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Mills v. Marx

JEFFREY W. MILLS III, a Minor, by ANISSA J. MILLS, His Parent and Natural Guardian,
and ANISSA J. MILLS, Individually and in her own right, Plaintiffs,
v. DAVID G. MARX, M.D., Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 1998-267, Jury Trial Demanded

Medical Malpractice; Negligence; Limits on Minor's Claim; Comparative Negligence

1. Pursuant to Pennsylvania law, a parent's alleged negligent act or omission cannot be imputed to his or her child in order to bar or limit the minor child's claim.
2. If comparative negligence is found on the part of a plaintiff-parent, it shall not affect the minor-plaintiff's recovery.
3. If evidence of comparative negligence by a plaintiff-parent is produced at trial, the jury may decide the issue of apportionment with respect to the plaintiff-parent's individual claim.

Appearances:

Catherine M. Mahaday-Smith, Esq., *Counsel for Plaintiffs*

Evan Black, Esq., *Counsel for Defendant*

OPINION

Walsh, J., December 13, 2001

Background

This matter is before the Court to address an issue raised in Pre-Trial memoranda of the parties. At the October 26, 2001 Pre-Trial Conference, the Plaintiff raised the following issue: "does Pennsylvania law preclude imputing a parent's alleged negligent acts or omissions to his/her child in order to bar or limit the minor's claim." It was clear at the Pre-Trial Conference that further research was needed to properly address the raised issue. Therefore, the Court requested that the Plaintiffs Jeffrey W. Mills, III, and Anissa J. Mills and the Defendant David G. Marx, M.D., submit legal memoranda for the Court's consideration.

This case began on December 31, 1996 when Minor-Plaintiff Jeffrey Mills, III, after complaining of abdominal pains, was taken by his parents to Chambersburg Hospital. Defendant, Dr. Marx, examined the Minor-Plaintiff and Jeffrey Mills was discharged from the hospital after being diagnosed with a viral infection. The Plaintiffs allege that Defendant Marx told the parents to wait 24 hours before seeking any further medical attention. On the other hand, the Defendant states that he instructed the Plaintiffs to return to the Emergency Room if the Minor-Plaintiff's condition worsened. Either way, when Jeffrey Mills returned to the Emergency Room the next day, Jeffrey was admitted for emergency surgery on a ruptured appendix. Within a few weeks after being discharged from the Chambersburg Hospital, Jeffrey Mills returned to his normal activities.

Issues

The issues raised in the Plaintiffs' and Defendant's legal memorandums are:

1. Whether Pennsylvania law precludes imputing a parent's alleged negligent acts or omissions to his/her child in order to bar or limit the minor's claim.
2. Whether the mother's individual claim, which arises from her son's accident, can be reduced or barred by her comparative negligence.

Discussion

According to their memoranda, the Defendant and the Plaintiffs agree on the first issue. As legal authority dictates, Pennsylvania precludes imputing a parent's alleged negligent act or omission to his/her child in order to bar or limit the minor's claim. See *Young v. Washington Hosp.*, 761 A.2d 559 (Pa. Super 2000); *Idzajtich v. Catalucci*, 292 A.2d 464 (Pa. Super. 1972); *Smalich v. Westfall*, 269 A.2d 476 (Pa. 1970); *Frankel v. United States*, 321 F. Supp. 1331 (E.D. Pa. 1970); and *Eshbach v. W.T. Grant Co.*, 481 F.2d 940 (3d Cir. 1973). From this case-law, it is clear to this Court that the mother's negligence, if any, cannot be imputed to the minor so as to reduce the minor's claim.

In the second issue, Defendant argues that since Plaintiff Anissa J. Mills has an individual claim against the Defendant, her claim may be reduced or barred by her comparative negligence. The Comparative Negligence Act, 42 Pa.C.S. §7102, establishes that any damages sustained by the Plaintiff shall be reduced proportionally to the amount of negligence attributed to the Plaintiff. If the Plaintiff's negligence is greater than the Defendant's, recovery by that particular Plaintiff shall be barred. *Id.*

While the Plaintiff asserts that there are no facts supporting a comparative negligence claim against Anissa Mills, Ms. Mills has not provided the Court with any legal authority contradicting the Defendant's assertion. Therefore, we find that the issue of comparative negligence is relevant to Plaintiff Anissa Mills' case. If comparative negligence is found on the part of Anissa Mills, however, it shall not affect the Minor-Plaintiff's recovery. In addition, if there is comparative negligence, it is proper to allow the jury to decide on the issue of apportionment. See *White v. Southeastern Pennsylvania Transp. Authority*, 518 A. 2d 810 (Pa. Super. 1986). Therefore, if enough evidence is produced at trial to support a comparative negligence charge against Anissa Mills, the Court shall read such an instruction to the jury for their consideration.

ORDER OF COURT

And now this 13th day of December, 2001, upon consideration of the arguments and briefs of the parties and the law, it is hereby ordered that Ms. Mills' alleged negligent acts shall not be imputed to the Minor-Plaintiff so as to reduce the Minor's claim, and if enough evidence is produced at trial to support a comparative negligence charge against Ms. Mills, the Court shall read such an instruction to the jury for their consideration.