Cases In Which Dr. Foster, Meharry Medical College or Hubbard Hospital Were Parties
Stacy Reynolds

Summary:

I conducted a search of the Tennessee cases on Lexis using the "TNMega" file. My searches revealed no cases that even mentioned Dr. Foster as a party or in the text. I did find 12 cases against Meharry Medical College, 3 of those also named Hubbard Hospital. One case was prior to Dr. Foster's employment at Meharry Medical College. None of the cases involved Dr. Foster or the OB/GYN department. One case made reference to the accreditation of Meharry Medical College in passing. As explained below, that case merely mentioned that the Board of Accreditation of the American Association of Medical Colleges issued a directive requiring Meharry to adopt a medical practice plan or lose its accreditation. That case also mentioned that the Department of Health, Education and Welfare also ordered such a plan or risk losing certain federal funds. Since the case arose from the practice plan instituted as a result of those warnings, this was probably not in any way a factor in Meharry losing its accreditation.

Case Mentioning Accreditation:

In Tarleton v. Meharry Medical College, 717 F.2d 1523 (6th Cir. 1983) the plaintiff, Dr. Tarleton, sued for damages and injunctive relief when his employment was terminated by Meharry because he refused to join Meharry's medical practice plan. The plaintiff alleged certain antitrust and constitutional claims. In the discussion of the facts, the court mentions that the Department of Health, Education and Welfare ordered such a plan or risk losing certain federal funds because they were concerned that doctors on staff at Meharry and other medical schools were using patients from their private practices for teaching purposes by using their treatment as an instruction aid, thereby receiving double compensation for the services (teaching salary for the instruction and Medicare/Medicaid funds for the treatment). The case also mentions that the Board of Accreditation of the American Association of Medical Colleges issued a directive requiring Meharry to adopt a medical practice plan or lose its accreditation. The trial court had dismissed the antitrust claims for lack of jurisdiction and granted summary judgment in the other claims. The Circuit court reversed in part and remanded the case but due to the procedural nature of the appeal and decision, it is impossible to determine from this what the substantive outcome would have been.

Cite List:

Littleton v. Alexander, 857 F.2d 1474 (6th Cir. 1988)(After remand, case by a prisoner, alleging defendants, including Meharry, were deliberately indifferent to his medical needs concerning his heart condition, was dismissed as frivolous).

Littleton v. Alexander, 830 F.2d 194 (6th Cir. 1987)(Same case as above, remanded for consideration of plaintiff's objections regarding medical records).

Tarleton v. Meharry Medical College, 717 F.2d 1523 (6th Cir.)(See discussion above).

Hodgson, Sec'y of Labor v. George W. Hubbard Hospital of Meharry Medical College, 351 F.Supp. 1295 (Mid.D.Tenn. 1971)(Prior to Dr. Foster's employment).

Ware v. Meharry Medical College, 1994 Tenn. LEXIS 244 (Aug. 1, 1994)(Grant of appeal, no facts-see below).

Martirez v. Meharry Medical College, 673 S.W.2d 141 (Tenn. 1984)(Worker's Comp. claim by a nurse working at Meharry who was attacked as she was ending her shift).

Maynard v. Meharry Medical College, 1995 Tenn. App. LEXIS 55 (Feb. 1, 1995)(Aff'd dismissal of plaintiff's claim arising from Meharry's decision to not renew her residency contract after 1 year of a 3 year program and their subsequent agreement to a six month probationary continuation in 1986 because she only had a contract for one year).

Ware v. Meharry Medical College, 1994 Tenn. App. LEXIS 161 (March 30, 1994)(Court aff'd jury verdict against Meharry for conversion of plaintiff's property resulting from Meharry's retrieval, after a fire, of property that had been sold by an employee who had apparent authority to do so and reduced the jury verdict to the jurisdictional limit).

Walker v. Brooks, 1993 Tenn. App. LEXIS 710 (Nov. 17, 1993)(Aff'd summary judgement for defendants, including Meharry, in malpractice suit alleging negligence by a nurse when she allegedly injected a needle into the plaintiff's sciatic nerve).

Canady v. Meharry Medical College, 811 S.W.2d 902 (Tenn. App. 1991)(Aff'd dismissal of contract case in which plaintiff's residency contract was not renewed for the final year of his 5 year surgery residency because contract was for one year and negative reviews justified non-renewal).

Lewis v. Meharry Medical College, Slip Op. by Tenn. App. (October 31, 1986)(Court allowed set-off of sums paid by co-defendant to plaintiff at trial but not sums paid to co-plaintiffs who settled prior to trial. Meharry admitted liability for damages arising from injuries received by a minor while a patient at Hubbard Hospital. No facts about the injury or cause of injury).

Day v. Meharry Medical College, Slip Op. by Tenn. App. (July 20, 1984)(Slip and fall in parking lot of apartments owned by Meharry in which Meharry negligently failed to clear the parking lot of ice and snow).

MAIL-IT REQUESTED: FEBRUARY 10, 1995 1036TB

CLIENT: STACY
LIBRARY: TENN
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YOUR SEARCH REQUEST AT THE TIME THIS MAIL-IT WAS REQUESTED:
NAME(MEHARRY MEDICAL COLLEGE)

NUMBER OF CASES FOUND WITH YOUR REQUEST THROUGH:
LEVEL 1... 12

LEVEL 1 PRINTED

DISPLAY FORMAT: FULL

SEND TO: REYNOLDS, STACY
WHO - PRESIDENTIAL PERSONNEL
OLD EXECUTIVE OFFICE BUILDING
WASHINGTON DISTRICT OF COLUMBIA 20500

LEVEL 1 - 1 OF 12 CASES

ROBERT D. LITTLETON, Plaintiff-Appellant, v. PAUL ALEXANDER, M.D.; PHILLIP GARDNER, P.A.C.; NANETTE VASQUEZ, L.P.N.; STATE OF TENNESSEE; MEHARRY MEDICAL COLLEGE, Defendants-Appellees

LITTLETON v. ALEXANDER

No. 88-5378

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

857 F.2d 1474; 1988 U.S. App. LEXIS 12193

September 2, 1988, Filed

PRIOR HISTORY: [*1]

On Appeal from the United States District Court for the Middle District of Tennessee, No. 86-01020

OPINION:

BEFORE: LIVELY, RYAN and NORRIS, Circuit Judges.

ORDER

Plaintiff Littleton moves for counsel and for a free transcript on appeal from the district court's order dismissing this prisoner's civil rights case. 42 U.S.C. § 1983. The appeal has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. After an examination of the record and the plaintiff's brief, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Littleton is a prisoner at the Tennessee State Penitentiary in Nashville, Tennessee. The defendants are prison medical personnel, the State of Tennessee, and a local hospital. Littleton alleged that the defendants were deliberately indifferent to his medical needs concerning his heart condition. The district court initially held that the case was frivolous and dismissed the action under 28 U.S.C. § 1915(d). On appeal, this court issued an order remanding the case for consideration of Littleton's allegations that the medical records submitted by the defendants were fraudulent.

On remand, the magistrate held a hearing [*2] and examined each of Littleton's allegations. He found no evidence of fraud and again recommended that the case be dismissed as frivoulous under 28 U.S.C. § 1915(d). The district court adopted the recommendation and dismissed the case.

Upon consideration, we agree with the conclusions of the district court for the reasons stated in the magistrate's report and recommendation. Accordingly, the motions for counsel and for a free transcript are denied. The order of the district court is affirmed under Rule 9(b)(5), Rules of the Sixth Circuit, because the issues are not substantial and do not require oral argument.

LEVEL 1 - 2 OF 12 CASES

Robert D. Littleton, Plaintiff-Appellant v. Paul Alexander, M.D.; Phillip Gardner, P.A.C.; Nanette Vasquez, L.P.N.; State of Tennessee; and Meharry Medical College, Defendants-Appellees

Littleton v. Alexander

No. 87-5414

* NOT RECOMMENDED FOR FULL-TEXT PUBLICATION SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

830 F.2d 194; 1987 U.S. App. LEXIS 12983

October 1, 1987, Filed

OPINION: [*1]

Before: Milburn, Keith and Norris, Circuit Judges.

ORDER

This case has been referred to a panel of this court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the record and briefs, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Plaintiff appeals from the dismissal of his civil rights complaint filed pursuant to 42 U.S.C. § 1983 in which he alleged that defendants were deliberately indifferent to his serious medical needs. The case was referred to the magistrate for a determination of whether dismissal pursuant to 28 U.S.C. § 1915(d) was appropriate. The magistrate conducted an evidentiary hearing on February 10, 1987, at which defendants submitted copies of plaintiff's medical records. Plaintiff objected to the records on the grounds that they contain errors and alterations.

The magistrate recommended that the complaint be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d) and plaintiff filed timely objections. The district court adopted the magistrate's recommendation and dismissed the complaint on March 30, 1987. This appeal followed.

Upon consideration, it appears that plaintiff's objections regarding his medical [*2] records have not been addressed. The allegations of errors and alterations, if true, undermines the analysis of frivolity heretofore undertaken. Therefore, remand of this case to the district court for consideration of plaintiff's objections concerning his medical records is appropriate.

It is therefore ORDERED that the district court's judgment is vacated pursuant to Rule 9(b)(6), Rules of the Sixth Circuit, and the case is remanded to the district court for further proceedings consistent with this order. In so ordering, we express no opinion regarding the ultimate merits of plaintiff's complaint.

Dr. Gadson J. Tarleton, Plaintiff-Appellant, v. Meharry Medical College, Dr. Ralph J. Cazort, Dean, School of Medicine, Dr. Lloyd Elam, President, Meharry Medical College, Florence Gaynor, Director Hospital and Health Services, Board of Trustees of Meharry Medical College, Defendants-Appellees

Tarleton v. Meharry Med. College

No. 82-5449

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

717 F.2d 1523; 1983-2 Trade Cas. (CCH) P65,625

September 20, 1983

PRIOR HISTORY:
APPEAL from the United States District Court for the Middle District of Tennessee, Nashville Division.

COUNSEL: Avon N. Williams, Williams & Dinkins, Nashville, Tennessee, for Appellant.

Wilson Sims, Bass, Berry & Sims, Nashville, Tennessee, Stafford McNamee, for Appellees.

JUDGES: Merritt and Jones, Circuit Judges, and Weick, Senior Circuit Judge.

OPINIONBY: WEICK

OPINION: [*1525] WEICK, Senior Circuit Judge.

Plaintiff-Appellant, Dr. Gadson J. Tarleton, a black physician specializing in radiology, was formerly employed as a faculty member of defendant-appellant Meharry Medical College, a predominantly black, private, not-for-profit educational institution in Nashville, Tennessee. Plaintiff's association with Meharry was terminated after he refused to join a medical practice plan prepared by the Meharry faculty which regulated patient fees charged by salaried faculty members who conducted their own private practice on the campus using facilities, personnel, and drugs Meharry supplied to them free of charge. Plaintiff brought this suit in the United States District Court for the Middle District of Tennessee, Nashville Division, seeking damages and injunctive relief against Meharry and certain of its officers, trustees, and employees for alleged violations of § 1 and § 2 of the Sherman Act, 15 U.S.C. § 1 and § 2; 42 U.S.C. §§ 1981, 1982, 1983, 1985, 1986, and 1988; the First, Fifth, Thirteenth and Fourteenth Amendments of the United States Constitution; various Tennessee antitrust statutes, Tenn. Code Ann. §§ 69-101 et seq., and the Tennessee Professional Corporations Act, Tenn. Code Ann. §§ 48-2001 et seq. The district court dismissed the Sherman Act claims for lack of jurisdiction, granted summary judgment in favor of the defendants on all other federal claims, and declined pendent jurisdiction over the state claims. We affirm in part, reverse in part, and remand for further proceedings by the district court.

I

The facts, as found by the district court, are as follows:

Meharry Medical College [hereinafter "the College" or "Meharry"] is a private, not-for-profit educational institution located in Nashville, Tennessee. From 1949 until July 1, 1977, plaintiff was a full-time faculty member of the College, and for most of that period, was Chairman of the Department of Radiological Service of Hubbard Hospital, a full service teaching hospital which is owned and operated by the College on the Meharry campus.

Meharry's full-time faculty may conduct the private practice of medicine by seeing patients both at the College and at their own private offices for which they charge professional fees. Prior to the adoption of the Meharry Medical Practice Plan [hereinafter "the Plan"] these fees were retained in their entirety by the individual physicians most of whom conducted their private practices from facilities located on the Meharry campus. These facilities were supplied to the physicians free of charge incident to their teaching duties along with medical and non-medical support personnel paid by the College and supplies and equipment purchased by the College.

Beginning in the late 1960's and early 1970's, the Meharry administration determined that the College could not continue to subsidize its faculty members in their private practices. Accordingly, the faculty and administration developed and considered several alternative proposals for a medical practice plan that would allow full-time faculty members to continue their private practices, but would provide some reimbursement to the College for the overhead it was contributing to these private practices.

In 1974, the Department of Health, Education and Welfare [hereinafter "HEW"] n1 advised the College that if it were to continue [*1526] to receive federal funds it must adopt a medical practice plan. As Meharry was receiving approximately sixty percent (60%) of its revenues from federal funds, termination of that funding would more than likely have resulted in the financial collapse of the college. HEW's objections were directed to what it characterized as double payment of federal funds to faculty members for performing a single function. HEW's position was that faculty members often treated their private patients in the presence of their medical students using the treatment as an example to aid instructions. The professor/physician would then receive federal Medicare or Medicaid funds in payment for patient treatment in addition to receiving a teaching salary heavily subsidized by HEW funds for performing the identical function.

n1 This department has recently been split into two separate agencies: (1) the Department of Education, and; (2) the Department of Health and Human Services.

At approximately the same time that HEW took a firm position in this matter, the Board of Accreditation of the American Association of Medical Colleges issued a directive requiring the College to adopt a medical practice plan or lose its accreditation. As a result of the directives of HEW and the Board of Accreditation, the Board of Trustees of the College mandated that the full-time faculty members adopt and implement a medical practice plan in 1974. After consideration of alternative plans, the Plan at issue was adopted by the faculty members, approved by the Board of Trustees and appropriate college officers.

The Plan was put into operation on February 1, 1975 and subsequently amended on June 28, 1976. All full-time faculty members of the College who engaged in the private practice of medicine were required to be members of the Plan. All fees collected by the participating faculty members had to be endorsed to the college. These fees in turn were to be used to pay the expenses of delivery of health care services, including salaries of the participating faculty members, salaries of medical support personnel, cost of billing and collection, malpractice insurance premiums, costs of supplies, rental of occupied space, and other overhead expenses.

Compensation of faculty member participants in the Plan is based on a guaranteed salary component and an incentive component. The guaranteed salary is based on the history of collections from private practice generated by the individual participant. This component is paid regardless of revenues generated in the present year. The incentive component is based upon a percentage of revenues generated in the present year after guaranteed salary and support costs are paid. If a particular department generates revenues sufficient to cover all guaranteed salaries and support costs for the department, the office of the Dean of the School of Medicine and the department divide the excess funds. The College benefits from the Plan because it is reimbursed by the participants in the Plan for support services necessary for their individual private practices, which previously had been supplied by the College without charge to the participants. The Plan also provides a mechanism for receipt of excess practice funds by the College.

Despite provisions in the Plan which called for standard fees to be set by the Executive Committee of the Plan, the Plan has been administered from its inception in such a way that the Executive Committee never exerted any influence or control over the fixing of professional fees charged by a participating faculty member. Each participant establishes his own fees and reports these fees to the business office of the Plan, which in turn conducts all billing and collection services. The Executive Committee of the Plan, by resolution dated November 8, 1977, recommended to the membership of the Plan, that the provisions in the Plan relating to standard fees be deleted.

At the time the Plan was instituted, plaintiff refused to subscribe. He testified that his objections to the Plan included: a basic philosophical objection; loss of freedom to manage his fees; the Plan restricted his decisions as to what dispositions to make of his money; the Plan misrepresented services given to the patient; and the Plan increased the cost of medical care for patients. Other evidence demonstrated, however, that the management of fees is not in any way affected by the Plan and, in fact, [*1527] the Plan has no control over the individual physician's setting of fees or management of his revenues. In addition, evidence showed that each physician treats his patients as his own without any control from the business office of the Plan, the Executive Committee of the Plan, or the College. The patient is in all respects the individual patient and client of the physician. The Plan simply collects the medical fees and arranges for disbursement of those fees to pay all the costs of the medical services. Evidence also failed to show that physician fees have increased (or, indeed, changed at all) since the beginning of the Plan or that any alleged increase or decrease was a result of the imposition of the Plan.

After continued negotiations over a period of two years, it became apparent that discussions with the plaintiff were not producing results and the Dean of the School of Medicine, at the instruction of the Board of Trustees of the College, informed the plaintiff on June 6, 1977, that he would no longer be retained on full-time faculty status after July 1, 1977. At all times during the negotiations and at the time plaintiff was notified of his termination, he had the option of becoming a member of the Plan in accordance with the instructions of his employer and retain his full-time faculty status. Instead plaintiff elected to surrender his full-time faculty status and refused to become a part of the Plan. Incident to his surrender of full-time faculty status, plaintiff also surrendered his tenure rights and his positions as Chairman of the Radiology Department of the College and Chief of Radiological Services of Hubbard Hospital. After plaintiff's resignation, he filed this suit. Thereafter on May 24, 1978, plaintiff's staff privileges at Hubbard Hospital were totally terminated.

