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GEORGIA S. KIDDY v. LARRY R. LIPSCOMB

OCTOBER 07, 1993

GEORGIA S. KIDDY

v.

LARRY R. LIPSCOMB, M.D. AND SOUTH JACKSON WOMAN'S CLINIC, P.A.

James H. Herring, Herring Long & Joiner, Canton, for Appellant.

Jimmie Brock Reynolds, Jr., Steen Reynolds Dalehite Currie, Jackson, for Appellee.

Michael F. Myers, Steen Reynolds Dalehite Firm, Jackson, for Appellee.

BEFORE HAWKINS, C.J., SULLIVAN AND McRAE, JJ.

McRAE, JUSTICE, FOR THE COURT:

This appeal arises from a December 20, 1990, order of the Hinds County Circuit Court denying Georgia S. Kiddy's motion for a new trial in a medical malpractice action against Dr. Larry R. Lipscomb, M.D. and the South Jackson Woman's Clinic, P.A. Finding that the circuit court abused its discretion under either M.R.C.P. 21 or 42 (b) by severing Mrs. Kiddy's claims against a second physician involved in the incident, Dr. Milan Chepko, we reverse and remand with instructions that the two actions be joined pursuant to M.R.C.P. 20. We further take this opportunity to reiterate that pursuant to M.R.C.P. 59, when the trial court has had the opportunity to rule on a matter, particularly during trial or a hearing, this Court will consider an assignment of error on appeal regardless of whether it was raised in the motion for new trial.

I.

On August 22, 1987, Dr. Larry Lipscomb attempted to perform an abortion on Mrs. Georgia S. Kiddy, then six weeks pregnant, at the South Jackson Woman's Clinic. In his post-operative report, Dr. Lipscomb questioned whether the procedure had been successful, but assured Kiddy that there were no problems. According to the Clinic's records, Kiddy was instructed to return for a follow-up appointment on September 1, 1987. Kiddy, however, asserts that no such appointment was made.

Kiddy returned to the Clinic on September 4, concerned that she was still pregnant. She tested positive on the pregnancy test administered at that time. Dr. Lipscomb, however, told her that patients frequently tested positive at the follow-up visit and sent her home without further testing or care.

Kiddy continued to experience serious pain and bleeding. Suspecting that she was still pregnant, she administered

two home pregnancy tests on September 26, 1987, both of which registered a positive reading. She called Dr. Lipscomb and saw him again on September 28, 1987. He told her to return a few days later for a second procedure. Instead, she went to a local hospital where still another pregnancy test showed positive results, indicating that the abortion had been incomplete.

Having lost faith in Dr. Lipscomb, Kiddy made an appointment at the New Woman's Clinic, where Dr. Milan Chepko attempted a second abortion on October 3, 1987. Kiddy suffered serious complications and was admitted to Mississippi Baptist Medical Center the next day. She was treated by Dr. Freda Bush, an obstetrician and gynecologist who was on call that evening. Kiddy was released on October 5. After further out-patient visits with Dr. Bush, Kiddy was readmitted to the hospital on October 10, 1987, where she was treated by Dr. Bush's associate, Dr. Beverly McMillan. She was released the next day, but again was taken to the emergency room on October 13, 1987. Dr. McMillan performed emergency surgery at that time, removing a large quantity of placental matter from Kiddy's uterus.

Kiddy filed suit against Dr. Lipscomb, and his solely-owned clinic, the South Jackson Woman's Clinic, P.A., on June 20, 1988. She alleged that on August 22, 1987, Dr. Lipscomb negligently failed to perform a complete abortion on her. Kiddy later amended her complaint to join Dr. Milan D. Chepko, M.D., of the New Woman's Clinic as a defendant because the cause of action against both doctors arose from the same transaction or occurrence and because Dr. Lipscomb owned a one-third interest in the New Woman's Clinic. Dr. Lipscomb and the South Jackson Clinic filed a motion to bifurcate the causes of action. He asserted that he would be unfairly prejudiced by the joinder of Dr. Chepko, who had been indicted in a highly-publicized child pornography case. Dr. Chepko joined in the motion, to which Kiddy objected. The trial court denied the motion, with the reservation that the motion would be granted if Dr. Chepko were convicted prior to the scheduled trial date. Upon Dr. Chepko's conviction, the trial court entered an amended order to sever the cases. Subsequently, Kiddy's case against Dr. Lipscomb was heard by a jury in November, 1990, which returned a verdict in his favor. The circuit court then denied Kiddy's motion for a new trial.

II.

Kiddy first asserts that the circuit court abused its discretion in severing her cases against Drs. Lipscomb and Chepko. She filed her initial complaint against only Dr. Lipscomb and the South Jackson Woman's Clinic. More than a year later, she was granted leave of court to amend her pleadings to join Dr. Chepko as a defendant pursuant to M.R.C.P. 19 (a) (1) because the issues of liability and damages could not be separated between the doctors. *fn1 Joinder probably should have been granted instead under M.R.C.P. 20. Since it is the severance of the defendant's trials that is at issue, we make no determination on the issue of joinder except to note that by allowing joinder under Rule 19 (a)(1), the trial court apparently thought that the cases could not be tried separately.

On May 16, 1990, Dr. Lipscomb filed a motion to bifurcate the proceedings. He asserted that he would be prejudiced by any affiliation with Dr. Chepko, who had been indicted on child pornography charges. After Dr. Chepko was convicted, the circuit ...

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