison palpated Edgerton’s sternum and determined it was well-healed. Edgerton sought a second opinion from Dr. Lundman, a general surgeon, who diagnosed him with an unstable sternum and a possible infection and referred Edgerton to another cardiothoracic surgeon, Dr. Rogers. Rogers agreed the sternum was unstable and, during a follow-up surgery, discovered Edgerton’s sternum was mostly destroyed and was liquefying – termed “necrotic.” He cut away the dead tissue, resulting in the removal of most of Edgerton’s sternum. Because he believed an infection may have caused the damage to the sternum, Rogers had a plastic surgeon close the wound using a “flap procedure” in which he used part of Edgerton’s pectoralis muscle to cover where the liquefied portion of the sternum had been. Edgerton subsequently sued Morrison and a clinic (collectively “Morrison”) for negligence, alleging Morrison failed to diagnose and treat the splitting and instability of his sternum properly and that the failure to have more solid repair of the sternum has affected his daily tasks negatively, has caused him physical pain during certain activities and has made certain surgeries more risky. Following a jury verdict, the trial court entered judgment against Morrison, who appeals.

AFFIRMED.

Court en banc holds: (1) Because the term “rigid fixation” used in the verdict-directing instruction did not permit the jury to find a verdict without being limited to issues of law

or fact developed in the case, the trial court did not err in giving the verdict director to the jury. Although the term was not defined for the jury in the instructions or during the presentation of evidence, it was not misleading in context. Both parties elicited testimony that only two types of rigid stabilizing procedures were available in Edgerton's circumstances, multiple witnesses agreed that a third type of rigid repair – rewiring the sternum – was not available to Edgerton, and the attorneys' arguments were consistent with the testimony. It was clear from the evidence that "rigid fixation" referred to the two procedures available to Edgerton, and the jury properly understood this term in context.

(2) Because there is no indication that the identifying phrase "as submitted by Instruction No. 11" in the verdict form misdirected, misled or confused the jury, the trial court did not err in using the verdict form. Although use of an applicable Missouri approved instruction is mandatory, a verdict form is not an instruction. When viewed in context of the verdict form's statements of the parallel liability claims against the various defendants, it is apparent that the phrase added here to the form provided in the Missouri approved instructions simply referred the jury to the verdict director that corresponded to each defendant. In no other respect was the verdict form modified. As such, the addition was akin to a descriptive phrase allowed under the Missouri approved instruction's notes on use.

(3) The trial court did not err in giving the jury a particular instruction regarding damages. Morrison does not cite any relevant authority that this instruction was error, the jury did not find any other defendant liable for damages pursuant to other instructions, and the jury must be assumed to have harmonized all the instructions, considering and applying them as a whole pursuant to the Missouri approved instructions.

(4) The evidence support's the jury's verdict in favor of Edgerton's theory that, but for Morrison's negligence in diagnosing the problem with his sternum, he would have had the opportunity to undergo a preferable procedure to repair it. Here, this Court must view the jury's verdict in the light most favorable to the verdict and must uphold it unless there is a complete absence of facts that prove causation. Edgerton asserts that, because of Morrison's misdiagnosis, he was forced to seek consultation from another surgeon who did not have firsthand knowledge of the original surgery and who, therefore, was compelled to assume that infection was possible, thereby precluding the more desirable option of using two alternative rigid repairs to Edgerton's sternum. In support of his theory, Edgerton presented evidence from a medical expert witness who testified the new surgeon acted reasonably and practically in cutting away dead tissue and recommending the plastic surgeon perform a flap procedure. The expert testified that Morrison, in contrast, with knowledge of Edgerton's first surgery, would have known the wound was not infected and could have used a rigid reconstruction procedure that would have restored the sternum's structural integrity. As such, the testimony supports Edgerton's theory, and Morrison's challenge to causation fails.