Plaintiff's original complaint alleged that the Plan provided for an illegal price fixing scheme resulting from an alleged conspiracy of the defendants to violate the Anti-trust Laws. (Complaint, para. 13, filed Sept. 19, 1977). The original Plan contained a clause which stated that "the standard fees for professional services rendered in the care of patients by a participating member shall be as established by the Executive Committee of the Meharry Medical Practice Plan". Plaintiff also asserted various pendent state claims in this original complaint.

After an evidentiary hearing from which the above factual findings were gleaned, plaintiff's notice [sic, motion] for a preliminary injunction was denied. The Court found, inter alia, that plaintiff had failed to prove that the fees had been affected in any way by the Plan and that he had not demonstrated a reasonable probability of success on the merits. Pendent jurisdiction on the state claims was declined on the ground that plaintiff had failed to state a substantial federal claim.

Plaintiff then filed a "Second Amendment and Supplement To Complaint" (filed March 27, 1979) adding several new causes of action including claims arising under 42 U.S.C. §§ 1981, 1982, 1983, 1985, 1986, and 1988. He also asserts claims arising under the First, Fifth, Thirteenth, and Fourteenth Amendments to the United States Constitution. This amended complaint also includes new claims arising under "15 U.S.C. §§ , et seq." Apparently plaintiff intends this rather broad statement to more specifically include Sections 1 and 2 of the Sherman Act.

n.1 This department has recently been split into two separate agencies: (1) the Department of Education, and; (2) the Department of Health and Human Services.

(Appendix 681-86)

II

A

Defendants moved for summary judgment on the federal antitrust claims on the grounds that the district court lacked subject matter jurisdiction and the claims failed as a matter of law because plaintiff did not satisfy the interstate commerce requirement of the Sherman Act. n1 Considering the motion under Rule 12(b)(1) rather [*1528] than Rule 56 of the Federal Rules of

Civil Procedure, the district court: (1) determined that plaintiff sought to invoke the "effect on" interstate commerce test rather than the "in" interstate commerce test for Sherman Act jurisdiction, see McLain v. Real Estate Board of New Orleans, 444 U.S. 232, 241-42, 62 L. Ed. 2d 441, 100 S. Ct. 502 (1980), (2) interpreted ambiguous language in McLain to mean that a Sherman Act plaintiff must demonstrate that the alleged illegal conduct, as opposed to the defendant's general business, substantially affects some channel of interstate commerce, n2 (3) reviewed the pleadings and evidence, and concluded:

All of the [plaintiff's] allegations are statements that the defendants' business generally is engaged in interstate commerce. Plaintiff has failed to identify any relevant area of interstate commerce potentially affected by the defendants' activities in implementing the Plan or in revoking plaintiff's staff privileges. Even if plaintiff intends [his] allegations of defendants' general business activities to be the "relevant channels" of interstate commerce, he has failed to assert how implementation of the Plan or revocation of his staff privileges affects these activities -- there is no "nexus". Moreover, another district court has held that [*1529] the appropriate focus in staff privilege cases is on how the defendants' alleged illegal activities affect the plaintiff's role in interstate commerce. Cardio-Medical Associates, Ltd. v. Crozer-Chester Medical Ctr., 536 F. Supp. 1065 (E.D. Pa. 1982). Plaintiff makes no mention of any activities of his own in interstate commerce, much less how those activities are affected by defendants' alleged unlawful acts.
In sum, plaintiff's complaint fails to meet even the most minimal standards for properly pleading a cause of action under the Sherman Act. The complaint as twice amended fails to allege any legally relevant channel of interstate commerce, any effect on interstate commerce, and any connection between the challenged actions of defendants and interstate commerce. Accordingly, defendants' motion to dismiss for lack of subject matter jurisdiction, FED. R. CIV. P. 12(b)(1), will be granted as to the Sherman Act claims and this cause will be dismissed without prejudice.

- - - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - - -

n1 § 1 of the Sherman Act, 15 U.S.C. § 1, provides, in pertinent part:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states . . ., is declared to be illegal. (emphasis added)

§ 2 of the Sherman Act, 15 U.S.C. § 2, provides, in pertinent part:

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any parts of the trade or commerce among the several States . . . shall be deemed guilty of a felony . . . . (emphasis added)

n2 In McLain, the plaintiff's complaint alleged that real estate brokers in the New Orleans area had agreed to a fixed rate of brokerage commissions on sales of residential property in violation of Section 1 of the Sherman Act, and that this conduct affected the frequency and terms of home sales financed through interstate channels. The district court dismissed the complaint for failure to establish the interstate commerce component of Sherman Act jurisdiction and the Fifth Circuit affirmed. In reversing the dismissal, Chief Justice Burger wrote for a unanimous Court:

To establish the jurisdictional element of a Sherman Act violation it would be sufficient for petitioners to demonstrate a substantial effect on interstate commerce generated by respondents' brokerage activity. Petitioners need not make the more particularized showing of an effect on interstate commerce caused by the alleged conspiracy to fix commission rates, or by those other aspects of respondents' activity that are alleged to be unlawful. The validity of this approach is confirmed by an examination of the case law. If establishing jurisdiction required a showing that the unlawful conduct itself had an effect on interstate commerce, jurisdiction would be defeated by a demonstration that the alleged restraint failed to have its intended anticompetitive effect. This is not the rule of our cases. See American Tobacco Co. v. United States, 328 U.S. 781, 811, 66 S. Ct. 1125, 90 L. Ed. 1575 (1946); United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 225, 84 L. Ed. 1129, 60 S. Ct. 811, n. 59 (1940).

McLain, supra, at 242-43.

Courts differ over the meaning of this language. In James R. Snyder v. Associated General Contractors of America, 677 F.2d 1111, 1115 n. 3 (6th Cir. 1982), this court observed:

We are aware that a conflict exists between the circuits regarding McLain. The Ninth Circuit has held that Sherman Act jurisdiction exists when any business activity of a defendant affects interstate commerce. Western Waste Service v. Universal Waste Control, 616 F.2d 1094 (9th Cir. 1980). Under a more conservative view of the reach of the Sherman Act, the Tenth Circuit has taken the position that a defendant's illegal activities must affect interstate commerce for jurisdiction to be present. In the instant case, because the evidence supports a finding that defendants' alleged illegal actions affected interstate commerce, we need not decide whether Sherman Act jurisdiction could be founded solely on proof that defendants' general business activity affects interstate commerce.

The Tenth Circuit opinion referred to is Crane v. Intermountain Health Care, Inc., 637 F.2d 715, 720-25 (10th Cir. 1980). The Ninth Circuit's liberal reading of McLain has also been rejected by the First Circuit in Cordova & Simonpietri Insurance Agency, Inc. v. Chase Manhattan Bank, N.A., 649 F.2d 36, 44-45 (1st Cir. 1981), and by the Second Circuit in Furlong v. Long Island College Hospital, 710 F.2d 922 (2d Cir. 1983). We again decline to decide this question because we find, infra, that plaintiff's complaint satisfies Sherman Act jurisdictional requirements under either a broad or narrow reading of McLain.

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

(Appendix 696-97)

B

The reach of the Sherman Act extends as far as Congress' power to regulate interstate commerce. Gulf Oil Corp. v. Copp Paving Co., 419 U.S. 186, 201, 42 L. Ed. 2d 378, 95 S. Ct. 392 (1974); James R. Snyder Co. v. Associated General

Contractors of America, supra, at 1114. Sherman Act jurisdiction exists when an activity is "in" interstate commerce or, although local in nature, has a "substantial effect" on interstate commerce. McLain, supra, at 242-43; Hospital Building Co. v. Trustees of Rex Hospital, 425 U.S. 738, 743, 48 L. Ed. 2d 338, 96 S. Ct. 1848 (1976). There is no talismanic test for the adequacy of the interstate commerce nexus under the "effects" test; jurisdiction must be determined by a case-by-case analysis of the relevant economic facts. Heille v. City of St. Paul, Minnesota, 671 F.2d 1134, 1136 (8th Cir. 1982); Crane v. Intermountain Health Care, Inc., supra, at 727; Western Waste Service Systems v. Universal Waste Control, supra, at 1098-99; J.P. Mascaro & Sons, Inc. v. William J. O'Hara, Inc., 565 F.2d 264, 269 (3d Cir. 1977). Defendants' activities allegedly infected by a price-fixing conspiracy must as a matter of "practical economics" substantially affect interstate commerce. McLain, supra, at 246.

To establish jurisdiction a plaintiff must allege in the pleadings the critical relationship between local activity and a channel of interstate commerce, and if these allegations are controverted must proceed to demonstrate by submission of evidence beyond the pleadings that the jurisdictional requirements of the Sherman Act are satisfied. McLain, supra, at 246, quoting Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957). In antitrust cases, "where the proof is largely in the hands of the alleged conspirators," dismissals prior to giving the plaintiff ample opportunity for discovery should be granted very sparingly. Hospital Building Co. v. Rex Hospital Trustees, supra, at 746, quoting Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 473, 7 L. Ed. 2d 458, 82 S. Ct. 486 (1962). Under this "rigorous standard", id., a 12(b)(1) motion should not be granted if there are facts pleaded from which jurisdiction can be inferred. In re Plywood Antitrust Litigation, 655 F.2d 627, 641 (5th Cir. 1981); Crane v. Intermountain Health Care, Inc., supra, at 725; 5 C. Wright & A. Miller, Federal Practice And Procedure § 1350, at 552 (1969).

Application of these principles to the instant case leads us to conclude the district court erred in dismissing the Sherman Act claims for lack of subject matter jurisdiction. The following pleadings and evidence are relevant. Plaintiff's original Complaint alleged, in pertinent part:

10. The defendants are engaged in interstate commerce, by inter alia, receiving a substantial amount of the funds for the operation of said Meharry Medical College through interstate commerce and through the receipts by the physicians who are members of said Medical Practice [*1530] Plan of funds, which funds are endorsed over to said defendants, through interstate commerce.

(Appendix 4). Plaintiff's first Amended Complaint alleged, in pertinent part:

10a. The plaintiff and the members of his class and the defendant, Meharry Medical College have in the past and are now in the business of providing professional medical services to the Nashville, Davidson County, Tennessee community and said plaintiffs and defendants have in the past and are now competing for patients to provide said services to.

. . . .

10c. The defendant, Meharry Medical College, by requiring the plaintiff and the members of his class to enter into the Meharry Medical Practice Plan, eliminates all competition for patients and eliminates all independence in the charging of fees.

10d. The members of the plaintiffs' class who have left their employ at Meharry Medical College and who have set up private offices off the campus of Meharry Medical College have also been adversely affected by the Medical Malpractice Plan (sic) in that said plan allows Meharry to monopolize the medical business in that part of the community and said plan causes the prices for medical services to remain at an artificial level in that said members of plaintiff's class cannot effectively charge higher prices and compete for the same patients.

10e. Because of the Meharry Medical Practice Plan the fees charged for medical services administered by physicians associated with and members of said medical plan will be fixed and maintained at an artificial level.

(Appendix 22-23). Plaintiff's second Amended Complaint alleged, in pertinent part:

22. After the filing of this lawsuit the defendants proposed and are considering the adoption of a revised MMPP which, on information and belief, eliminates the explicit price fixing clause contained in the MMPP in effect when this suit was filed, and provides that medical fees became the property of MMPP rather than defendant Meharry Medical College. However, on information and belief, said revised MMPP still contains the following features which constitute restraint of trade or commerce in violation of the statutes set out in Sections I and II of the original Complaint:

. . . .

(d) the plan presently contemplates the corporate practice of medicine by requiring that where professional fees become a part of the MMPP, substantial portions of said MMPP income are to be paid to the Meharry Medical College for its unrestricted use in the College or its clinical and hospital facilities;

(e) the plan increases the cost of health care to patients by including in and adding to their patient fees said hidden contributions to Meharry Medical College and its agencies, including Hubbard Hospital and other clinical facilities who are already being paid for said health care to patients;

(f) the plan restrains competition of physicians who are members thereof by burdening of their fees with the aforesaid hidden costs which other physicians who are not members of the plan do not have;

(g) the plan restrains competition between MMPP physicians who are forced to join the plan by fixing their income at arbitrary levels which are not based on competition and without interactive influence between MMPP physician members so that their income is not based on medical services rendered or relative income generated;

(h) the plan restrains competition by requiring MMPP to contribute to the Medical College and its hospital facilities as a part of medical fee costs and thereby permits increased hospital fees to be charged by Hubbard Hospital without regard to cost or efficiency and without said hospital being required to compete with other hospitals;

(i) the requirement that full-time faculty members at Meharry Medical College, including [*1531] the plaintiff, lose their faculty positions as a condition of refusing to join such anticompetitive Medical Practice Plan with its aforesaid provisions working against cost-containment results in an illegal restraint of trade;

(Appendix 73-74). Plaintiff's affidavit, filed November 20, 1979, averred, in pertinent part:

Meharry Medical College is a nationally recognized institution, being one of two predominantly black medical schools in the country. As such, prior to the integration of predominantly white medical schools in the recent years, it graduated approximately one-half of the practicing black physicians in the United States. In the past, resident physicians of the Department of Surgery have rotated in practice through a hospital located in Mound Bayou, Mississippi, and resident physicians in pediatrics and other departments rotated through a hospital located in Tuskegee, Alabama. Students at Meharry are drawn from throughout the United States and several foreign countries. Doctors and other hospital personnel are recruited both nation and world-wide. Supplies to the hospital and the college are purchased through interstate commerce. Numerous patients at the hospital come from out of state and their bills are paid through out-of-state insurance companies and/or through federal programs administered in Washington, D.C., including, but not limited to, medicare and medicaid.

As a result of the operation of the Plan, I would be unable to receive all the income from my labor. Indeed, the Plan penalizes a practioner who commands a substantial income by taking a larger portion of his income than that of a practioner with less income for "administrative costs". This restrains competition by making it less profitable to perform patient services. Additionally, the Plan would operate to deprive me of income received for patient-care consultative services performed at places other than Hubbard Hospital by requiring that the income from same be turned over to the Plan and distributed according to its formula. . . .

The Plan operates to increase the costs of medical care to patients by adding to their fees hidden contributions to Meharry Medical College. Further, Hubbard Hospital and the various clinics of Meharry are already billing the patients for services performed in the hospital and/or clinics, the additional billing through the Plan, in which part of the income is given to Meharry, allows Meharry to be paid twice for the same service given to the patient.

(Appendix 669-70).

In sum, plaintiff explicitly or implicitly alleged a nexus between the Meharry Medical Practice Plan and the following channels of interstate commerce: (1) interstate recruitment and travel of Meharry students, (2) interstate recruitment and travel of Meharry physicians and other personnel, (3) collection of bills from out-of-state patients, (4) payment of patients' bills through out-of-state insurance companies and the federal government, (5) purchase by Meharry and/or Hubbard Hospital of supplies and equipment in interstate commerce, and (6) transmission in interstate commerce of federal subsidies for Meharry other than payments of patient fees.

Defendants denied plaintiff's Sherman Act jurisdictional allegation (Appendix 25, 56), introduced testimony that the percentage of Meharry patients from out-of-state was "by far under five percent" (Appendix 357), and submitted an affidavit by the Business Manager of the Meharry Medical Practice Plan which stated, inter alia, that during the relevant period the Plan involved over $1 million per year in medical fees (Appendix 28-30).

Viewing the foregoing pleadings and evidence in the light most favorable to the non-movant, Hospital Building Co. v. Rex Hospital Trustees, supra, at 741, 742 n. 1, we conclude that plaintiff alleged a nexus between the Meharry Medical Practice Plan and the interstate movement of Meharry [*1532] patients and medical fees sufficient to satisfy the interstate commerce element of Sherman Act jurisdiction. In so holding, we note: (1) plaintiff alleged that the Plan fixed medical fees at artificial levels, n3 (2) defendants did not attempt to rebut plaintiff's affidavit that substantial medical fees paid by out-of-state insurance companies and the federal government are transmitted in interstate commerce, and (3) defendants' assertion that less than five percent of Meharry patients are from out-of-state does not necessarily establish that their number and/or medical fees are insubstantial. Sherman Act jurisdiction does not fail because a plaintiff does not precisely quantify the alleged adverse impact a defendants' conduct has on interstate commerce. McLain, supra, at 243; Palmer v. Roosevelt Lake Log Owners Ass'n., 651 F.2d 1289, 1293 (9th Cir. 1981).

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n3 The district court found that the Plan had no effect on patient fees charged by Meharry physicians. We express no opinion on this finding, but note that failure to prove that an alleged price-fixing scheme actually affected prices does not preclude Sherman Act jurisdiction. McLain, supra, at 243.

- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

We express no opinion on the sufficiency of the alleged nexus between the Meharry Medical Practice Plan and other channels of interstate commerce, or on the merits of plaintiff's Sherman Act claims. Since the interstate commerce nexus established by plaintiff arises out of defendants' alleged illegal activity, i.e. the Medical Practice Plan, we also decline to decide whether McLain permits Sherman Act jurisdiction when interstate commerce is "substantially affected" by a defendant's general business but not by the alleged illegal conduct. See n. 2, supra.

