

Summary of SC94814, Paul M. Lang and Allison M. Boyer v. Dr. Patrick Goldsworthy, et al.

Appeal from the Jackson County circuit court, Judge Charles H. McKenzie
Argued and submitted September 2, 2015; opinion issued October 13, 2015

Attorneys: The surviving family members were represented by Kenneth B. McClain, Michael S. Kilgore, Jonathan M. Soper and Daniel A. Thomas of Humphrey, Farrington & McClain PC in Independence, (816) 836-5050. The Goldsworthys were represented by Timothy M. Aylward, Bradley M. Dowd and Diana M. Jordison of Horn Aylward & Bandy LLC in Kansas City, (816) 421-0700. The Missouri Hospital Association and Missouri Organization of Defense Lawyers, which filed a brief as friends of the Court, were represented by Edward C. Clausen and Joshua L. Hill of Newman, Comley & Ruth PC in Jefferson City, (573) 634-2266.

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 appeal the circuit court's dismissal of their lawsuit against chiropractors they allege caused their family member's death. In a 5-2 decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the circuit court's judgment. Because the family members failed to file, as required by statute, an affidavit that they had the written opinion of a qualified health care provider in support of their claims, the circuit court properly dismissed their suit.

Judge Richard B. Teitelman dissents. He would address the family members' argument that section 538.225, RSMo, violates the open courts provision of article I, section 14 of the state constitution and would hold that it does.

Facts: After Michael Lang died, his surviving family members filed a wrongful death action alleging his death was caused by the negligent chiropractic services of Drs. Patrick Goldsworthy, Aston Goldsworthy and Patrick L. Goldsworthy. The family members timely filed an affidavit stating that they obtained the written opinion of a qualified health care provider in support of their claims as required by section 538.225. After more than two years of litigation, the family members voluntarily dismissed that action and timely refiled an identical petition in the same court but did not attach the affidavit to their new petition. The circuit court ultimately granted the Goldsworthys' motion to dismiss the suit for failure to file the affidavit. The family members appeal.

AFFIRMED.

Court en banc holds: Because the family members failed to file their affidavit pursuant to section 538.225, the circuit court properly granted the motion to dismiss. Since 2005, the language of section 538.225 unambiguously has required plaintiffs to file an affidavit in medical negligence cases and circuit courts to dismiss without prejudice (so it can be refiled) any such action if the affidavit is not filed. That the family members filed such an affidavit in their first lawsuit demonstrates they were aware of the statute's procedural requirements. The circuit court's determination in the first case that the family members' claims merited a jury trial did not alleviate the family members of their obligation to refile the affidavit in the second action. Section 538.225 requires plaintiffs to file an affidavit in every medical negligence action; it makes no exception for plaintiffs who previously filed an affidavit in an identical prior action. It was the family members' own failure to attach the affidavit to the second suit that prevented them from being able to pursue that suit. And due to the passage of

time and the three-year statute of limitations governing wrongful death actions, the family members now are prohibited from refiling their claims in a third suit.

Dissenting opinion by Judge Teitelman: The author would address the family members' argument that section 538.225 violates the open courts provision of article I, section 14 of the state constitution and would hold that it does. The purpose of the courts is to screen out non-meritorious cases. The mandatory affidavit requirement of section 538.225 – which also screens out non-meritorious cases – is duplicative and amounts to nothing but a restriction on access to the courts, especially given the practical burden it imposes on parties to find a non-local health care provider as a prerequisite to exercising their constitutional right to access the courts.