



Pa. Man's \$3.5M Award Over Missed Heart Disease Upheld



By Y. Peter Kang

Law360 (July 19, 2019, 8:57 PM EDT) -- A Pennsylvania appellate panel on Friday affirmed a jury's decision to award \$3.5 million in a suit accusing a hospital of failing to timely diagnose a man's heart disease, saying certain medical expert testimony was not required.

A three-judge Superior Court panel upheld the verdict in favor of patient Frederick Macosky in a suit accusing Wilkes-Barre General Hospital of failing to properly inform him of abnormal results from a heart monitoring test known as an echocardiogram, which prevented timely treatment of Macosky's heart disease and caused an increased risk of harm and worsened his medical condition.

The suit had also named Dr. Mallikarjun Udoshi as a co-defendant, but the cardiologist settled out of the case prior to trial, according to the opinion. The jury found that the hospital breached the standard of care and caused Macosky's injuries.

On appeal, the hospital argued that Macosky failed to submit medical expert testimony proving its liability under the doctrine of corporate negligence as applied to a hospital.

The panel disagreed, however, saying the trial judge properly applied the Superior Court's 2001 ruling in Cangemi v. Cone, which held that expert testimony was not necessary in a suit where a hospital failed to send an X-ray to an attending physician. The panel said evidence was submitted at trial showing that Wilkes-Barre General had procedures in place regarding echocardiograms but failed to follow them.

"Appellant had procedures for ensuring that the appropriate physician timely completed an EKG report; appellant, and not a cardiologist, was responsible for sending an EKG report to the appropriate physician; and if these procedures were not followed, it was appellant's responsibility to enforce them," the panel said in a 23-page opinion.

Wilkes-Barre General had also argued that the jury should not have awarded more than \$2.5 million for future medical expenses because Macosky didn't submit sufficient expert testimony that he required the future implantation of a heart pump device and a heart transplant.

But the panel noted that under Pennsylvania case law, there is a "relaxed standard" for medical malpractice cases that allege an increased risk of harm. It said Macosky did indeed submit sufficient testimony under that relaxed standard.

"Because there was testimony about appellant's failure to timely detect Macosky's [heart abnormality], and such failure increased the risk that Macosky would suffer harm, it was a question for the jury whether, by a preponderance of the evidence, appellant's acts or omissions were a substantial factor in bringing about the harm," it said.

Addressing the hospital's contention that it should have been allowed to submit evidence of the patient's history of alcohol consumption, the panel said the "question of why or how Macosky came to have heart issues was not relevant" to the hospital's duty of care to properly report test results.

Attorneys for the parties did not immediately respond to requests for comment Thursday.

Judges Anne E. Lazarus, Mary P. Murray and Maria McLaughlin sat on the panel for the Superior Court.

Macosky is represented by Carl J. Guagliardo and Joseph M. Cosgrove of Selingo Guagliardo LLC.

The hospital is represented by Stuart T. O'Neal III, Ira L. Podheiser, Joseph T. Healey, Marcy B. Tanker and Amy Redington Riley of Burns White LLC.

The case is Macosky v. Mallikarjun Udoshi M.D. et al., case number 1682 MDA 2018, in the Superior Court of Pennsylvania.

--Editing by Abbie Sarfo.

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