For the foregoing reasons, we reverse dismissal of the Sherman Act claims and remand those claims to the district court for further proceedings consistent with this opinion.

III

A

Plaintiff alleged in his second Amended Complaint that defendants violated his rights under the First, Fifth, and Fourteenth Amendments and 42 U.S.C. § 1983. Defendants moved for summary judgment on these claims on the grounds that the challenged conduct was not "state action" or "under color of state law".

The district court deemed the following principles applicable to these claims.

Based upon [Jackson v. Metropolitan Edison Co., 419 U.S. 345, 42 L. Ed. 2d

477, 95 S. Ct. 449 (1974); Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 32 L. Ed. 2d 627, 92 S. Ct. 1965 (1972); and Burton v. Wilmington Parking Authority, 365 U.S. 715, 6 L. Ed. 2d 45, 81 S. Ct. 856 (1961)] in order to satisfy the significant state involvement prong of state action analysis, plaintiff must aver sufficient factual allegations to establish either a close nexus between the challenged activity and the state or the existence of a symbiotic relationship between defendants and the state.

The Sixth Circuit has repeatedly held that "something more" than partial federal funding is needed for state action. Newsom v. Vanderbilt University, 653 F.2d 1100, 1115 (6th Cir. 1981); Jackson v. Norton-Children's Hospitals, Inc., 487 F.2d 502, 503 (6th Cir. 1973), cert. denied, 416 U.S. 1000, 40 L. Ed. 2d 776, 94 S. Ct. 2413 (1974). In essence, the nexus requirement places the burden on the plaintiff to demonstrate that the state is involved not simply in some activity of the offending institution such as funding alone, but is involved with the activity that caused the injury to the plaintiff. Feldman v. Jackson Memorial Hospital, 509 F. Supp. 815, 822 (S.D. Fla. 1981).

(Appendix 702-03).

The court found that plaintiff's only reference to a state action nexus occurred in the following paragraphs of his Second Amended Complaint.

para. 21. "On information and belief defendant Meharry Medical College and its agencies receive over 60% of their finances [*1533] from state and local Governments and, by virtue of public involvement in their financing, regulation and operation, a state agency." Plaintiff's "Second Amendment and Supplement to Complaint", filed March 27, 1979.

In addition, that complaint stated that the termination of plaintiff's employment as a faculty member and the termination of his staff privileges was:

. . . violative of due process of laws secured by the Fifth and Fourteenth Amendments in denying plaintiff notice and hearing prior to termination of his employment by an agency predominantly financed through public Federal and State funds . . .

(Appendix 703). The court also noted that defendants submitted an affidavit by the President of Meharry Medical College which averred that Meharry operations were controlled solely by a private Board of Trustees, that the Medical Practice Plan was drafted by Meharry physicians and approved by the Meharry Trustees independent of any government regulation of the Plan's content, and that no governmental unit caused or influenced plaintiff's demotion and dismissal from Meharry. Finally, the court observed that the Meharry President's affidavit indicated that federal and state funds accounted for approximately 55% of Meharry's budget during the relevant period.

Based on the foregoing, the court concluded:

Plaintiff asserts that there is "state action" because (1) Meharry receives a high percentage of federal and state funding, in fact it is denominated a federally dependent institution, and (2) it is subject to extensive governmental regulation. Moreover, HEW threatened withdrawal of federal funds unless some sort of medical practice plan was adopted. Defendants state that while "a" plan was required, the challenged plan was drafted by the college physicians and that the state and federal governments have had no involvement with the administration or implementation of the adopted plan. Finally, defendants state that the decision to terminate plaintiff's employment and staff privileges was neither required, influenced nor controlled by the state or federal government. It is important to precisely identify the alleged unconstitutional conduct. Plaintiff asserts that the conduct was the termination of his staff privileges and employment without notice and a hearing in violation of the due process clause. It could also possibly be inferred from the complaint that he believed he was terminated for exercising his First Amendment rights in speaking out against the Plan.

The HEW requirement generally that a medical practice plan be implemented had no connection with either the decision to terminate plaintiff or the manner in which that termination was accomplished. Moreover, even though the federal government mandated the adoption of a plan, the plan itself was formulated by plaintiff's colleagues. It was not an intricate regulatory scheme devised by the agency and imposed upon the college. Consequently, the policies and conduct here under attack have not been shown to have been influenced or supported by a governmental entity. The requisite nexus has not been demonstrated. The government involvement alleged is no more than simple funding contingent in part on the general requirement that a medical practice plan be implemented. Any nexus between that and the manner and reason for plaintiff's termination has not been sufficiently alleged. Accordingly, claims brought under 42 U.S.C. § 1983, the First, Fifth and Fourteenth Amendments to the Constitution must be dismissed for failure to demonstrate that the challenged conduct was "under color of state law" or "state action".

(Appendix 702-03, 705-06).

B

We believe the grant of summary judgment in favor of defendants was premature for two reasons. First, the district court overlooked an averment by plaintiff which bears on the question of state action. [*1534] Plaintiff's affidavit filed November 20, 1979, states, in pertinent part:

Hubbard Hospital has a contract with the Metropolitan Government of Nashville and Davidson County, Tennessee, for the treatment of indigent patients. To certify indigency, said Government employs at least two persons, whose office is located at the hospital.

(Appendix 669). Testimony by Meharry's President also refers to services for indigent patients. (Appendix 240).

It was incumbent upon the district court to evaluate this averment in conjunction with other allegations of "state action" regardless of whether it was overlooked by counsel, Equal Empl. Opp. Comm'n v. Keco Industries, Inc., 617 F.2d 443, 446 (6th Cir.), cert. denied, 449 U.S. 899, 66 L. Ed. 2d 128, 101 S. Ct. 267 (1980), and to accord it every favorable presumption. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157, 26 L. Ed. 2d 142, 90 S. Ct. 1598 (1970); Fitzke v. Shappell, 468 F.2d 1072, 1077 (6th Cir. 1972). This rule assumes particular importance in this case because the critical inquiry as to state action is necessarily a case-by-case factual determination. Newsom v. Vanderbilt University, 653 F.2d 1100, 1113 (6th Cir. 1981). "Only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance." Burton v. Wilmington Parking Authority, 365 U.S. 715, 722, 6 L. Ed. 2d 45, 81 S. Ct. 856 (1961). Ultimately, this may or may not be a "close case" on the state action question, see Newsom v. Vanderbilt University, supra, at 1116. At this juncture, we express no opinion on the merits; we hold only that plaintiff's affidavit created a "genuine issue as to [a] material fact." Fed. R. Civ. P. 56(c), which should be evaluated by the district court.

Second, defendants' refusal to provide responsive answers to plaintiff's interrogatories frustrated plaintiff's attempt to discover the extent of Meharry's contacts with, regulation by, and dependency upon federal, state, and local governments. n4 Defendants assert that plaintiff cannot now complain about their evasion because he did not seek a remedy from the district court. This argument lacks merit for the simple [*1535] reason that plaintiff filed a motion to continue discovery, in which he objected to defendants' evasion and requested the district court to extend the time for discovery. (Appendix 429-35). The record contains no indication that the district court considered or ruled on this motion before deciding defendants' motion for summary judgment.

- - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - - -

n4 Plaintiff served the following interrogatories on the defendants:

53. Identify each and every communication, written or oral, by source, date and substance of contents upon which Meharry Medical College or any of its agencies relies in regard to its claim that the United States Department of Health, Education, and Welfare, or any other governmental agency required Meharry Medical College or any of its agencies to impose a Medical Practice Plan upon its professional practitioners or to insist upon adoption of same.
56. List each and every requirement imposed on Meharry Medical College and each of its agencies, including but not limited to Hubbard Hospital, the Comprehensive Mental Health Center, the Comprehensive Health Center and the Matthew Walker Health Center imposed by the United States Government, the State of Tennessee and the Metropolitan Government of Nashville and Davidson County, Tennessee in connection with or as a condition of the furnishing of financial or other support to Meharry or its said agencies, attach a copy of any and all contracts, rules, regulations, correspondence or other documents reflecting said requirements.

In response to these interrogatories, defendants merely referred to their response to other interrogations, which read as follows:

8. Since the Court has determined that the Plan does not violate any anti-trust laws (See the Memorandum) and since the answers to this question do not reflect on the issues raised in the amended complaint, we respectfully decline to answer. See Rule 26 of the Federal Rules of Civil Procedure.
11. We respectfully decline to answer this interrogatory because to answer would be unduly burdensome and expensive and that would not be relevant or material to the subject matter involved in the pending action. See Rule 26 of the Federal Rules of Civil Procedure.

These answers were unresponsive for several reasons. At this point the district court had only decided the preliminary injunction motion, and had not determined the merits of plaintiff's Sherman Act claims. The present dispute over the existence of state action demonstrates the relevance and materiality of both interrogatories. Finally, if defendants considered these interrogatories unduly burdensome and expensive, they should have sought a protective order rather than evading the substance of facially reasonable questions. See Fed. R. Civ. P. 26(c).

- - - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - - -

Although it is within the sound discretion of the district court to regulate discovery practice within the parameters set by the Federal Rules of Civil Procedure, 8 C. Wright & A. Miller, Federal Practice and Procedure § 2006, at 35 (1970), summary judgment should not ordinarily be granted before discovery has been completed. Alabama Farm Bureau Mutual Casualty Co., Inc. v. American Fidelity Life Insurance Co., 606 F.2d 602, 609 (5th Cir.), cert. denied, 449 U.S. 820, 66 L. Ed. 2d 22, 101 S. Ct. 77 (1980). This principle is particularly strong when constitutional and civil rights claims are at issue. Porter v. Califano, 592 F.2d 770, 778 (6th Cir. 1979); Mabey v. Reagan, 537 F.2d 1036, 1050 (9th Cir. 1976); see generally 10A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 2732.2 (1983). In this case, plaintiff was entitled to a ruling on his motion to extend discovery before the district court granted defendants' summary judgment motion.

We do not necessarily preclude the possibility that further discovery may be inappropriate because of undue delay, burden or expense, or for other reasons, but note that defendants have a heavy burden in resisting discovery given the facial reasonableness of the interrogatories in question. See n. 4, supra. It is for the district court to determine this question in the first instance. Accordingly, the grant of summary judgment for defendants on plaintiff's claims under the First, Fifth, and Fourteenth Amendments and § 1983 is reversed and remanded for further proceedings consistent with this opinion.

IV

Plaintiff also alleged that defendants violated the Thirteenth Amendment, 42 U.S.C. §§ 1981, 1982, 1985, 1986, 1988 and various provisions of Tennessee law. The district court granted summary judgment for defendants on these federal claims and dismissed the pendent state claims for lack of a cognizable federal claim. We have examined the record for error with respect to disposition of these federal claims. Finding none, we are of the opinion that the grant of summary judgment in favor of defendants should be affirmed. In light of our findings in Sections II and III with respect to plaintiff's other federal claims, we reverse dismissal of the state claims and remand for further consideration by the district court on the question of pendent jurisdiction. We express no opinion on the merits of these state claims or the propriety of assuming pendent jurisdiction given the ultimate disposition of the remaining federal claims.

In conclusion, we reverse the judgment of the district court dismissing plaintiff's Sherman Act claims for lack of jurisdiction. We reverse the summary judgment in favor of defendants on plaintiff's claims under the First, Fifth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983. We affirm the summary judgment in favor of defendants, holding that they did not violate the Thirteenth Amendment to the Constitution of the United States, and did not violate 42 U.S.C. §§ 1981, 1982, 1985, 1986, 1988. Finally, we reverse dismissal of plaintiff's pendent state claims for lack of a cognizable federal claim.

We remand to the district court for further consideration and determination consistent with this opinion. We express no opinion on the merits of this case.

LEVEL 1 - 4 OF 12 CASES

James D. Hodgson, Secretary of Labor, United States Department of Labor, Plaintiff v. George W. Hubbard Hospital Of Meharry Medical College, Inc., Defendant

Hodgson v. George W. Hubbard Hosp. of Meharry Med. College, Inc.

No. 5334

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION

351 F. Supp. 1295; 9 Fair Empl. Prac. Cas. (BNA) 698; 66 Lab. Cas. (CCH) P32,572; 4 Empl. Prac. Dec. (CCH) P7546

October 12, 1971

Before Dr. Foster

JUDGES: Morton, D.J.

OPINIONBY: MORTON

OPINION: [*1295]

MORTON, D.J.:

The complaint was filed by the Secretary of Labor against the defendant, George W. Hubbard Hospital of Meharry Medical College, Inc., seeking to enjoin said defendant from alleged violations of § 6(d) and § 15(a)(2) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq., and such other and further relief as may be necessary and appropriate, including the restraint of any withholding of wages found to be due to employees under the Act.

Jurisdiction is conferred in this Court by § 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 217.

The averred violations deal with the allegedly discriminatory payment of salaries to nurse aides (females) and nurse attendants (males) which is prohibited by the equal pay provisions of the Equal [*1296] Pay Amendment to the Fair Labor Standards Act. The defense as proffered by the defendant is that the nurse attendants (male) perform additional tasks which (1) require extra effort, (2) consume a significant amount of time, and (3) are of an economic value commensurate with the pay differential.

Findings of Facts

The stipulated facts are as follows:

(1) George W. Hubbard Hospital (hereinafter called Hubbard Hospital or Hospital) is owned and operated by, and as a division of, Meharry Medical College. Hubbard Hospital has an annual gross volume of sales or business done of approximately $3,000,000. The hospital is located at 1005 18th Avenue, North, in Nashville, and has been in operation at this location since 1931. It is a full service hospital, open to the general public, and normally has

approximately 200 patients. The hospital generally employs some 450 employees, and operates on three shifts: 7 a.m. until 3 p.m., 3 p.m. until 11 p.m., and 11 p.m. until 7 a.m.

Hubbard Hospital generally employs some 50 to 60 female "nurse aides" and some 20 to 25 male "nurse attendants." Prior training or experience is not a prerequisite to employment and the starting pay within each classification is the same regardless of prior training or experience. At the beginning of employment both nurse aides and nurse attendants are given three to six weeks of on-the-job training and orientation. The training for the aides and attendants is essentially the same.

(2) Nurse aides and nurse attendants work on all three shifts. The routine patient care is essentially the same on all three shifts. The normal workweek for these employees consists of five 8-hour shifts or a total of 40 hours a week. With the exception of Obstetrics-Gynecology, the various nursing service areas throughout the hospital contain both male and female patients. There are no male attendants assigned to pediatrics, cardiology, female surgery, or obstetrics; both male and female aides are assigned to male surgery, private surgery, recovery room, emergency room, and internal medicine; and they are indiscriminately assigned to care for patients of the opposite sex. The pay of the employees within each classification, basically, does not vary because of the shift or nursing service departments to which they are assigned.

(3) The female nurse aides and male nurse attendants are assigned to and do perform essentially the same routine patient care, examples of which are as follows: give bed baths, back care, and change linen and make beds; give and assist with personal hygiene; feed patients and provide ice and drinking water; provide care for incontinent patients; take and record vital signs (temperature, pulse, respiration, weight and blood pressure); provide and remove bedpans and urinals; answer patients' signal lights; assist patients in and out of bed; perform simple treatments; collect specimens; measure intake and output; report on and off duty to nurse in charge and hear patient reports; participate in in-service educational programs; give enemas and perform urine-sugar tests; shave patients; wheel and walk patients; and dress or help dress patients.

(4) The work of the employees within the classifications in question has been substantially the same throughout the period since February 1, 1967.

(5) The work of the female nurse aides and male nurse attendants is substantially equal in terms of skill and responsibility. The jobs are performed within the same establishment and under similar working conditions. The performance evaluation records maintained by defendant with respect to the female nurse aides and the male nurse attendants show that overall the performance rating of the employees is substantially equal.

(6) During the period pertinent to this case the weekly starting rates for [*1297] 40-hour workweeks for the men and women in question have been as follows:

Period Covered	Female Nurse Aides	Male Nurse Attendants
2-1-67 to 2-1-68	$ 40	$ 46
2-1-68 to 6-30-68	46	51
7-1-68 to 2-1-69	49	54
2-1-69 to 6-30-69	52	58

7-1-69 to 2-1-70	58	80
2-1-70 to 6-30-70	58	80
7-1-70 to Present	64	80

During the period since 1968, the wage rate differential between the male and female employees in question has averaged 30 cents an hour.

(7) The defendant does not contend that the wage rate differentials are based on a merit system, a seniority system or on a system which measures earnings on the basis of quality or quanity of production.

(8) If the Court finds that the work of all the nurse aides and nurse attendants is substantially equal within the meaning of the Act, then $68,949 is owed to 115 female nurse aides for the period January 1, 1968, to January 1, 1971.

(9) Hubbard Hospital was first investigated by the Department of Labor in April, 1967, again in August, 1968, and finally in February, 1971. The Department in its first, and in subsequent investigations, has advised the defendant that it considers the jobs of the female nurse aides and male nurse attendants to be substantially equal and that the current wage rate differential is in violation of the Act. The defendant's basic position, as set forth in the letter from the Hospital Administrator to Mr. C.W. Carden of the Department of Labor (Exhibit 3 to the Vanstone Deposition), in the first and all subsequent investigations, is that the aforesaid jobs are not equal in terms of effort and that a wage rate differential is not in violation of the Act.

