

Summary of SC90613, *Ann Spradling et al. v. SSM Health Care St. Louis, et al.*

Appeal from the St. Louis County circuit court, Judge Tom W. DePriest Jr.

Argued and submitted April 14, 2010; opinion issued June 29, 2010

Attorneys: The Spradlings were represented by Joan M. Lockwood and Stephen R. Woodley of Gray, Ritter & Graham PC in St. Louis, (314) 241-5620, and the health care defendants were represented by Jeffery T. McPherson, Thomas B. Weaver, Timothy J. Gearin and Anna T. Selby of Armstrong Teasdale LLP in St. Louis, (314) 621-5070, and Kenneth W. Bean and Jaime L. Sitton of Sandberg, Phoenix & von Gontard PC of St. Louis, (314) 231-3332. Saint Louis University, which filed a brief as a friend of the Court, was represented by Stephen G. Reuter of Lashley & Baer PC in St. Louis, (314) 621-2939, and Anne Garcia of St. Louis University Medical Center in St. Louis, (314) 977-5774.

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 husband and wife appeal the trial court's dismissal of their medical malpractice action involving a spinal procedure performed on the wife. In a unanimous opinion written by Judge Mary R. Russell, the Supreme Court of Missouri reverses the trial court's judgment and remands (sends back) the case for further proceedings. Although the trial court correctly determined that "substantially the same specialty" as used in the health care affidavit statute applies both to physicians actively practicing as well as those within five years of retirement from actively practicing, it incorrectly determined that the physician on whose opinion the husband and wife relied was not practicing "substantially the same specialty" as the defendant doctor. The statute does not require that both physicians be board certified in the same specialty; rather, it requires that the plaintiff's expert have sufficient expertise in performing the procedure in question, as the plaintiff's expert did here.

Facts: After suffering a fall, Ann Spradling was admitted to St. Mary's Health Center in St. Louis and diagnosed with compression fractures in her lower back. The next month, she returned to St. Mary's, where neurosurgeon Dr. William Sprich performed a vertebroplasty, a procedure used to relieve the pain of vertebral compression fractures. Following the surgery, she complained of pain and paralysis in her lower extremities and did not have use of her lower extremities when St. Mary's discharged her to a nursing home, where she still lives. She and her husband subsequently filed a medical negligence lawsuit against St. Mary's. To comply with the health care affidavit statute – section 538.225.1, RSMo – the Spradlings submitted an affidavit of Dr. John Mathis that Sprich failed to use reasonable care in his treatment of Spradling. The affidavit also stated that Mathis was certified in diagnostic radiology and nuclear medicine radiology. St. Mary's moved to dismiss the suit, contending that because Mathis was a radiologist, he did not practice "substantially the same specialty" as Sprich, a neurosurgeon, and, therefore, was not qualified to submit an affidavit pursuant to the statute. The trial court dismissed the Spradlings' suit without prejudice, finding that as a radiologist, Mathis was not a "legally qualified health care provider" pursuant to section 538.225.5 because he did not actively practice "substantially the same specialty" as the Sprich. The Spradlings appeal.

REVERSED AND REMANDED.

Court en banc holds: Because the phrase “substantially the same specialty” as used in section 538.225.2 does not require that a “legally qualified health care provider” have the exact board certification as the defendant, and may include one who repeatedly performs the same procedure as that allegedly performed negligently, Mathis is qualified under the health care affidavit statute. The purpose of this statute was to strengthen the requirements for filing a medical malpractice action by preventing plaintiffs from relying on opinions from health care providers with minimal to no experience in performing the procedure in question and, accordingly, dismissing such suits at an early stage of litigation if they lack even color of merit. Honoring rules of grammar and that legislative intent, “substantially the same specialty” must modify both “actively practicing” and “within five years of retirement from actively practicing.” As such, the trial court properly interpreted “substantially the same specialty” to apply to actively practicing health care providers such as Mathis. It erred, however, in determining that Mathis was not qualified under the statute. Although the legislature did not define “substantially the same specialty,” it used the word “substantially,” recognizing there may be situations in which the health care provider who gives an opinion as to the standard of care may not have the exact same board certification as the defendant but may have expertise in the medical procedure at issue. Here, Mathis has performed or assisted in more than 3,000 vertebroplasties and remains active in performing such procedures, has given more than 50 lectures and 15 scientific presentations about vertebroplasty, has written or co-authored material for books or peer-reviewed scientific publications about vertebroplasty, and has taught physicians – including neurosurgeons such as Sprich – how to perform vertebroplasties. As such, while Mathis is a radiologist rather than neurosurgeon, his experience establishes he actively is practicing “substantially the same specialty” as Sprich and, therefore, is the type of “legally qualified health care provider” as the legislature intended in using the phrase “substantially the same specialty.”