

Summary of SC99249, Alfred J. (A.J.) Giudicy v. Mercy Hospitals East Communities f/k/a St. John's Mercy Medical Center, and Michael J. Chehval, M.D.

Appeal from the St. Louis County circuit court, Judge Ellen H. Ribaud

Argued and submitted March 22, 2022; opinion issued June 14, 2022

Attorneys: Giudicy was represented by Patrick J. Hagerty of Gray, Ritter & Graham PC in St. Louis, (314) 241-5620. The hospital was represented by James C. Thoele and Michael D. Griffith of Brinker & Doyen LLP in Clayton, (314) 863-6311; and the doctor was represented by Teresa M. Young and David P. Ellington of Brown & James PC in St. Louis, (314) 421-3400.

This summary is not part of the opinion of the Court. It is provided 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: A man appeals a judgment dismissing his medical negligence claims for failure to timely file affidavits of merit. In a unanimous decision written by Judge Robin Ransom, the Supreme Court of Missouri affirms the judgment. The circuit court did not err in refusing to apply a court rule to extend the statutory deadline for filing affidavits of merit; nor does the statutory affidavit of merit requirement violate the separation of powers, clear title, single subject or retrospective law provisions of the state constitution. Additionally, the failure to file the statutorily required affidavit of merit is not an affirmative defense that must be raised in an answer, and substantial compliance with the affidavit of merit statute cannot be achieved if no affidavit is filed within the statutorily prescribed timeframe.

Facts: Alfred Giudicy was born in 1997 at Mercy Hospitals East Communities, formerly known as St. John's Mercy Medical Center, with a rare congenital condition that required him to undergo several surgeries in the years following his birth. Dr. Michael Chehval performed the surgeries at Mercy Hospital. In 2014, Giudicy filed a lawsuit alleging the doctor and hospital (collectively, medical providers) negligently treated him, resulting in significant injuries and damages. He filed two affidavits of merit from a legally qualified health care provider that the medical providers failed to provide reasonably prudent health care under the circumstances. Giudicy later voluntarily dismissed the case. In 2020, he refiled his negligence action against the medical providers but failed to file any affidavits of merit within 180 days. Giudicy moved to file the affidavits out of time; the medical providers moved to dismiss the action. The circuit court dismissed the action for failure to timely file the affidavits of merit. Giudicy appeals.

AFFIRMED.

Court en banc holds: (1) The circuit court's application of the time limitations in section 538.225, RSMo, for filing affidavits of merit instead of following this Court's rule for extending filing deadlines does not conflict with this Court's power under article V, section 5 of the Missouri Constitution to establish procedural rules. By its plain language, Rule 44.01(b) does not apply to section 538.225's deadline because the rule permits for extension only of deadlines imposed by court order or rule; it does not authorize a circuit court to extend statutory deadlines.

(2) Section 538.225 does not violate article II, section 1 of the Missouri Constitution. This Court previously rejected a similar challenge and now reaffirms that section 538.225 does not violate the separation of powers principle, despite the statute's mandatory dismissal language.

(3) Section 538.225 does not violate article I, section 13 of the Missouri Constitution. The provision prohibiting enactment of laws retrospective in operation does not apply to purely procedural statutes, and section 538.225 is procedural despite its mandatory dismissal language. Giudicy's substantive right to recover went unchanged as long as he complied with section 538.225's affidavit procedure.

(4) House Bill Number 393, which amended section 538.225 to implement the mandatory 180-day deadline, does not violate the clear title and single subject provisions of the state constitution. The test for whether a bill addresses a single subject is not how the provisions relate to one another but whether the provisions are germane to the bill's general subject. Although all the statutes HB 393 amended do not necessarily relate to each other, all are relevant to claims for damages. Furthermore, HB 393's single subject is adequately conveyed by its title. When a bill has multiple and diverse topics within a single, overarching subject, that subject may be clearly expressed by stating some broad umbrella category that includes all the topics within its cover. HB 393's reference to "relating to claims for damages and the payment thereof" is a sufficient umbrella category encompassing the bill's contents without being so broad that it would mislead as to the bill's coverage.

(5) Section 538.225 is not an affirmative defense that can be waived if not pleaded in an answer. No Missouri case law establishes section 538.225 is an affirmative defense, and the statute's operation counsels against such an application because affidavits of merit typically need not be filed before the answer is due. Furthermore, the statute provides no timeframe for moving to dismiss an action for failure to file an affidavit of merit. The medical providers, therefore, did not waive the defense that Giudicy failed to file the statutorily required affidavits of merit.

(6) Even assuming the doctrine of substantial compliance applies to section 538.225's affidavit of merit requirement, Giudicy failed to comply substantially with the statute. Subsection 5 requires the affidavit 90 days after the petition is filed and permits one 90-day extension. The legislature, therefore, created a 180-day timeframe for filing affidavits of merit. The purpose of requiring affidavits of merit is to eliminate frivolous medical malpractice suits early in the process. To find a plaintiff substantially complied with section 538.225 by filing the affidavit outside the legislature's designated timeframe would infringe on the statute's very purpose.