This Court is required to determine whether the male attendants performed additional duties which consume a significant amount of their time and require extra effort, with an economic value commensurate with the pay differential.

The determination of these facts requires the evaluation of the testimony given by the respective witnesses, said witnesses consisting of two classes in general, i.e., nurse aides and attendants, and the hospital's supervisory staff. It is of interest that the persons who were more closely associated with the activities of the nurse aides and nurse attendants, the "charge nurses," who have direct supervision of the nurse aides and nurse attendants were not called to testify. Although one or two of the supervisory personnel who did testify were former charge nurses, they had been removed from this position for some time prior to the period in question and prior to the date of trial.

After weighing all of the testimony, observing the demeanor of the witnesses and judging the reasonableness of their testimony, the Court finds that the contentions of the defendant are without merit or supporting evidence. The activities of the male nurse attendants which the defendant contends requires extra effort are summarized as follows: (a) mopping floors, (b) transporting bodies to the morgue, (c) assisting the undertaker in release of bodies from the morgue, (d) moving helpless patients into and out of bed, (e) transporting large gas cylinders to and from the storage area and patients' bedside, (f) delivering heavy supplies to wards, (g) changing mattresses, (h) transporting stretcher patients to and from the operating rooms, the emergency room and the admission office, and (i) placing helpless patients in the bathtub. Special emphasis is placed upon the fact that male nurse attendants were called for temporary emergency duty to other areas of the hospital. After performing temporary emergency services, they returned to their regular stations.

Although it may be true that these extra duties were to be assigned only to male nurse attendants, the proof shows that both nurse aides and nurse attendants performed and assisted each other [*1298] in performing these aforementioned tasks. The Court notes that occasionally an emergency would arise which required the expenditure of a special effort on the part of the nurse attendants without any assistance on the part of the nurse aides. However, the general practice and general experience in this particular hospital indicates that such events arose only occasionally. In the general operation of the hospital, both the female nurse aides and the male nurse attendants were called upon and did perform these services as a unit without regard to job classification.

Conclusions of Law

The Court concludes the following:

(1) The duties performed by the nurse aides and nurse attendants are substantially identical.

(2) The defendant having stipulated that the jobs are equal in terms of skill, responsibility and working conditions, failed to sustain its burden of proof that the alleged additional duties, as performed, rendered the job unequal in terms of effort. See Shultz v. Wheaton Glass Co., 421 F.2d 259 (3rd Cir. 1970).

(3) The defendant has violated § 6(d) and § 15(a)(2) of the Fair Labor Standards Act of 1938, as amended.

(4) The 115 female nurse aides are entitled to be paid the sum of $68,949, as stipulated.

In reaching this decision, the Court was not persuaded that the pay differential was justified by any occasional extra effort expended by the male attendants. The question of occasional extra effort as justification for pay differential has been, in the opinion of this Court, correctly dissected and resolved by the Fifth Circuit Court of Appeals.

"The equal effort criterion has received substantial play in the reported cases to date. As the doctrine is emerging, jobs do not entail equal effort, even though they entail most of the same routine duties, if the more highly paid job involves additional tasks which (1) require extra effort, (2) consume a significant amount of the time of all those whose pay differentials are to be justified in terms of them, and (3) are of an economic value commensurate with the pay differential. We are persuaded that this approach to the application of the statutory 'equal effort' criterion is in keeping with the fundamental purposes of the Equal Pay Act, and adopt it here. Employers may not be permitted to frustrate the purposes of the Act by calling for extra effort only occasionally, or only from one or two male employees, or by paying males substantially more than females for the performance of tasks which command a low rate of pay when performed full time by other personnel in the same establishment." Hodgson v. Brookhaven General Hospital, 436 F.2d 719, 725 (5th Cir. 1970).

In connection with the investigation of the defendant, minor underpayment of wages in other categories was discovered. This defendant made no question about its obligation to comply with the Fair Labor Standards Act, and immediately paid said amount. The defendant has maintained its position, based on competent legal advice, that it was not guilty of discrimination in the payment of salaries to the female nurse aides and the male nurse attendants. This was based on what it and its attorney thought was the proper application of the statutory law. The defendant is an outstanding medical institution consisting of both a medical school and a hospital. Based on the testimony in this record, this Court can find no indication that this defendant has intended to violate the law in the past or has any intention of violating the law in the future. Therefore, by reason of the discretion vested in this Court, this Court does not find justification for the issuance of an injunction, and the application therefor is hereby denied.

An appropriate order will be prepared by the attorney for the plaintiff, submitted to the attorney for the defendant, and then to the Court for approval.

TIMOTHY A. WARE, Plaintiff/Appellant, v. MEHARRY MEDICAL COLLEGE, Defendant/Appellee.

WARE v. MEHARRY MED. COLLEGE

No. 01A01-9304-CV-00149

SUPREME COURT OF TENNESSEE, AT NASHVILLE

1994 Tenn. LEXIS 244

August 1, 1994, Entered

PRIOR HISTORY: [*1] Circuit Court. Davidson County.

Original Opinion of March 30, 1994, Reported at: 1994 Tenn. App. LEXIS 161.

OPINIONBY: PER CURIAM

OPINION: ORDER

Plaintiff and defendant have each filed applications for permission to appeal from the judgment of the Court of Appeals in this case.

Each of the parties has raised, inter alia, the issue of the jurisdictional authority of the circuit court on appeal of judgments from general sessions court.

Both appeals are granted, limited to the issue stated herein. All other issues raised are found to be without merit, and are pretermitted.

A motion has been filed for permission to file an amicus curiae brief by plaintiff in the case of Pullen v. Textron, Inc., d/b/a Homelite, No. 01A01-9404-CV-00193, now pending in the Court of Appeals.

Permission is granted for either party in the Pullen case to file an amicus brief. Oral argument by Amici will not be allowed.

ENTER, this 1st day of August, 1994.

PER CURIAM

LEVEL 1 - 6 OF 12 CASES

KATHRYN H. MARTIREZ, Plaintiff-Appellant, v. MEHARRY MEDICAL COLLEGE, Defendant-Appellee.

MARTIREZ v. MEHARRY MED. COLLEGE

Supreme Court of Tennessee, at Nashville

673 S.W.2d 141

July 16, 1984

PRIOR HISTORY:

Appeal from the Circuit Court for Davidson County

Hon. Harry Lester, Judge

DISPOSITION: AFFIRMED.

COUNSEL: For Plaintiff-Appellant: Michael P. Williamson, Nashville

For Defendant-Appellee: William C. Moody, Nashville

JUDGES: Brock, J. wrote the opinion. Fones, Harbison, and Drowota, JJ., and Russell, Sp. J., Concur.

OPINIONBY: Brock

OPINION: [*141] BROCK, J.

The plaintiff, while working as a nurse for the defendant, sustained injuries by accident arising out of and in the course of her employment when she was attacked by a large black man as she was in the process of "clocking out" after completing her duties on the 3:00 p.m. until 11:00 p.m. shift on January 2, 1980. The plaintiff was admitted to the defendant hospital immediately following the attack where she received treatment for the ensuing two weeks. Thereafter, a dispute arose between the parties respecting the extent of benefits due the plaintiff under the worker's compensation [*142] laws and she filed suit to enforce her rights. The compensability of the attack has never been questioned. The trial court awarded benefits for temporary total disability from the date of the assault through April 21, 1980, and benefits for medical treatment through April 21, 1980, but denied any benefits for medical expenses or disability after April 21, 1980.

The plaintiff has appealed, asserting that she is entitled to receive psychiatric treatment and that she has sustained a permanent partial disability for which she is entitled to benefits. The defendant has also appealed contending that the trial court erred in awarding temporary total disability benefits and medical expenses accruing after February 26, 1980, the date on which the employer ceased to pay worker's compensation benefits to the plaintiff because of its inability to receive a medical report from the physician who attended the plaintiff and treated her injuries from the beginning, but who was employed by the defendant.

The assault to which the plaintiff was subjected was a brutal one although it did not result in any broken bones. She sustained severe bruising around her neck, eyes and arms and other parts of her body. She was hospitalized for two weeks and was treated by Dr. Gardiner and by other physicians to which she was referred by Dr. Gardiner. For several months following the assault she suffered from dizziness and ringing in her ears. Dr. Gardiner was employed by the defendant hospital and was on duty when plaintiff entered the hospital as a patient following the assault; he continued to treat her during her stay in the hospital.

The assault caused the plaintiff, a young immigrant from the Phillipines, to suffer extreme anxiety and for this reason she was referred to Dr. Zillur Athar, a psychiatrist, whose testimony by deposition was the only medical evidence submitted to the trial court. Dr. Athar testified that he first saw and treated the plaintiff on January 24, 1980, at which time she was totally disabled from the injuries suffered in the assault. Thereafter, he saw and treated the plaintiff on January 31, February 14, and April 21, 1980. He testified that petitioner was totally disabled through April 21, 1980. After that date he did not see the plaintiff until April 19, 1982, just prior to the trial of this cause in the trial court. On the last occasion he saw the plaintiff and talked with her for a period of about 15 minutes. He stated that following his last observation on April 19, 1982, that the plaintiff is now stable and seems to be progressing very well but that she still suffers from a traumatic neurosis. He testified that the only treatment for her condition is that she "go through exploratory psychotherapy" for the purpose of "reconstruction." We quote from Dr. Athar's testimony:

"I would have to say it is a fracture of her ego. She has it so much the id has fractured. There has to be some exploratory and some reconstructive psychotherapy. To do that any psychiatrist would have to see her very frequently, at least once a week, maybe two or three times a week, and how long it takes I can't tell you. It depends on who she sees, how they get along and how things work out for them. Psychotherapy is the only treatment for this type of problem. There is no medicine for it. You don't have any chemotherapy.

* * *

"Q. There is no question she is able to work now?

"A. That's right. It looks like she is doing okay.

* * *

"Q. Doctor, what problems if any would she have working as a nurse because of her psychological problems?

"A. Facing black men mostly. And facing any situation where she has to deal with by herself. It hampers her not only in her job but also in her day to day life. If she is on duty alone someplace, which is not [*143] in this place, there -- because there is always another nurse working."

The record discloses that following the assault upon the plaintiff she successfully passed the examinations to become a registered nurse in Tennessee and also in Illinois and that she now practices as a registered nurse in Illinois in a pediatrics ward of a Chicago hospital, earning three or four times as much as she earned in her employment at the time of the assault upon her.

The applicable statutory provision is as follows:

"For not exceeding three (3) years after notice of injury, the employer or his agent shall furnish free of charge to the employee such medical and surgical treatment, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus, such nursing services as ordered by the attending physician and hospitalization, including such dental work made reasonably necessary by accident as herein defined, as may be reasonably required; . . . ."

T.C.A., § 50-1004 (now T.C.A., § 50-6-204(a)(1)).

The trial judge did not make a finding of fact but apparently he concluded that the psychotherapy recommended by Dr. Athar was not "reasonably required" by the plaintiff, because in his final decree he stated, in part,

". . . that it further appeared to the court that the plaintiff is not entitled to compensation for any future medical expenses or permanent partial disability benefits . . . ."

The trial court's conclusion that the plaintiff's condition does not "reasonably require" the psychotherapy as suggested by Dr. Athar is not without evidentiary support in the record. Without such psychotherapy, during the period from April 21, 1980, to April 19, 1982, the date of Dr. Athar's brief conversation with the plaintiff prior to giving his deposition, it appears that the plaintiff has made a good recovery from her injuries, having become a registered nurse both in Tennessee and Illinois and being able to practice her profession as a registered nurse in a Chicago hospital. The fact that a certain course of treatment is recommended by a physician does not, ipso facto, render the employer liable to provide such treatment; the court finds that such a course of treatment is not "reasonably required," considering all the relevant evidence. Wisconsin Tel. Co. v. Industrial Commission, 263 Wis. 380, 57 N.W.2d 334 (1953).

The fact that Dr. Athar's examination of plaintiff on April 19, 1982, lasted no more than 15 to 20 minutes and that he had not seen her since April 21, 1980, were also factors which the trial judge could consider in determining how much weight to give the testimony of Dr. Athar in determining whether psychotherapy was "reasonably required" within the meaning of the statute. We find no error in the failure of the trial court to provide for such psychotherapy treatment.

Although the record shows that the plaintiff continues to suffer from some of the after effects of the vicious assault upon her, it fails to show that she sustained a permanent disability within the meaning of the worker's compensation laws. Therefore, the trial court did not err in failing to find any permanent partial disability as a result of this attack. See, Minton v. Leonard, 219 Tenn. 642, 412 S.W.2d 886 (1967).

Likewise, the record fails to support the contention of the defendant that plaintiff's right to medical and disability benefits for the period from February 26, 1980, through April 21, 1980, should be held to have been suspended by reason of the failure of Dr. Gardiner, her treating physician, to timely furnish a report of his treatment and the plaintiff's injuries. This report was requested on January 11, 1980, and was not received until June 20, 1980. Approximately six weeks following the assault upon the plaintiff the insuror of the employer wrote to the plaintiff and informed her of Dr. Gardiner's failure to furnish the medical report and directed that she cease being treated by Dr. Gardiner and instead was to be treated by one of three physicians whose names the insuror [*144] supplied to her. She responded that she would not cease being treated by Dr. Gardiner, whereupon, the insuror notified her that her worker's compensation benefits were being terminated as of February 26, 1980.

The statute, T.C.A., § 50-1004, required that $". . . within thirty (30) days after examination or treatment of an employee, a physician shall, upon request, furnish to the employer or to the employer's insuror and to the employee or his attorney a complete medical report as to the claimed injury, its effect upon the employee, the medical treatment prescribed, an estimate of the duration of required hospitalization, if any, and an itemized statement of charges for medical services to date."

The failure of Dr. Gardiner to furnish the requested medical report cannot in any way be blamed on the plaintiff. She was in no way responsible for his conduct; he was an employee of the defendant-employer; the plaintiff did not object to his giving the required report and was in no way responsible for his failure to do so. Therefore, the trial court did not err in awarding benefits for the period between February 24, 1980, and April 21, 1980.

Finding no error in the decree of the trial court, we affirm the same and tax costs against the plaintiff and the defendant, equally.

Fones, Harbison, and Drowota, JJ., and Russell, Sp. J., Concur.

LEVEL 1 - 7 OF 12 CASES

PATRICIA MAYNARD, Plaintiff/Appellant, v. MEHARRY MEDICAL COLLEGE, and RICHARD E. JACKSON, Statutory Agent, and HAROLD JORDAN, M.D., Official Capacity, and RICHARD WHITTEN-STOVALL, M.D., Official Capacity, Defendants/Appellees.

MAYNARD v. MEHARRY MED. COLLEGE

Appeal No. 01-A-01-9408-CH-00400

COURT OF APPEALS OF TENNESSEE, MIDDLE SECTION, AT NASHVILLE

1995 Tenn. App. LEXIS 55

February 1, 1995, FILED

PRIOR HISTORY: [*1]

APPEAL FROM THE CHANCERY COURT FOR DAVIDSON COUNTY AT NASHVILLE, TENNESSEE. No. 92-1804-II. THE HONORABLE C. ALLEN HIGH, CHANCELLOR.

DISPOSITION: AFFIRMED AND REMANDED

COUNSEL: FOR PLAINTIFF/APPELLANT: ALAN BRYANT CHAMBERS, Memphis, Tennessee.

FOR DEFENDANTS/APPELLEES: C. HAYES COONEY, Watkins McGugin McNeilly & Rowan, Nashville, Tennessee.

JUDGES: SAMUEL L. LEWIS, JUDGE, CONCUR: HENRY F. TODD, PRESIDING JUDGE, BEN H. CANTRELL, JUDGE

OPINIONBY: SAMUEL L. LEWIS

OPINION: OPINION

This appeal is by plaintiff/appellant, Patricia Maynard, from the trial court's order granting the defendants/appellees' motion to dismiss, pursuant to Tennessee Rule of Civil Procedure 12.03. Following the dismissal of her cause, plaintiff duly perfected her appeal.

Plaintiff, Patricia Maynard, M.D., was a licensed physician who entered into a contract with Meharry Medical College for a psychiatric residency program. The term of the "written agreement" entered into between plaintiff and defendant Meharry was from 1 July 1985 through 1 July 1986.

Plaintiff, on 1 July 1985, began her first year of psychiatric residency at Meharry Medical College. On 25 June 1986 plaintiff was terminated, effective 30 June 1986; however, Meharry reversed itself and reappointed [*2] her to the program with a six-month probationary period. On 15 June 1992, plaintiff filed the instant suit against Meharry and the other defendants claiming breach of contract. On 29 September 1992 defendants answered asserting, inter alia, that the plaintiff had not stated a cause of action. On 13 January 1993, defendants moved to dismiss plaintiff's complaint, pursuant to Tennessee Rule of Civil Procedure 12.03.

It is defendants' contention that plaintiff had no contract right to continued employment, and therefore, she had not stated a claim upon which relief could be granted. On 22 March 1993 the trial court dismissed the complaint for the limited reason that the contract documents were not attached to the complaint, pursuant to Tennessee Rule of Civil Procedure 10.03. However, plaintiff moved to amend the judgment, for new trial, and/or reconsideration, and on 2 July 1993 the court set aside the judgment and dismissal and permitted an amendment of the complaint to exhibit the contract documents. Subsequently, the defendants filed an amended motion to dismiss, again contending that plaintiff had failed to state a claim. Plaintiff responded to the motion to dismiss, and on [*3] 21 March 1994 the court dismissed the complaint.

