



Gunn v. McCoy (TX S.Ct.)

Topics Covered: Abusive Litigation Against Physicians

Issue

The issue in this case is whether the testimony in a medical negligence case was sufficient to prove proximate cause.

AMA interest

The AMA opposes abusive lawsuits against physicians.

Case summary

Shannon McCoy, when she was 37 weeks pregnant, presented at a hospital with severe abdominal pain. Her fetus had detached from her uterine wall and was dead before she arrived at the hospital. Debra Gunn, MD, an obstetrician/gynecologist, was McCoy's physician during part of the time she was in the hospital.

McCoy was bleeding before Gunn saw her, and she was bleeding after she was transferred to the ICU and no longer under Gunn's direct supervision. McCoy went into ventricular fibrillation, as a result of which her heart was unable to pump a sufficient volume of blood. Ultimately, she suffered profound neurocognitive and physical deficits.

McCoy, through her husband and guardian, sued the hospital and several healthcare practitioners who had cared for McCoy in the hospital, including Gunn. The defendants other than Gunn either settled the claims against them or were dismissed from the case before trial.

The case against Gunn was tried before a jury. McCoy asserted (and her expert testified) that Gunn should have ordered more blood plasma for McCoy while McCoy was under her care. Part of Gunn's defense was that even if this were true and she was negligent, it was unclear how much, if any, of McCoy's injuries resulted from that negligence. Maybe the same result would have been reached if Gunn had ordered more plasma.

According to Gunn, the evidence from McCoy's expert on probable cause was insufficient to determine whether Gunn's alleged negligence led to McCoy's injury. Gunn asserted that the proximate cause evidence was based on speculation and unsupported conclusions. The trial judge, however, found otherwise and accepted McCoy's evidence on causation. The jury awarded \$10.6 million, although the trial court reduced this to approximately \$8 million.

On appeal, the Texas Court of Appeals also found the proximate cause evidence sufficient. It affirmed.

Dr. Gunn appealed to the Texas Supreme Court. Oral argument has been heard, and the case is under advisement.

Litigation Center involvement

The Litigation Center, along with the Texas Medical Association, filed an *amicus* brief in the Texas Supreme Court to support Dr. Gunn.

Texas Supreme Court brief