MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MARIA DEL CARMEN ORDINOLA VELAZQUEZ,

Appellant-Respondent,

v.

JENNIFER REEVES, M.D., et al,

Respondent-Appellants.

DOCKET NUMBER WD83485
Consolidated with WD83490, WD83722 and WD83781

Date: February 16, 2021

Appeal from:
Jackson County Circuit Court
The Honorable John M. Torrence, Judge

Appellate Judges:
Division One: Alok Ahuja, P.J., Thomas H. Newton, and Thomas N. Chapman, JJ.

Attorneys:
Timothy M. Aylward, Robert Givens, Kansas City for respondent-appellants
Russell S. Dameron, Kathleen M. Meier, Kansas City for appellant-respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MARIA DEL CARMEN ORDINOLA VELAZQUEZ, Appellant-Respondent,
v.
JENNIFER REEVES, M.D., et al, Respondent-Appellants.

WD83485 Jackson County
(Consolidated with WD83490, WD83722 and WD83781)

Before Division One Judges: Alok Ahuja, P.J., Thomas H. Newton, and Thomas N. Chapman, J.J.

Maria del Carmen Ordinola Velazquez filed a medical malpractice action against multiple physicians and against University Physician Associates, which employed several of the individual defendants. In her petition, Ordinola alleged that the physicians had acted negligently in multiple respects in connection with the delivery of her child, and her post-partum care, at Truman Medical Center in Kansas City in September 2015. Ordinola alleged that as a result of the physicians' negligence, she was required to undergo multiple surgeries, and experienced a variety of serious and permanent injuries.

After a trial, a jury awarded Ordinola $30,000 in economic damages, and $1 million in non-economic damages. The circuit court reduced Ordinola's non-economic damages award to $748,828, the inflation-adjusted cap on non-economic damages imposed by § 538.210.2(2), RSMo, in cases of catastrophic personal injury.

Both Ordinola and the defendants appeal. In her appeal, Ordinola contends that the damages limitations found in § 538.210 violate her right to a trial by jury guaranteed in Article I, § 22(a) of the Missouri Constitution. Ordinola has filed a motion to transfer the case to the Missouri Supreme Court, on the basis that her constitutional challenge to § 538.210 invokes the Supreme Court's exclusive appellate jurisdiction under Article V, § 3 of the Missouri Constitution.

MOTION TO TRANSFER GRANTED, AND CASE ORDERED TRANSFERRED TO MISSOURI SUPREME COURT.

Division One holds:

Under Article V, § 3 of the Missouri Constitution, the Missouri Supreme Court has "exclusive appellate jurisdiction in all cases involving the validity of a . . .

statute . . . of this state." Not all constitutional challenges invoke the Supreme Court's exclusive appellate jurisdiction, however. To trigger the Supreme Court's jurisdiction, the constitutional claim must have been properly preserved in the circuit court, and must be real and substantial, not merely colorable.

Ordinola properly preserved her constitutional claim. She raised it in her petition – before the application of the damages limitations in § 538.210 were even in issue. More importantly, Ordinola renewed her constitutional argument in response to the defendants' post-verdict motions for remittitur. The circuit court addressed Ordinola's constitutional claim on the merits in its judgment.

Ordinola's constitutional claim is real and substantial. In *Watts v. Lester E. Cox Medical Centers*, 376 S.W.3d 633, 641 (Mo. 2012), the Missouri Supreme Court addressed the constitutionality of the damages caps in § 538.210, as applied to a *common-law* medical malpractice action. The result in the present case is not necessarily dictated by *Watts*, however. Subsequent to *Watts*, the General Assembly purported to abolish the *common-law* cause of action for medical malpractice, and replace it with a *statutory* cause of action. The Missouri Supreme Court has held that damages limitations may permissibly be applied to certain *statutory* claims, even though those same limitations would be unconstitutional as applied to *common-law* causes of action. Thus, the result in this case is not necessarily controlled by the Supreme Court's earlier decision in *Watts*. To the contrary, Ordinola's constitutional claim presents a real and substantial issue, that involves fair doubt and reasonable room for disagreement.

Opinion by: Alok Ahuja, Judge **February 16, 2021**

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.