Plaintiff, following dismissal of her complaint, duly filed her notice of appeal.

The pleadings in this case show that plaintiff, Patricia Maynard, M.D., was a licensed physician and that she entered into a written contract entitled "Medical Dental Staff Post-Graduate Contract Agreement" effective 1 July 1985 with defendant Meharry Medical College as a post-graduate physician in psychiatry for a term beginning 1 July 1985 and ending 1 July 1986. The contract expressly provides: "The term of this contract is not automatically annually renewed. Renewal of appointment will be based on the Post-graduate physician's clinical performance and the availability of positions based upon accreditation standards and fiscal resources." The contract provided plaintiff was to receive a salary of $ 20,275.00 per year. Plaintiff admitted in the pleadings that during the term of the written contract, she experienced problems with her supervisors.

On 30 June 1986 the Psychiatric Training Committee reversed its prior determination of 25 June 1986 that plaintiff be terminated and recommended that she be reappointed to the psychiatric program with a six-month [*4] probationary period, subject to evaluation at the end of the six-month period and providing for termination in the event of non-improvement of performance. Meharry also advised Dr. Maynard that she would have to repeat her first year. Dr. Maynard accepted the terms of probation, but appealed the Psychiatric Training Committee's recommendation, pursuant to the contract agreement. The parties signed a written contract extending Dr. Maynard's contract for the period from 1 July 1986 to 31 December 1986. The contract was further extended from 15 December 1986 to 31 January 1987.

Plaintiff contends that the "contract agreements" are for physician's services, not for the residency program. She insists that the residency program guidelines are established in the "Directory of Residency Training Programs," (Directory), which is accredited by the Accreditation Council for Graduate Medical Education of the American Medical Association and which was provided by Meharry Medical College to plaintiff to explain the residency program. It is plaintiff's insistence that the Directory makes it clear that there will be a minimum three-year program of residency education in psychiatry. Dr. Maynard points [*5] out that the Directory expressly states that resident physicians must be given due process by the institution and contains the following language:

Due Process: There must be institutional procedures which provide for due process for all parties potentially involved when actions are contemplated which could result in dismissal or could significantly threaten a resident's intended career development or when there are grievances against a program or institution. Residents, program directors, teaching staff and administration should be involved in the development of these policies and procedures which are to be approved by the governing board. The details must be written and made known to the residents, program directors, and adhered to by all programs sponsored by the institution. There must be an equitable and satisfactory mechanism, involving the participation of the medical staff, for the redress of grievances. Although final responsibility rests with the institutions governing body, the latter should rely upon the determinations of the medical staff in professional and educational matters.

The Directory of Residency Training Program sets forth a process of review and accreditation [*6] of educational programs and graduate medical education. However, the Directory does not form part of the contract between plaintiff and defendant Meharry, with reference to terms and conditions upon which plaintiff may continue as a student at Meharry. The Directory provides for terms and conditions upon which defendant Meharry would be accredited in its residency training program in psychiatry. We are of the opinion that this does not dictate the terms of the contract between Meharry and residents in the program such as plaintiff. We have reviewed the record in detail, but cannot find a prohibition of one year contracts in residency programs. As we stated earlier, the contract which Dr. Maynard signed provided that her contract would not be automatically annually renewed.

After plaintiff was placed on probation, she was to receive monthly evaluations. Plaintiff contends that after this process began, her appeal within Meharry was heard. She further contends that as a result of her appeal, she and Meharry began to negotiate a settlement agreement, but the parties eventually reached an impasse.

Plaintiff did not have a contractual relationship to perform the three-year Psychiatric [*7] Residency Program at Meharry. She had a contract for one year. In Canady v. Meharry Medical College, 811 S.W.2d 902, 906 (Tenn. App. 1991) this court stated that a resident at Meharry had no contractual right to renew or extend his contract beyond the termination date of the contract. Here, there is no allegation that the plaintiff was discharged during the period of her contract or deprived of any compensation due her under the terms of her contract. As in Canady, plaintiff insists that she has a right of action for the failure of Meharry to contract with her for additional years of residency, which would have enabled her to pursue further training in the medical specialty of psychiatry and to realize her hopes for a large income. However, as we stated in Canady: "Plaintiff has no such right of action." Id.

Meharry and plaintiff were free to contract or not to contract after her first year of residency. Either plaintiff or Meharry was free to decline to renew for good cause, bad cause, or no cause at all. Canady, 811 S.W.2d at 906. Meharry was free to determine whether it would enter into a further contract [*8] with plaintiff, without liability to plaintiff.

The plaintiff alleged that negotiations to settle the differences between the parties broke down in July 1987, after her appeal was heard on 9 March 1987, and that the parties reached an impasse on 3 August 1987. Plaintiff does not allege that she attempted to reach any final administrative decision. Administrative remedies that are provided by statute must be exhausted before relief may be sought from the courts. Bracey v. Woods, 571 S.W.2d 828, 829 (Tenn. 1978).

Plaintiff does not allege any reason why she failed to exhaust her administrative remedies. She waived her procedural rights. See Canady v. Meharry Medical College, 811 S.W.2d at 907.

The judgment of the trial court is in all respects affirmed, and the cause is remanded to the trial court for any further necessary proceedings. Costs on appeal are taxed to the plaintiff/appellant, Patricia Maynard.

SAMUEL L. LEWIS, JUDGE

CONCUR:

HENRY F. TODD, PRESIDING JUDGE

BEN H. CANTRELL, JUDGE

LEVEL 1 - 8 OF 12 CASES

TIMOTHY A. WARE, Plaintiff/Appellee, v. MEHARRY MEDICAL COLLEGE, Defendant/Appellant.

WARE v. MEHARRY MED. COLLEGE

Appeal No. 01-A-01-9304-CV-00149

COURT OF APPEALS OF TENNESSEE, MIDDLE SECTION, AT NASHVILLE

1994 Tenn. App. LEXIS 161

March 30, 1994, Filed

SUBSEQUENT HISTORY: Applications for Permission to Appeal Granted August 1, 1994, Reported at: 1994 Tenn. LEXIS 244.

PRIOR HISTORY: [*1]

APPEALED FROM THE CIRCUIT COURT OF DAVIDSON COUNTY AT NASHVILLE, TENNESSEE. No. 91C-1285. THE HONORABLE BARBARA N. HAYNES, JUDGE

DISPOSITION: AFFIRMED AS MODIFIED AND REMANDED.

COUNSEL: For Plaintiff/Appellee: M. REID ESTES, JR., STEWART, ESTES & DONNELL, Nashville, Tennessee.

For Defendant/Appellant: LEROY CAIN, JR., RUSSELL B. ENNIX, PETWAY, BLACKSHEAR, CAIN & ENNIX, Nashville, Tennessee.

JUDGES: CANTRELL, LEWIS, KOCH, JR.

OPINIONBY: BEN H. CANTRELL

OPINION: OPINION

Appellant Meharry Medical College appeals from a judgment on a jury verdict in the Circuit Court of Davidson County. The jury found that Meharry had converted audio-visual equipment belonging to plaintiff/appellee Timothy Ware. In accordance with the verdict, the court ordered the Medical School to pay Mr. Ware $ 75,000. The converted property had originally been owned by Meharry, and had been sold to Ware by its employee, who represented to him that he had authority to dispose of surplus equipment as he saw fit. Appellant argues that Meharry was at all times the true owner of the property in question, and so could not convert its own property as a matter of law. The opposing parties have each presented evidence to support their respective contentions of ownership. [*2] There is material evidence in the record to support the jury's finding on liability, and so we affirm that finding. However, because of the procedural history of this case, the size of the judgment is in excess of the jurisdiction of the circuit court, and we modify the judgment accordingly.

I

Plaintiff/appellee Timothy Ware had plans to establish a video production company. He met a man named Darnell Blair, who was the Coordinator of Media

Services for defendant/appellant Meharry Medical College. Mr. Blair told the plaintiff that he had the authority to sell or otherwise dispose of surplus or obsolete video equipment owned by Meharry Medical College, and that he himself had already purchased a considerable quantity of such equipment for "pennies on the dollar." Mr. Blair offered to supply the equipment that Mr. Ware needed for his new business in exchange for a share of that business

Timothy Ware attempted to confirm Darnell Blair's claim that he was authorized to sell Meharry's surplus equipment. He contacted Mr. Blair's supervisor by phone, and she acknowledged that part of his duties included the purchase and sale of new and used audio-visual equipment. He acquired internal memoranda [*3] of Meharry Medical College that indicated that Mr. Blair's supervisors relied heavily upon his expertise and judgment in all matters affecting the acquisition, use and disposal of such equipment. Timothy Ware accompanied Mr. Blair when he sold some obsolete equipment to a company called Javanco; Mr. Blair supplied Mr. Ware with character references who attested to the high regard with which Mr. Blair's superiors at Meharry viewed him.

Eventually, an agreement designed to launch the new business was reached between Darnell Blair, Timothy Ware, and Timothy Ware's father, Mr. Robert Ware. Mr. Blair signed a bill of sale in his own name, purporting to transfer all the equipment on an appended list of several hundred pieces to Robert Ware. It is not clear from the record which of the pieces were items that Mr. Blair claimed to have previously acquired by purchase from Meharry, and which were surplus items being disposed of for the first time. The list assigned a value to each piece of audio, video, recording and projection equipment. The total value of all the items listed was recited to be $ 191,411.40.

With the collateral represented by the the Bill of Sale, Robert Ware was able to borrow [*4] $ 25,000 from the Heritage Bank of Clarksville, though he had to put up his home as additional collateral. The $ 25,000 was put in an account in the name of the new business, Professional Video Services. Robert Ware then prepared and signed a Bill of Sale to transfer his interest in the equipment to his son, for Timothy Ware's promissory note for $ 25,000. Timothy Ware also cosigned on the loan from the bank. In exchange for supplying the equipment, Mr. Blair was to receive a 45% interest in Professional Video Services. Robert Ware was to receive a 10% interest for his role in financing the venture. And Timothy Ware was to retain the remaining 45% interest.

Timothy Ware and Darnell Blair moved the equipment from storage at Meharry to an office Timothy Ware had rented on Music Row. The move took several days and was done in broad daylight. Several Meharry officials, including Meharry's general counsel, observed the two men carrying the equipment, but no one questioned the right of Mr. Blair or Mr. Ware to remove the equipment from the campus. Timothy Ware purchased a $ 300,000 insurance policy on the assets of his new business.

A fire of unknown origin occurred at the Music Row location, [*5] just a few days before the planned grand opening of Video Production Services. Most of the equipment was damaged or destroyed. The Fire Marshall, seeing tags with the Meharry logo on many items of damaged equipment, requested Meharry to identify and claim its property.

Meanwhile, Mr. Ware hired a private insurance adjustor who submitted a claim on the insurance policy. The insurance company refused to pay on the audio-visual equipment because of the possible adverse claim of ownership. Timothy Ware and his adjustor presented their bills of sale to Meharry's general counsel and asked the school to relinquish its claims to the equipment. The official said that Meharry also had insurance on the equipment, but it had a very high deductible. He offered to give up Meharry's claims to all but two of the pieces on the list if Mr. Ware would agree to share the insurance proceeds with Meharry in proportions to be determined solely by Meharry. Mr. Ware refused.

The next day, Meharry's agents came by the Music Row premises, identified the property as its own, brought some of the damaged property back to its campus, and threw away the more severely damaged items. Mr. Ware then hired an attorney [*6] and initiated an action in the General Sessions Court of Davidson County to recover the property. The Judge dismissed the plaintiff's case and entered judgment on behalf of defendant Meharry Medical College.

Mr. Ware then found a new attorney, appealed to the Circuit Court, and moved for permission to amend the complaint to add counts of negligent misrepresentation, intentional conversion, interference with business relations, and outrageous conduct. After a four day trial, the jury returned a $ 75,000 verdict for Mr. Ware. The jury unanimously found that defendant Meharry Medical College had made negligent misrepresentations through its officers, employees or agents, as to Darnell Brown's authority to dispose of the property in question to Mr. Ware; that Darnell Brown had apparent authority to sell surplus equipment to the plaintiff; and that in seizing the equipment, Meharry had converted the plaintiff's personal property.

II

In its appeal, Meharry Medical College contends that it was at all times the true owner of the property in dispute, and therefore could not convert it. The appellant's arguments may be summarized as follows: The property had been originally purchased, owned [*7] and possessed by Meharry; had always been located on campus; and many items carried metal tags identifying Meharry as the owner. In the face of such overwhelming indicia of ownership, no alleged purchaser could prove that he acquired the property in good faith and without notice if he ignored the interests of Meharry, as Mr. Ware did, when he accepted a bill of sale that was signed by Mr. Blair in his individual capacity only.

But, the argument continues, even if Timothy Ware could prove that he was an innocent, bonafide purchaser, he would still not be entitled to prevail, because in effect, Darnell Blair stole the property from Meharry. The appellant correctly asserts that a sale by a thief does not vest in the purchaser any title that is superior to the rights of the true owner.

The appellant's argument does not account for the effect on its alleged ownership rights of the representations that it permitted Mr. Blair and other of its agents to make, as to Mr. Blair's authority to dispose of the equipment as he saw fit. In a business transaction a principal is liable for the negligent misrepresentations of its agent. Haynes v. Cumberland Builders Inc. 546 S.W.2d 228 (Tenn. App. 1976). [*8]

The jury found that Timothy Ware relied to his detriment on the representations that the appellant's agents made. They found that Mr. Blair had no actual authority to sell the equipment to Mr. Ware, but that his employer had clothed him with the apparent authority to do so. An agent's acts within the scope of his apparent authority are binding on his principal. Adams v. Duncan Transfer & Storage of Morristown and North American Van Lines, 757 S.W.2d 336 (Tenn. App. 1988).

Timothy Ware and his father made diligent inquiries of Meharry officials to confirm that Darnell Blair's authority was as he presented it. The record shows that those officials were aware of Mr. Blair's intentions to go into business with Mr. Ware, yet at no time did they express any reservations as to his rights to dispose of the equipment under his supervision. Appellant argues that the Wares did not attempt to confirm Mr. Blair's right to sell the particular pieces of equipment listed with the Bill of Sale, but in light of the failure of the appellant's agents to indicate any limitations on Mr. Blair's authority over the equipment as a whole, this argument must fail.

The proper [*9] standard of review for this case is stated in Rule 13(d) Tenn. R. App. Proc.: "Findings of fact by a jury in civil actions shall be set aside only if there is no material evidence to support the verdict." As discussed above, there is ample evidence in the record of facts required to make out a case of negligent misrepresentation and conversion. Therefore, the verdict of the jury on the question of liability must be affirmed.

III

As an alternative to its argument that no conversion had taken place, Meharry asserts that the circuit court exceeded its jurisdiction in granting a $ 75,000 money judgment in a case on appeal from the Court of General Sessions. We agree, though we rely on a different section of the Code than the appellant did to reach that conclusion.

The jurisdiction the circuit court can exercise in a case on appeal from the general sessions court is no greater than the general sessions court's original jurisdiction in that case. Marlin v. Merrill, 25 Tenn. App 328, 156 S.W.2d 814 (1941); Riden v. Snider, 832 S.W.2d 341 (Tenn. Ct. App. 1991); Martin v. Flack, No. 88-346-II (Tenn. [*10] Ct. App., May 12, 1989).

The scope of the jurisdiction of the General Sessions Court is determined by statute. The relevant section is Tenn. Code Ann. § 16-15-501(d)(1):

The jurisdiction of courts of general sessions, where they have been created, shall extend to the sum of ten thousand dollars ($ 10,000) in all civil cases, both law and equity; provided that this section shall not apply to cases of forcible entry and detainer, wherein the court shall have unlimited original jurisdiction; and further provided, that this section shall not apply to actions to recover personal property wherein the court shall have unlimited original jurisdiction, and jurisdiction to award an alternative money judgment not to exceed twenty-five thousand dollars ($ 25,000) . . . . (1988, ch. 698 § 10.)

We read the statute to mean that in a proper case, the general sessions court has jurisdiction to restore to a plaintiff all the personal property he is entitled to recover, regardless of the value of that property. In the alternative, the court may award the plaintiff money damages, but only to a maximum of $ 25,000.

We note in passing that both the appellant and the appellee based their arguments [*11] on § 16-15-501(d)(2) of the code. That section establishes different limits on the jurisdiction of the courts of general session than does § 16-15-501(d)(1), but it only applies to counties with a "population of not less than seven hundred thousand (700,000) according to the 1980 federal census or any subsequent federal census." The population of Davidson County in 1990 was 518,784.

The present case originated in the court of general sessions as an action to recover personal property. If the general sessions court had found that the plaintiff was entitled to relief, it possessed the authority to order the defendant to return the property, or to enter a judgment of $ 25,000 against him. The authority of the circuit court in this case can be no greater. We therefore reduce the judgment of the circuit court to $ 25,000.

The lower court's order is modified as indicated, and the cause is remanded to the Circuit Court of Davidson County for further proceedings consistent with this opinion. Tax the costs on appeal to the parties equally.

