

Summary of SC94844, *Ruth Mickels, et al. v. Raman Danrad, M.D.*

Appeal from the Marion County circuit court, Judge Rachel Bringer Shepherd
Argued and submitted October 21, 2015; opinion issued April 19, 2016

Attorneys: The family members were represented by Thomas K. Neill and Stephen R. Woodley of Gray, Ritter & Graham PC in St. Louis, (314) 241-5620. Danrad was represented by John B. Morthland, Amy Lee Ohnemus and Casey J. Welsh of Wasinger Parham LC in Hannibal, (573) 221-3225.

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: Family members of a man who died of a brain tumor filed a wrongful death lawsuit against a doctor who twice reviewed a man’s brain test results, two months apart, but did not diagnose the man with a brain tumor until after the second test. The family members appeal the circuit court’s summary judgment (judgment on the court filings, without a trial) in favor of the doctor. In a 4-3 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri vacates the judgment and remands (sends back) the case. Because the doctor’s alleged negligence did not cause the man’s death, the family members cannot sue for wrongful death. But their allegations do state a cause of action for negligence, if brought by the man’s personal representative.

Judge Richard B. Teitelman dissents. He would reverse the judgment. The plain language of the relevant statute authorizes wrongful death actions when death “results from” negligence – it does not require that negligence be the sole and exclusive cause of death. Neither the language nor the purpose of the statute requires immunity to be given to those whose negligence leads to the premature death of a patient who happens to be terminally ill.

Facts: Joseph Mickels Sr. underwent a magnetic resonance imaging (MRI) procedure in December 2008. Dr. Raman Danrad reviewed the results but made no diagnosis. In February 2009, Mickels underwent a brain scan after arriving at a hospital in an altered mental state. Danrad reviewed the results and diagnosed Mickels with a terminal, incurable brain tumor. Despite immediate surgery, Mickels died in June 2009. Three years later, his surviving family members filed a wrongful death lawsuit against Danrad, alleging Mickels would not have died when he did had Danrad diagnosed him after the December 2008 MRI. The circuit court granted Danrad’s motion for summary judgment, finding the family members could not prove Danrad’s alleged negligence resulted in Mickels’ death as required by section 537.080.1, RSMo. The family members appeal.

VACATED AND REMANDED.

Court en banc holds: Because Mickels’ death was caused by an incurable, terminal brain tumor and not by Danrad’s alleged negligence, the family members cannot sue for wrongful death under section 537.080.1. But this does not mean Danrad’s negligence is not actionable. It surely injured Mickels by depriving him of the opportunity to delay his death for up to six months. As

such, Mickels would have been able to sue Danrad for this negligence while he lived, and Mickels' personal representative can bring that action under section 537.020, RSMo, after his death. Allowing the claim for negligence to proceed as a wrongful death action rather than a medical malpractice action that survives under section 537.020 not only is contrary to this Court's precedent and the language of the wrongful death statute, but it also could thwart meritorious claims in the future. Properly characterizing the claim as a tort claim that survives keeps the question of the time and date of the decedent's death out of the causation analysis and confines it to the damages analysis, where it belongs. Dismissal is inappropriate unless an appellate court is convinced the allegations are such that a recovery cannot be had. Because the allegations in the family members' petition state a cause of action for negligence that would have been actionable under section 537.020 if brought by Mickels' personal representative, the judgment is vacated and the case remanded.

Dissenting opinion by Judge Teitelman: The author would reverse the judgment. The plain language of section 537.080 authorizes wrongful death actions when death "results from" negligence. It does not require the alleged negligence to be the sole and exclusive cause of death, nor does it immunize a physician who negligently causes a patient's premature death when the patient suffers from a terminal illness. The statute's purpose is to compensate bereaved plaintiffs for their loss, to ensure that wrongdoers pay for the consequences of their actions and to deter negligent acts that may lead to death. Immunizing wrongdoers from wrongful death liability when they kill the terminally ill does not advance these statutory purposes.