Summary of SC97854, *Londa L. Sofia, et al. v. Robert W. Dodson, M.D., et al.*
Appeal from the Jasper County circuit court, Judge David B. Mouton
Submitted on briefs April 14, 2020; opinion issued June 16, 2020

Attorneys: The decedent's daughters were represented by Patrick M. Martucci and Joshua G. Decker of Johnson, Vorhees & Martucci in Joplin, (417) 206-0100. The hospital was represented by Timothy M. Aylward and Nicholas R. Snow of Horn, Aylward & Bandy LLC in Kansas City, (816) 421-0700. Dodson and the clinic were represented by Brian Malkmus and Jared Robertson of Malkmus Law Firm LLC in Springfield, (417) 447-5000.

This summary is not part of the opinion of the Court. It has been prepared by 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 plaintiffs in a wrongful death lawsuit appeal the circuit court's entry of summary judgment (judgment on the court filings, without a trial) in a hospital's favor. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirmed the judgment. The plaintiffs' substitution of a clinic in place of the hospital did not entitle them to another year in which to bring a new lawsuit. Their amended petition against the hospital – filed after the statute of limitations expired – was time-barred.

Facts: In April 2011, a woman died after undergoing a gallbladder removal surgery performed by Dr. Robert Dodson at Mercy Hospital Joplin. In March 2013, the woman's daughters timely filed a wrongful death lawsuit against Dodson and Mercy Hospital, incorrectly stating Dodson was the hospital's agent and employee. The three-year statute of limitations expired in April 2014. Nearly two years later, the daughters discovered Dodson's employer was Mercy Clinic Joplin LLC, not Mercy Hospital. In July 2016, they moved for leave to amend their petition under Rule 55.33(c) to substitute Mercy Clinic in place of the hospital to correct their mistake. The circuit court sustained their motion. They filed their amended petition, substituting the name of Mercy Clinic in place of Mercy Hospital as a defendant; the amended petition otherwise was substantively identical to the original. In November 2016, the daughters sought leave under Rule 55.33(c) to file a second amended petition to add Mercy Hospital back into the case as a defendant. The circuit court allowed them to do so. The hospital moved for summary judgment, arguing the claims against it were time-barred. The circuit court sustained the hospital's motion. The daughters appeal.

AFFIRMED.

Court en banc holds: The action against Mercy Hospital is time-barred. The daughters' substitution of the clinic in lieu of the hospital under Rule 55.33(c) was not a "nonsuit." A nonsuit occurs when a court order terminates a cause of action without prejudice (allowing it to be refiled), giving a plaintiff in a wrongful death action an extra year to file a new lawsuit under the savings statute. But substituting one party for another relates back to the original action; it does not terminate the original action or constitute a new action. Under Rule 55.33(c), one party may be substituted for another in the original lawsuit when the plaintiff made a mistake in selecting the party to sue; it does not permit a party to be added after the statute of limitations expires. Accordingly, the daughters cannot add the hospital back into the lawsuit outside the statute of limitations.