BEN H. CANTRELL, JUDGE

CONCUR:

SAMUEL L. LEWIS, JUDGE

CONCUR IN PART AND DISSENT IN PART:
WILLIAM C. KOCH, JR., JUDGE

CONCURBY: WILLIAM C. KOCH, JR. (In Part)

DISSENTBY: [*12] WILLIAM C. KOCH, JR. (In Part)

DISSENT: OPINION

CONCURRING IN PART AND DISSENTING IN PART

I concur with the majority's conclusion that the record contains sufficient evidence to support Timothy Ware's judgment against Meharry Medical College for misrepresentation and conversion. I cannot, however, concur with the majority's decision to reduce Mr. Ware's judgment from $ 75,000 to $ 25,000 simply because it exceeded the Davidson County General Sessions Court's jurisdictional limits. The judge-made ceiling on damages in civil cases appealed from the general sessions court and tried de novo in the circuit court serves no useful purpose and conflicts with the Tennessee Rules of Civil Procedure. I would affirm the $ 75,000 judgment

I.

Timothy Ware, his father, and Darnell Blair formed a partnership in late 1989 to operate a small video production business called Professional Video Services. The partners agreed that Mr. Ware would run the business, his father would provide the start-up capital, and Mr. Blair would provide the equipment. In return, Mr. Ware and Mr. Blair would each own 45% of the business and Mr. Ware's father would own 10%.

Mr. Blair was Meharry's director of media services [*13] when he went into business with Mr. Ware and Mr. Ware's father. He told his partners that part of his job included selling the college's surplus electronic equipment, and Mr. Ware confirmed with Mr. Blair's supervisors that his duties included the purchase and sale of new and used electronic equipment. Mr. Blair obtained several hundred pieces of Meharry's audio and video equipment worth approximately $ 191,000 and sold them to Mr. Ware's father in January 1990 for $ 25,000.

A fire at the partnership's Music Row offices in February 1990 destroyed or damaged most of the equipment. The fire department notified Meharry of the fire since many pieces of equipment still bore Meharry's property identification tags. Mr. Ware's insurance company would not pay his claim because of Meharry's possible interest in the equipment, and Meharry refused to relinquish its claims unless Mr. Ware agreed to pay it a portion of his insurance proceeds. After Mr. Ware rejected Meharry's proposal, the college's agents hauled away several truck loads of equipment from the partnership's office.

Mr. Ware filed a warrant in the Davidson County General Sessions Court against Meharry to recover his personal property. [*14] The general sessions court dismissed the warrant, and Mr. Ware perfected an appeal to the Circuit Court for Davidson County. With the circuit court's permission, Mr. Ware filed amended complaints alleging fraud, conversion, and negligence and requesting compensatory and punitive damages. Meharry responded with a general denial and a counterclaim seeking Tenn. R. Civ. P. 11 sanctions and damages against Mr. Ware and his lawyer.

The jury returned a $ 75,000 verdict for Mr. Ware following a four-day trial. The trial court entered a judgment according to the verdict and also ordered Meharry to pay Mr. Ware $ 2,431.10 in discretionary costs. Meharry filed two timely post-trial motions seeking a judgment notwithstanding the verdict under Tenn. R. Civ. P. 50.05, a new trial under Tenn. R. Civ. P. 59.02, n1 or a remittitur in accordance with Tenn. Code Ann. § 20-10-102(a) (Supp. 1993). The trial court denied the motions, and Meharry perfected this appeal.

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n1 Meharry's grounds for requesting a new trial do not appear in either motion even though Tenn. R. Civ. P. 7.02(1) requires that all written motions "state with particularity the grounds therefor. . . ." The grounds were apparently included in memoranda accompanying the motions, but these memoranda have not been included in the appellate record. We cannot determine whether Meharry's motion for new trial challenged the verdict because it exceeded the general sessions court's jurisdictional limits or whether Tenn. R. App. P. 3(e) permits Meharry to raise this issue on appeal. It would have been preferable to include the grounds of the motion for a new trial in the motion itself. However, we may consider this issue even with this oversight because it arguably relates to the trial court's subject matter jurisdiction. See Tenn. R. App. P. 13(b); Dalton v. Dean, 22 Tenn. App. 56, 57, 117 S.W.2d 973, 974 (1938).

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

[*15]

II.

This appeal presents an opportunity to consider the continuing soundness of the judge-made limits on the circuit court's jurisdiction in cases appealed from the general sessions court. The Tennessee Supreme Court has not confronted this issue directly since the Tennessee Rules of Civil Procedure became effective almost twenty-five years ago. Present litigation reality indicates that limiting the circuit court's jurisdiction to that of the general sessions court interferes with the circuit court's ability to resolve all claims efficiently on the merits in one expeditious proceeding.

A.

Today's general sessions courts trace their lineage back to the justice of the peace courts. Weaver v. Cromer, 54 Tenn. App. 510, 513, 392 S.W.2d 835, 836 (1965). They first appeared in Tennessee over fifty years ago when the General Assembly, responding to the growing popular dissatisfaction with the justice of the peace courts, began creating general sessions courts by private act. James G. France, Effective Minor Courts: Key to Court Modernization, 40 Tenn. L. Rev. 29, 41 (1972) ("France"); Paul M. Bryan & Isadore B. [*16] Baer, General Sessions Courts: Origin and Recent Legislation, 24 Tenn. L. Rev. 667, 667-68, 684-85 (1956). In 1959 the General Assembly finally replaced virtually all of the remaining justice of the peace courts with a state-wide system of general sessions courts. n2

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n2 See Act of Mar. 5, 1959, ch. 109, 1959 Tenn. Pub. Acts 109, now codified at Tenn. Code Ann. § 16-15-101, et seq.

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The general sessions courts share many of the same attributes of the justice of the peace courts. Like their predecessors, they are the courts that "touch elbows" with the ordinary people and provide "justice in the small everyday affairs of life." Robert S. Keebler, Our Justice of the Peace Courts - A Problem in Justice, 9 Tenn. L. Rev. 1, 4-5 (1930) ("Keebler"). They are not courts of record, State v. McClintock, 732 S.W.2d 268, 271 (Tenn. 1987); Christopher v. Spooner, 640 S.W.2d 833, 835 (Tenn. Ct. App. 1982), [*17] and thus they provide many of the same informal procedures used in the justice of the peace courts. Spencer v. Dixie Fin. Co., 205 Tenn. 485, 488, 327 S.W.2d 301, 302 (1959).

Since the informality particularly suited the types of cases heard in the justice of the peace courts, Baker v. Allen, 2 Tenn. (2 Overt.) 175, 176 (1812), the General Assembly sought to preserve the same informality in the general sessions courts. Weaver v. Cromer, 54 Tenn. App. at 513, 392 S.W.2d at 836. Litigants in general sessions courts may plead their cases orally without filing written pleadings conforming to complex common-law rules. Spencer v. Dixie Fin. Co., 205 Tenn. at 489, 327 S.W.2d at 302-03; Wood v. Hancock, 23 Tenn. (4 Hum.) 465, 466-67 (1844); Wilson v. White, 20 Tenn. App. 604, 607, 102 S.W.2d 531, 534 (1936). Accordingly, Tenn. Code Ann. § 16-15-729 (Supp. 1993) provides that circuit courts should not dismiss cases originating in general sessions courts [*18] because of "any informality whatever."

General sessions courts also inherited many of the justice of the peace courts' jurisdictional characteristics and limitations. They derive their authority and jurisdiction from state law. See Miller v. State, 218 Tenn. 643, 646, 405 S.W.2d 466, 467 (1966) (justice of the peace courts); Riden v. Snider, 832 S.W.2d 341, 342 (Tenn. Ct. App. 1991). The 1959 Act transferred the jurisdiction of the justice of the peace courts to general sessions courts. Tenn. Code Ann. § 16-15-501(a) (Supp. 1993). Later acts authorized county legislative bodies to expand their local general sessions courts' jurisdiction to include juvenile, domestic relations, worker's compensation, or probate matters. n3

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n3 Tenn. Code Ann. § 16.15-401(c) (Supp. 1993); Tenn. Code Ann. § 16-15-501(b)(2); Tenn. Code Ann. § 17-2-209(a) (Supp. 1993); Tenn. Code Ann. § 36-5-209(b)(2) (1991); Tenn. Code Ann. § 16-15-5010 app. at 236-42 (Supp. 1993) (Appendix, Jurisdiction of Courts of General Sessions).

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[*19]

Despite the growth of their authority, general sessions courts remain courts of limited jurisdiction. City of Knoxville ex rel. Roach v. Dossett, 672 S.W.2d 193, 195 (Tenn. 1984); State ex rel. Boone v. Torrence, 63 Tenn. App. 224, 242, 470 S.W.2d 356, 364 (1971), whose authority depends upon the nature and amount of the dispute. Sam R. Gilreath & Bobby R. Aderholt, Caruthers' History of a Lawsuit § 511, at 584 (8th ed. 1963). Their judgments cannot exceed their jurisdictional limits or their subject matter jurisdiction. Harris v. Hadden, 75 Tenn. 214, 216 (1881); Houser v. McKennon, 60 Tenn. 287, 288 (1872); Morrow v. Calloway, 8 Tenn. (1 Martin & Yer.) 240, 241 (1827).

B.

The concern about the quality of justice dispensed by the justice of the peace courts also carried over to the general sessions courts. Justice of the peace court's decisions were considered "fragile," France, supra, 40 Tenn. L. Rev. at 42, for several reasons, including: (1) the courts' informal procedures, [*20] (2) the justices' lack of formal legal training, (3) the absence of a jury, (4) the high incidence of default judgments, and (5) the taint of the fee-based system for compensating justices. n4 The perception that general sessions courts' judgments are fragile continues even though general sessions court judges now receive fixed salaries. Thus, the General Assembly continued many of the same procedural safeguards designed to protect litigants against erroneous judgments.

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n4 Justices of the peace did not receive a fixed salary but rather derived their compensation from fees by the litigants. T. L. Howard, The Justice of the Peace System in Tennessee, 13 Tenn. L. Rev. 19, 22, 32-35 (1934). Some justices' fees exceeded the salary of the Chief Justice of the Tennessee Supreme Court. Keebler, supra, 9 Tenn. L. Rev. at 14.

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The principal safeguard is the broad right of appeal to the circuit court. The circuit court's appellate jurisdiction over the general sessions [*21] courts is similar to their former appellate jurisdiction over the justice of the peace courts. It gives the circuit courts "supervisory control" over the general sessions courts and enables them "to confine . . . [the general sessions courts] within the limits of their jurisdiction." Joseph Higgins & Arthur Crownover, Jr., Tennessee Procedure in Law Cases §§ 133, 1642 (1937).

Circuit courts may wield their appellate jurisdiction in two ways. First, they may vacate general sessions court judgments that exceed the particular court's subject matter jurisdiction or monetary jurisdictional limits. Second, they may provide the parties an entirely new trial. The latter procedure, authorized by Tenn. Code Ann. § 16-15-729, is commonly referred to as a "de novo" appeal.

De novo appeals from the general sessions courts differ from other types of appellate proceedings. The circuit court does not review the general sessions court's decision. Hohenberg Bros. Co. v. Missouri Pac. R.R., 586 S.W.2d 117, 119 (Tenn. Ct. App. 1979). Rather, it provides the parties an entirely new trial as if no other trial had occurred and as if the case had originated in the circuit [*22] court. Teague v. Gooch, 206 Tenn. 291, 296, 333 S.W.2d 1, 3 (1960); Odle v. McCormack, 185 Tenn. 439, 445, 206 S.W.2d 416, 419 (1947); Braverman v. Roberts Constr. Co., 748 S.W.2d 433, 435 (Tenn. Ct. App. 1987); Lawrence A. Pivnick, Tennessee Circuit Court Practice, § 3-10, at 115 (3d ed. 1991)("Pivnick").

C.

The transition from the justice of the peace courts to the general sessions courts is relatively straightforward to this point. Ambiguity, however, exists concerning the procedure to be followed in the circuit court and the scope of the circuit court's jurisdiction when the case arrives from the general sessions court. The unmistakable trend is to use the circuit court's procedural flexibility to expand the scope of its jurisdiction and to provide complete resolution of all the claims between all the parties.

Circuit courts must regard cases appealed from general sessions courts with great indulgence and must not dismiss these cases because of informalities in the general sessions proceedings. Tenn. Code Ann. § 16-15-729; Spencer v. Dixie Fin. Co., 205 Tenn. at 491, 327 S.W.2d at 303. [*23] Even though the Tennessee Rules of Civil Procedure apply to general sessions cases appealed to the circuit court, see Tenn. R. Civ. P. 1, n5 the parties are not required to file formal pleadings. Vinson v. Mills, 530 S.W.2d 761, 765 (Tenn. 1975); Pivnick, supra, § 3-10, at 115. The parties may, however, without the court's direction, file pleadings, engage in discovery, and take advantage of the procedural flexibility in the Tennessee Rules of Civil Procedure.

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n5 Tenn. R. Civ. P. 1 provides in part that ". . . these rules shall govern the procedure in the circuit and chancery courts of Tennessee . . . in all civil actions, whether at law or in equity, including civil actions appealed or otherwise transferred to these courts."

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At one time the parties had little ability to amend their cases once they were appealed to the circuit court. The circuit court's jurisdiction depended on the justice of the peace court's or the general sessions court's jurisdiction. Morgan v. Betterton & Co., 109 Tenn. 84, 89-90, 69 S.W. 969, 970 (1902); [*24] Marlin v. Merrill, 25 Tenn. App. 328, 335, 156 S.W.2d 814, 818 (1941); Securities Inv. Co. v. White, 19 Tenn. App. 540, 550, 91 S.W.2d 581, 587 (1935). Thus, cases appealed to the circuit court were limited to the subject matter jurisdiction, causes of action, and parties in the lower court's action. Morehead v. Clopton, 517 S.W.2d 3, 4 (Tenn. 1974); New York Casualty Co. v. Lawson, 160 Tenn. 329, 339-40, 24 S.W.2d 881, 884 (1930); Moran v. Weinberger, 149 Tenn. 537, 546, 260 S.W. 966, 968 (1924); Pivnick, supra, § 3-10, at 114.

At the same time, Tenn. Code Ann. § 16-15-729 and its predecessors directed the circuit court to "allow amendments in the form of the action, the parties thereto, or the statement of the cause of action, necessary to reach the merits, upon such terms as may be deemed just and proper." The circuit courts have thus permitted amendments that add new parties, n6 that add new causes of action, n7 that add a new counterclaim, cross-claim, or third-party [*25] claim, n8 or that add new defenses. n9

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n6 Cooke v. Neighborhood Grocery, 173 Tenn. 681, 684, 122 S.W.2d 438, 440 (1938).

n7 Shay v. Harper, 202 Tenn. 141, 147, 303 S.W.2d 335, 338 (1957).

n8 Vinson v. Mills, 530 S.W.2d at 765.

n9 Clark v. Howard, 18 Tenn. (10 Yer.) 250, 251 (1837); Phillips v. Tidwell, 26 Tenn. App. 543, 554, 174 S.W.2d 472, 477 (1942).

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The circuit courts have also permitted amendments increasing the amount of the damages. Forde v. Fisk Univ., 661 S.W.2d 883, 884 (Tenn. Ct. App. 1983). They have not, however, permitted amendments increasing the amount of damages beyond the general sessions court's monetary limits. Patterson v. Sheffield, 54 Tenn. (5 Cold.) 373, 374-75 (1872). Later dicta reiterates this monetary limitation [*26] on the circuit courts' jurisdiction. Kirby v. Cramer, 219 Tenn. 447, 451, 410 S.W.2d 724, 725 (1967); Sale v. Eichberg, 105 Tenn. 333, 346, 59 S.W. 1020, 1023-24 (1900); Tuck v. Chaffin, 89 Tenn. 566, 568, 15 S.W. 97, 97-98 (1891). However, the limitation has not provided the basis for a decision on the merits since the Tennessee Rules of Civil Procedure went into effect.

Circuit courts do not have monetary limits on their jurisdiction in civil cases. Tenn. Code Ann. § 16-10-106 (1980). The reasons for limiting their jurisdiction in cases appealed from the general sessions courts are not readily apparent. The only reported decision touching on the question concerns the operation of the savings statute when the plaintiff nonsuits a case after the defendant appeals to the circuit court. While the Tennessee Supreme Court held that the plaintiff could nonsuit the case, it also stated that the refiled suit would be subject to the general session court's monetary limits. Moran v. Weinberger, 149 Tenn. at 543-44, 260 S.W. at 968. [*27] The decision rested on the language of the savings statute itself, but the court also reasoned that the plaintiff's decision to file suit in justice of the peace court somehow "lulled [the defendant] into indifference" and "[threw the defendant] off his guard." Moran v. Weinberger, 149 Tenn. at 543, 547, 260 S.W. at 967, 968-69.

No other court has expressly followed Moran v. Weinberger's reasoning, and the General Assembly has rejected it, at least in part. In 1985 the General Assembly amended Tenn. Code Ann. § 28-1-105(a), -114(c) (Supp. 1993) to permit persons who nonsuit their cases in a general sessions court before a decision on the merits to refile their case in the circuit court. In this circumstance, both the newly filed claim and any counterclaim, cross-claim, or third-party claim may exceed the general sessions court's monetary limits even though the case originated in the general sessions court. n10

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n10 One author has incorrectly speculated that the wording of the 1985 legislation, at least by implication, permits amendments in the circuit court that exceed the general sessions court's monetary limits even in the absence of a nonsuit. Pivnick, supra, § 3-10 n.28. The language of the statute does not support this conclusion, and the legislation's House sponsor informed the House Judiciary Committee and the House Calendar Committee that it applied only to nonsuited cases and not to de novo appeals to the circuit court after the general sessions court had decided the case on the merits.

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[*28]

D.

The Tennessee Rules of Civil Procedure favor using a single proceeding to resolve all the parties' disputes on the merits. Karash v. Pigott, 530 S.W.2d 775, 777 (Tenn. 1975); Quelette v. Whittemore, 627 S.W.2d 681, 682 (Tenn. Ct. App. 1981). They govern civil actions appealed to the circuit court. Tenn. R. Civ. P. 1. Giving them full effect with regard to de novo appeal from the general sessions courts will not only encourage the parties to select the most appropriate judicial forum but will also avoid multiple proceedings to resolve the parties' disputes when they can be resolved in a single proceeding. n11

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n11 Prior decisions have alluded to the problems with counterclaims, cross-claims, and third-party claims resulting from imposing monetary limits on the circuit court's jurisdiction. See Sale v. Eichberg, 105 Tenn. at 346, 59 S.W. at 1024; Riden v. Snider, 832 S.W.2d at 343.

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[*29]

Removing the judge-made monetary limits on the circuit court's jurisdiction over de novo appeals will not undermine the general sessions courts, nor will it overwhelm the circuit courts. Parties desiring to avoid the general sessions courts' monetary limits may already bypass the general sessions courts and file their suits in the circuit courts. General sessions courts remain particularly suited for many types of minor disputes, and thus parties desiring a quick, less formal disposition of their claims will continue to file suit in the general sessions courts.

No other policy reason exists to limit the circuit court's jurisdiction or to deny the parties full advantage of the Tennessee Rules of Civil Procedure once the case arrives in the circuit court. Removing the jurisdictional limits will not introduce appreciable delays in resolving the cases. Nor will it create a notice problem because the defendant will already be aware that it has been sued because of the service of the general sessions warrant. Nor will it impede or expand the parties' discovery rights since both parties may already take full advantage of all available discovery procedures once the case reaches circuit court. [*30]

Accordingly, I would hold that cases appealed from the general sessions court to the circuit court pursuant to Tenn. Code Ann. § 16-15-729 should be treated for all purposes as if they originated in the circuit court. The parties should be permitted to file amended pleadings to the fullest extent permitted by the Tenn. R. Civ. P. 15 without regard to the general sessions court's monetary limits. Doing so will promote judicial economy by enabling the parties to resolve their disputes on the merits in a single proceeding.

WILLIAM C. KOCH, JR., JUDGE

ROBERT ALLEN WALKER, Plaintiff/Appellant, v. DOROTHY BROOKS, MEHARRY MEDICAL COLLEGE, and HUBBARD HOSPITAL, Defendants/Appellees.

WALKER v. BROOKS

Appeal No. 01-A-01-9307-CV-00291

COURT OF APPEALS OF TENNESSEE, MIDDLE SECTION, AT NASHVILLE

1993 Tenn. App. LEXIS 710

November 17, 1993, Filed

PRIOR HISTORY: [*1]

APPEAL FROM THE CIRCUIT COURT OF DAVIDSON COUNTY AT NASHVILLE, TENNESSEE. No. 89C-1973. HONORABLE WALTER C. KURTZ, JUDGE

DISPOSITION: AFFIRMED AND REMANDED

COUNSEL: For PLAINTIFF/APPELLANT, PRO SE, ROBERT ALLEN WALKER # 95188, Nashville, Tennessee.

For DEFENDANTS/APPELLEES: Thomas A. Wiseman, III, Martha O. Erwin, GIDEON & WISEMAN, Nashville, Tennessee.

JUDGES: TODD, LEWIS, CANTRELL

OPINIONBY: HENRY F. TODD

OPINION: MEMORANDUM OPINION n1

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n1 Rule 10(b) of the Rules of this Court provides: MEMORANDUM OPINION. The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

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The captioned plaintiff has appealed from a summary judgment dismissing his suit against the captioned defendants for alleged personal injury in June, [*2] 1988, by a faulty administration of an injection by the defendant, Brooks, an employee of Hubbard Hospital, contractually associated with Meharry Medical College.

In particular, the complaint alleged that the injection needle penetrated and permanently injured plaintiff's sciatic nerve thereby causing permanent disability of his right leg.

Plaintiff presents a single issue for review as follows:

The Fifth Circuit Court of Davidson erred in granting Defendants' Summary Judgment.

Defendants' joint motion for summary judgment is based upon a supporting brief which is not contained in the record. The following evidence is found in the record: 1. The affidavit of defendant, Brooks, states that all statements of the complaint regarding alleged irregularities in her administration of the injection are untrue and that all of her nursing services to plaintiff complied with acceptable standards of nursing care. 2. The affidavit of Patrick L. LeCorps states that he is an orthopedic surgeon, that he treated plaintiff for low back pain while plaintiff was a patient at Hubbard Hospital during parts of May, June, July, and August, 1988, and thereafter at the State Prison; that the patient complained [*3] of low back pain of three to four years duration; and the low back pain of which the patient complained was not due from the insertion of a hypodermic needle into the sciatic nerve.

No other relevant evidence is found in the record.

This suit is based upon two factual allegations, both of which must be shown to be true if plaintiff is to succeed. The first allegation is that Nurse Brooks was negligent in her treatment of plaintiff. The second allegation is that plaintiff sustained a disability of his right leg as a proximate result of the negligence of Nurse Brooks.

At trial, plaintiff would be required to prove both allegations, and failure to prove either would be fatal to his suit. Redbud Co-op Corp. v. Clayton, Tenn. App. 1985, 700 S.W.2d 551.

However, defendants' motion for summary judgment must be sustained if defendants produce uncontradicted evidence that either allegation is not true, T.R.C.P. Rule 56.03. Defendants have produced such evidence as to one of the necessary elements of plaintiff's suit, but not as to the other.

As to negligence, Nurse Brooks has sworn in effect that she was guilty of no negligence in treating plaintiff. Plaintiff [*4] has filed no sworn evidence to contradict the affidavit of Nurse Brooks. Therefore, the evidence is uncontradicted that Nurse Brooks was not negligent. In this state of the record, the defendants are entitled to summary judgment.

Although irrelevant to the disposition of this appeal, it should be pointed out that defendants did not produce evidence that the disability of plaintiff's right leg was not the proximate result of negligent treatment of Nurse Brooks. The evidence of Dr. LeCorps related to low back pain and not to a disabled right leg.

Although not contained in the plaintiff's statement of issues, plaintiff argues that the Trial Court erred in denying a stay of proceedings until the termination of his incarceration. Plaintiff concedes that such a stay is discretionary with the Trial Court, but that it was error to deny the stay where the movant is without counsel. This Court does not agree that a civil litigant is entitled to free counsel, even if he is a pauper.

Plaintiff is not entitled to counsel or personal presence in pre-trial proceedings, including motions for summary judgment. Dozier v. Ford Motor Co., D.C. Cir. 1983, 227 U.S. App. D.C. 1, 702 F.2d 1189; [*5] Holt v. Pitts, 6th Cir. 1980, 619 F.2d 558; Whisnant v. Byrd, Tenn. 1975, 525 S.W.2d 152.

This suit was filed on May 4, 1989. Defendants' motion for summary judgment with supporting affidavits was filed on December 7, 1989. On January 23, 1990, an order was entered directing a plaintiff to respond to the motion for summary judgment. On February 5, 1990, defendant filed an unsworn response. On March 6, 1990, the Trial Court granted six additional months for plaintiff's further response. On October 8, 1990, plaintiff filed another unsworn response. On August 18, 1992, the Trial Court ordered plaintiff to respond further by October 16, 1992, or summary judgment would be entered. On September 30, 1992, plaintiff filed yet another unsworn response. The plaintiff never filed even his own affidavit verifying the allegations of his complaint. Summary judgment was entered on April 6, 1993, three years and four months after the filing of motion for summary judgment with supporting affidavits.

No error is found in the denial of further delay in the disposition of the motion for summary judgment.

The judgment of the Trial Court is affirmed. [*6] Costs of this appeal are taxed against the plaintiff-appellant. The cause is remanded to the Trial Court for enforcement of its judgment.

Affirmed and Remanded.

HENRY F. TODD, PRESIDING JUDGE

CONCUR:

SAMUEL L. LEWIS, JUDGE

BEN H. CANTRELL, JUDGE

LEVEL 1 - 10 OF 12 CASES

JEROME CANADY, Plaintiff/Appellant v. MEHARRY MEDICAL COLLEGE, ET AL, Defendants/Appellee

CANADY v. MEHARRY MED. COLLEGE

Appeal No. 01-A-01-9009-CH-00312

Court of Appeals of Tennessee, Middle Section, at Nashville

811 S.W.2d 902; 1991 Tenn. App. LEXIS 43

January 30, 1991, Filed

PRIOR HISTORY:
[**1] Appeal from the Chancery Court for Davidson County at Nashville, Tennessee; the Honorable Robert S. Brandt, Chancellor.

DISPOSITION: AFFIRMED AND REMANDED.

COUNSEL: Fred W. Cowden, Jr., Paul T. Housch, Nashville, Tennessee, ATTORNEYS FOR PLAINTIFF/APPELLANT.

Joy Sims, Nashville, Tennessee, Richard Jackson, Nashville, Tennessee, ATTORNEYS FOR DEFENDANTS/APPELLEE.

JUDGES: Henry F. Todd, Presiding Judge. Samuel L. Lewis, Judge, Ben H. Cantrell, Judge, concur.

OPINIONBY: TODD

OPINION: [*903] OPINION

The plaintiff, Jerome Canady, has appealed from a non-jury judgment of the Trial Court dismissing his suit against the defendant Meharry Medical College and certain of its officials regarding plaintiff's participating in a residency program conducted by the defendant, Meharry Medical College (hereafter Meharry).

During the period involved in the controversy, Meharry maintained a five year surgical residency program leading to qualification as a specialist in general surgery. After graduation from Temple University Medical School and one year's medical resident training at the University of Illinois [*904] Hospital, on July 1, 1985, plaintiff began surgical residency at Meharry. Residents at Meharry serve under one year contracts. Plaintiff's contract [**2] was renewed in July, 1986, and July, 1987, but was not renewed in July, 1988. Plaintiff has filed this suit for damages for failure to renew plaintiff's contract for what would have been his final year of residence.

The Trial Judge filed a comprehensive memorandum in which he found:

1. In his first year at Meharry, Plaintiff began to receive negative evaluations with recommendations against renewal of his contract, but his contract was renewed for the 1986-1987 year.

2. During the 1986-1987 year, the head of the surgery department received further complaints which were relayed to plaintiff with the advice that it was not likely that his contract would be renewed. However, his contract was renewed for the 1987-1988 year.

3. In the summer of 1987, defendant, Dr. Hoover, became head of the surgery department. He met with a "uniform outcry to fire" plaintiff, but did not discharge plaintiff. He did place plaintiff under strict supervision of defendant, Dr. Weaver.

4. In the fall of 1987, as a part of the Meharry program, plaintiff served in St. Anthony's Hospital where he received several very negative evaluations.

5. In the spring of 1988, as a part of the Meharry program, plaintiff [**3] served at Veteran Hospital. The chief of surgery at Veterans Hospital sent plaintiff a written complaint of his performance, to which plaintiff responded with a letter criticizing the Veterans Hospital staff with copies to his attorneys, the Veterans Hospital chief of staff and director and to Dr. Hoover, his supervisor at Meharry. Dr. Hoover instructed plaintiff to meet him the following day for reassignment (to another hospital). On April 12, 1988, after surveying the fourth and fifth year residents, the staff voted not to renew plaintiff's contract and to remove him from patient care for the remainder of the contract year ending June 30, 1988.

6. On or about April 28, 1988, Dr. Hoover informed plaintiff orally, and, on May 5, 1988, Dr. Hoover informed plaintiff by letter that his contract would not be renewed.

7. On May 2, 1988, plaintiff requested reinstatement or a hearing. On May 19, 1988, a hearing was conducted by an ad hoc committee composed of non-surgical staff members. The committee concurred in the decision of the surgical staff.

8. On June 7, 1988, the executive committee of the medical staff concurred in the decision of the ad hoc committee.

9. On June 17, 1988, plaintiff [**4] requested a further hearing; but, before a further hearing could be held, this suit was filed.

10. Meharry failed to follow procedures required by Article VIII of the contract by failing to provide clear notice of the agenda of the May 19, 1988, meeting, the ad hoc committee was composed of 4 instead of 3, and its proceedings were not recorded.

11. Plaintiff's May 2, 1988, request for a hearing was vague: and, after his June 17, 1988, request for a further hearing, plaintiff abandoned the grievance procedure by filing this suit.

The Trial Judge concluded that:

1. The clinical performance of plaintiff justified the decision not to renew his contract.

2. The non-renewal of the contract was not due to imperfect grievance process, but due to plaintiff's substandard clinical performance.

3. All damages asserted by plaintiff are speculative.

4. Plaintiff abandoned his claim to "due process."

The judgment dismissed the suit as to all defendants.

Plaintiff has presented three issues for review, of which the first is as follows:

[*905] (1) WAS THE TRIAL COURT IN ERROR IN ITS DETERMINATION THAT THE PLAINTIFF WAS NOT DAMAGED BY THE DEFENDANT'S FAILURE TO COMPLY WITH ITS CONSTITUTION AND BYLAWS WHICH [**5] THE COURT FOUND WERE PART OF THE PLAINTIFF'S RESIDENCY CONTRACT?

This Court agrees with the Trial Court that the overwhelming evidence shows the plaintiff to have been guilty of such a continuous pattern of unsatisfactory conduct during his three year tenure that all reasonable men would agree that any fair-minded group of his peers or superiors would have declined to retain him in residence at Meharry. Without belaboring the unpleasant details, it is sufficient to state that this finding of the Trial Court is supported by the preponderance of the evidence, and should not be reversed.

Plaintiff asserts that he received one vote in the ad hoc committee, and that, if he had been permitted to name a member of a committee of three (as required by the bylaws), then two of the three would have voted in his favor. This is interesting reasoning, but not persuasive. In the first place, the minutes of the committee do not show that plaintiff received one vote. The minutes state:

The above accurately reflects the decision reached by at least a majority of the hearing committee.

(Emphasis added.)

A majority of a committee of four would be three, but the words emphasized above import [**6] that three or more of the committee approved the decision. Moreover, if only three voted for the decision, there is no indication that one voted against. It is equally plausible to infer that one member chose not to vote, but might well have approved the decision if necessary to produce a majority of two on a three person committee.

There is no showing that any member of the ad hoc committee or the executive committee was unfairly biased against plaintiff. Also, there is no showing that a member of the staff would vote in favor of plaintiff just because he was selected by plaintiff.

The termination of a residency does not infringe upon any constitutional right of due process. Stretten v. Wadsworth Veterans's Hospital, 9th Cir. 1976, 537 F2d 361.

A hospital is not precluded from suspending a resident with pay, but is only obliged to afford him rudimentary procedural and substantive fairness. Ezekial v. Winkley, Cal. Sup. 1977, 20 Cal. 3d 267, 572 P.2d 32, 142 Cal. Rptr. 418 .

A student, even one in a public institution, is not entitled to procedural due process more than some type of informal hearing. Harold W. Horne v. Cox, et al, Tenn. 1977, 551 S.W.2d 690.

The Courts are ill equipped to evaluate academic [**7] performance. Board of Curators v. Horowitz, 435 U.S. 78, 55 L.Ed. 124, 98 S. Ct. 948, 55 L. Ed. 2d 124 (1978).

This is an action for breach of contract. The Trial Judge found that Meharry breached its contract with plaintiff by failure to strictly comply with the contract in its conduct of hearings regarding complaints as to plaintiff's performance, or regarding plaintiff's grievance.

Assuming breach of the contract, the next question for resolution must be, what were the results of the breach? Plaintiff's contract with Meharry entitled him to employment for one year beginning July 1, 1987, and ending June 30, 1988. There is no evidence that plaintiff was discharged at any time during the period of his contract or deprived of any compensation due him under the terms of his contract.

It is true that plaintiff's duties were restricted because of his differences with his superiors, but this is not shown to be a violation of any provision of his contract. [*906] Absent an express provision assuring plaintiff of continuous, uninterrupted assignment to particular duties, there is no implied assurance of assignment to particular duties.

It appears that the only immediate loss sustained by plaintiff as a result [**8] of the disciplinary action of Meharry was his emotional reaction from being disciplined by limitation of duties. Since this action was not prohibited by the contract, it is not actionable as a breach of the contract.

Plaintiff conceives, however, that he has a right of action for the failure of Meharry to contract with him for an additional year of residency from July 1, 1988, to June 30, 1989, which would have enabled him to pursue further training in a medical speciality which would have produced for him a fabulous income, and that he should be compensated in damages for the inability to realize his hopes for the fabulous income. Plaintiff has no such right of action.

Plaintiff had no contractual right except for the agreed employment for one year. He had no contract right to renewal or extension of his contract beyond June 30, 1988. Both Meharry and plaintiff were free to contract or not to contract for the 1988-1989 year. The assent of both parties was necessary to create such a renewal contract. Either party was free to decline to renew for good cause, bad cause or no cause at all. For whatever cause, Meharry determined that it would not enter into a further contract with plaintiff, [**9] and it was free to do so without liability to him.

Thus, plaintiff sustained no compensable injury from the breach of his 1987-1988 contract, and there can be no breach of a nonexistent contract for the 1988-1989 year.

Plaintiff cites Bock v. John C. Lincoln Hospital, Ariz. App. 1985, 145 Ariz. 432, 702 P.2d 253; however, this was an action for revocation of the staff privileges of a physician in private practice who was actually damaged in his private practice by exclusion from the hospital. In the present case, the plaintiff was employed for a fixed term and has shown no damage or loss of benefits during that year.

Plaintiff also cites Kendall v. Board of Education of Memphis, 6th Cir. 1980, 627 F.2d 1; however, this was a civil rights action against a governmental agency; whereas the present cause is a contract action against a private charitable corporation. Moreover, Kendall involved a non-tenured teacher who was discharged during her one year contract period. The appeals court held that she was entitled to due process rights as to termination of her one year contract, but not as to her expectation of renewal of the contract.

The Trial Court correctly found that plaintiff did [**10] not establish that any or all of the infirmities in the grievance process was/were a proximate cause of any of the losses claimed by him.

The foregoing is dispositive of the merits of this appeal. However, plaintiff's two other issues will be briefly discussed.

Plaintiff's second issue is:

(2) WAS THE TRIAL COURT IN ERROR IN ITS DETERMINATION THAT THE FINANCIAL LOSSES PROVEN BY THE PLAINTIFF WERE SPECULATIVE AND THEREFORE COULD NOT FROM THE BASIS FOR AN AWARD OF DAMAGES?

The damages claimed by plaintiff are based upon the theory that, if Meharry had meticulously followed its grievance procedure, he would have been successful in his defense against charges and in prosecution of his complaint; and that as a result of such success, he would have been reappointed for an additional year; that, at the conclusion of that year, his services would have received approval and certification; that plaintiff would thereby have attained admission to a further specialized residency which he would have successfully completed; and that he thereafter would have engaged in a successful and profitable specialized surgical practice.

[*907] This Court agrees with the Trial Judge that the proximate [**11] relationship between the irregularities of procedure and the failure of plaintiff to realize his dream is too speculative and subject to too many future variables to show a proximate causal relationship between the irregularities and the claimed injury. The very first obstacle or breach in the relationship (already discussed) is the absolute freedom of Meharry to renew or not renew plaintiff's contract for the year 1988-1989, which was a necessary link in the chain leading to plaintiff's anticipated profitable career.

Plaintiff cites Dickens v. United States, 5th Circuit, 1977, 545 F.2d 886. This was a wrongful death case in which evidence of probable future earnings was admitted for its circumstantial support of the value of the life of the deceased. In the present case, plaintiff did not lose his life, he merely had a contest with his contemporaries with whom he could not agree. There is no showing that plaintiff has been "ruined for life" or that he is unable to pursue his dream through more friendly associations.

Likewise, Riddle v. Anderson, Penna. Com. 1984, 85 Pa. Commw. 271, 481 A.2d 382, cited by plaintiff, involved brain injuries which would have interfered with the anticipated career [**12] of the plaintiff in that case.

Plaintiff asserts the right to damages "within the contemplation of the parties to the contract." It cannot be said that parties to a one year contract expected to pay damages for refusal to renew such contract for an additional year when there was no contractual obligation to do so.

The next obstacle is the overwhelming evidence of plaintiff's unsatisfactory relations with his superiors and peers at Meharry and the virtual certainty that plaintiff would not have been retained for the final year under the circumstances.

The remaining obstacles include the uncertainty of plaintiff's successful residency elsewhere and of establishing a successful private practice in view of his unfortunate capacity to alienate those with whom he worked at Meharry.

The foregoing are factual matters which the Trial Judge determined adversely to the plaintiff. The evidence does not preponderate otherwise, and the decision of the Trial Court must prevail. T.R.A.P. Rule 13(d).

Plaintiff's final issue is:

(3) DID THE PLAINTIFF ABANDON OR WAIVE THE PROCEDURAL RIGHTS GUARANTEED TO HIM UNDER HIS CONTRACT?

The brief of plaintiff concedes that the established rule in Tennessee [**13] is that administrative remedies must be exhausted before relief may be sought from the courts. See Bracey v. Woods, Tenn. 1978, 571 S.W.2d 828.

It is true that the law will not require pursuit of an administrative relief if such pursuit would be useless. State v. Yoakum, Tenn. 201 Tenn. 180, 297 S.W.2d 635 (1956). There is no showing that the pursuit of administrative relief would be useless except the obvious fact that the merits of the controversy lay with the plaintiff's accusers rather than with plaintiff and that the free will of the officials of Meharry would not have been exercised to rehire plaintiff for another year.

Plaintiff cites authority for the exercise of judicial discretion in requiring exhaustion of administrative remedies. This Court is satisfied to approve the exercise of discretion by the Trial Judge in this regard.

Plaintiff complains that the timing of events was such that he could not have secured by administrative means the extension of his contract which he initially sought to force upon Meharry by judicial fiat which was refused.

A more temperate approach, including patient pursuit of the administrative process, would have produced a clear decision of the administrative [**14] authorities which might have been applied retroactively if favorable to plaintiff. The "time factor" is not an acceptable excuse for failure to follow the full administrative route in the present case.

[*908] Each of the issues presented by plaintiff has been considered and resolved in support of the judgment of the Trial Court which is affirmed. Costs of this appeal are taxed against the plaintiff. The cause is remanded to the Trial Court for any necessary further proceedings.

Affirmed and Remanded.

ANGINETTA E. LEWIS, by next friend, PAULA E. LEWIS Plaintiff-Appellee and PAULA E. LEWIS and ANNIE MAI NORTH Plaintiffs v. MEHARRY MEDICAL COLLEGE, INC., d/b/a GEORGE W. HUBBARD HOSPITAL Defendant-Appellant and KIMBERLY SERVICES INC. d/b/a KIMBERLY NURSES Defendant

LEWIS v. MEHARRY MED. COLLEGE, INC.

No. 86-178-II

Court of Appeals of Tennessee, Middle Section

Slip Opinion

October 31, 1986, Filed

PRIOR HISTORY:

APPEALED FROM THE SECOND CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE, THE HONORABLE HARRY S. LESTER, JUDGE

DISPOSITION: AFFIRMED AND REMANDED

COUNSEL: LEE W. RAMSEY, RANDALL L. KINNARD; FOR PLAINTIFF-APPELLEE

W. A. MOODY, MOODY AND MOODY; FOR DEFENDANT-APPELLANT

OPINIONBY: LEWIS

OPINION: SAMUEL L. LEWIS, JUDGE

OPINION

The issue in this case is whether a defendant in a negligence case is entitled to a setoff pursuant to Tenn. Code Ann. § 29-11-101 et seq. against a judgment rendered for one plaintiff against that defendant for sums paid in a settlement to two other plaintiffs by a former co-defendant.

The facts out of which this appeal arose are as follows:

Plaintiff Anginetta Lewis, b/n/f, sued defendants Meharry Medical College, Inc., d/b/a George W. Hubbard Hospital (Meharry), and Kimberly Services, Inc., d/b/a Kimberly Nurses (Kimberly), for injuries she received while a patient at Meharry.

Annie Mai North, grandmother of Anginetta Lewis, sued Meharry and Kimberly and alleged " that she has incurred damages in respect to medical bills" on behalf of her granddaughter as a result of the injuries she received while a patient at Meharry.

Paula E. Lewis, Anginetta Lewis' mother, sued Meharry and Kimberly and alleged that she was at the time of the filing of suit a minor seventeen years of age but that when she "becomes a majority age in the future, she will be responsible for the expense and medical care and treatment on behalf of

Anginetta E. Lewis."

On the date of trial and prior to jury selection, plaintiffs Annie Mai North and Paula E. Lewis entered voluntary non-suits against both defendants. Meharry also took a non-suit as to the cross-complaint it had previously filed against Kimberly. Prior to the introduction of proof, Meharry admitted liability and at that time the remaining plaintiff, Anginetta E. Lewis, took a voluntary non-suit of her case against Kimberly.

The case was tried before the jury solely on the issue of damages. The jury returned a verdict in favor of Anginetta E. Lewis in the amount of $72,500.

On October 15, 1985, the trial court approved a settlement between the minor Anginetta and Kimberly whereby Kimberly paid $20,000 for and on behalf of Anginetta. In connection with the settlement of Anginetta Lewis' claim, Kimberly paid $3,000 to Annie Mai North in settlement of her claim against Kimberly and $2,000 to Paule E. Lewis in settlement of her claim.

On January 3, 1986, after its motion for a new trial had been overruled, Meharry filed a motion seeking "a set off in the amount of $25,000.00 in accordance with the provisions of the medical malpractice statute for payment made to the plaintiffs by another entity in settling the same claim, which was litigated, as provided by 29-26-119, T.C.A." n1

n1 DAMAGES. In a malpractice action in which liability is admitted or established, the damages awarded may include (in addition to other elements of damages authorized by law) actual economic losses suffered by the claimant by reason of the personal injury, including, but not limited to cost of reasonable and necessary medical care, rehabilitation services, and custodial care, loss of services and loss of earned income, but only to the extent that such costs are not paid or payable and such losses are not replaced, or indemnified in whole or in part, by insurance provided by an employer either governmental or private, by social security benefits, service benefit programs, unemployment benefits, or any other source except the assets of the claimants or of the members of the claimants' immediate family and insurance purchased in whole or in part, privately and individually. Tenn. Code Ann. § 29-26-119 (1980).

The plaintiff Anginetta Lewis agreed that Meharry was entitled to a setoff in the amount of $20,000, the sum paid to Anginetta Lewis by Kimberly. The trial court entered an order granting Meharry a setoff in the amount of $20,000 but denied a setoff for the $3,000 paid to Annie Mai North and the $2,000 paid to Paula E. Lewis.

Meharry has appealed and insists that it is entitled to a setoff of the $5,000 paid to Annie Mai North and Paula E. Lewis.

At no point in its brief nor at oral argument does Meharry set forth under what theory it is entitled to a setoff pursuant to Tenn. Code Ann. § 29-16-119.

We have read and reread Tenn. Code Ann. § 29-16-119 and, under the facts of this case, can find no applicability.

While Meharry did not in its motion rely on Tenn. Code Ann. § 29-11-105, this is undoubtedly the section under which the trial court allowed the $20,000 reduction.

Tennessee Code Annotated § 29-11-105 provides that when a release or covenant not to sue or to enforce a judgment is given in good faith to one of two or more persons liable in tort for the same injury, the release or covenant not to sue given by another tortfeasor may be introduced by defendant "upon motion after judgment to reduce the judgment by the amount stipulated by the release or the covenant or by the amount of the consideration paid for it by whichever is greater."

Meharry has cited three cases at the close of its brief. n2 None of these cases support Maharry's contention that a joint tortfeasor is entitled to a setoff of all amounts paid in settlement to multiple claimants by a co-defendant where one of the plaintiffs has been awarded judgment against the non-settling defendant.

n2

One of the purposes of Tenn. Code Ann. § 29-11-105 is to prevent a plaintiff from receiving in excess of his adjudged damages while allowing him to release a joint tortfeasor. Nothing in Tenn. Code Ann. § 29-11-101 et seq., and specifically § 29-11-105, contemplates that a settling plaintiff is prohibited from receiving the total amount of the damages to which the jury determined she was entitled because she and her co-plaintiffs have settled with a co-defendant.

Under Meharry's contention, the plaintiff Anginetta Lewis would be prohibited from receiving the total amount of the damages to which the jury determined she was entitled since the amounts paid to her co-plaintiffs would be setoff against her.

In a case such as we have before us, nothing in Tenn. Code Ann. § 29-11-101 et seq. provides that a defendant is entitled to a setoff of amounts paid to co-plaintiffs by a co-defendant against a judgment rendered for one of the plaintiffs against that defendant.

Holden v. City Service Co., 514 F. Supp. 662 (E.D.Tenn. 1980); Yett v. Smokey Mountain Aviation, Inc., 555 S.W.2d 867 (Tenn. App. 1977); McDaniel v. General Care Corp., 627 S.W.2d 129 (Tenn. App. 1981).

The trial court properly denied Meharry's motion for a setoff of the amounts paid to Anginetta Lewis' co-plaintiffs by the co-defendant Kimberly and properly allowed the setoff of the amount paid to Anginetta Lewis by Kimberly.

The judgment of the trial court is affirmed with costs assessed against Meharry and the cause remanded to the trial court for the collection of costs, the enforcement of its judgment and any further necessary proceedings.

CONCUR: HENRY F. TODD, Presiding Judge, M.S., WILLIAM C. KOCH, JR., Judge

LEVEL 1 - 12 OF 12 CASES

JASPER DAY Plaintiff-Appellant-Appellee VS MEHARRY MEDICAL COLLEGE, d/b/a HERMAN STREET APARTMENTS Defendant-Appellee-Appellant

DAY v. MEHARRY MED. COLLEGE

Court of Appeals of Tennessee, Middle Section at Nashville

Slip Opinion

July 20, 1984

PRIOR HISTORY:

DAVIDSON LAW

APPEALED FROM THE FIRST CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

THE HONORABLE HAMILTON GAYDEN, JUDGE

DISPOSITION: REVERSED IN PART, AFFIRMED IN PART, AND REMANDED

COUNSEL: EDWARD F. BELL, GALBREATH, BELL & DOWDEN, Suite 901, Stahlman Building, Nashville, Tennessee 37201, ATTORNEY FOR PLAINTIFF-APPELLANT-APPELLEE

W. A. MOODY, MOODY & MOODY, 95 White Bridge Road, Suite 411, Nashville, Tennessee 37205, ATTORNEY FOR DEFENDANT-APPELLEE-APPELLANT

JUDGES: Lewis, Judge wrote the opinion. CONCUR: HENRY F. TODD, Presiding Judge, M.S., BEN H. CANTRELL, Judge

OPINIONBY: Lewis

OPINION: SAMUEL L. LEWIS, JUDGE

Plaintiff filed is complaint in the Circuit Court for Davidson County and sought damages from the defendant for personal injuries. Plaintiff alleged that as a result of defendant's negligence in failing to keep one of its parking lots free of ice and snow, he fell and received serious injuries to his arm.

The case was tried to a jury which returned a verdict of $23,000 for plaintiff. Defendant filed a motion seeking a remittitur and also a motion seeking a judgment n.o.v. and/or a new trial. The Trial Judge denied the motion for judgment n.o.v. and a new trial but granted a remittitur of $8,000. Plaintiff accepted the remittitur under protest and has appealed.

The pertinent facts are as follows:

Plaintiff, on the morning of January 16, 1982, visited a friend at the Herman Street Apartments in Nashville. The Herman Street Apartments and the adjacent parking lot are owned by defendant. Plaintiff parked his automobile in the defendant's parking lot. Later that day plaintiff and his friend drove in plaintiff's automobile to the Nolensville Road area looking for used furniture. They returned to the Herman Street Apartments that afternoon and plaintiff again parked his automobile in defendant's parking lot.

For several days prior to January 16th it had snowed in Nashville and, on the 16th, a large amount of ice and snow remained in the parking lot. Defendant had purchased 300 pounds of "ice melt" that was put on some of the sidewalks on defendant's campus. There is no evidence that defendant had made any effort to clear the ice and snow that the parking lot.

At approximately 6:00 P.M. on January 16th, plaintiff left his friend's apartment and, while walking to his automobile across the parking lot, slipped, fell, and broke his arm. At the time he was carrying a cinder block which weighed between twelve and thirty pounds. Plaintiff's friend had been using the cinder block as a base for a bookcase. He had purchased a bookcase that day and had given the cinder block to plaintiff, who was also going to use it as a base for a bookcase.

As a result of the injuries received plaintiff incurred medical bills of $4,023. Plaintiff will have to undergo another operation on his arm and will incur medical expenses of approximately $4,000. Plaintiff's arm was broken in three places. An open reduction operation was performed and a metal plate was inserted in his arm and is held by four screws. His arm had to remain in a plaster cast for thirteen weeks. The evidence is that the injury was very painful and that, as a result of the metal being placed in his arm, any movement of the arm caused pain. Plaintiff was unble to engage in any body contact sports as he had previous to the accident.

Plaintiff presents one issue: "Whether the Trial Judge abused his discretion by granting a remittitur." Defendant presents three issues: (1) There was no material evidence to support the verdict, (2) plaintiff was guilty of negligence as a matter of law, and (3) the Court erred in its charge to the jury. We first discuss defendant's issues.

Defendant argues that "the facts are without dispute that there was really nothing defendant could have done to alleviate the ice situation. . . ."

There is evidence that the walkways and parking lots of Fisk University, which is adjacent to the defendant's campus, had been cleared of snow and ice. There is evidence that the parking lots of stores in the nearby areas had also been cleared of snow and ice. The evidence is that defendant had done nothing to clear ice and snow from its parking areas. The only effort it had made to clear snow and ice was on the sidewalks by the use of 300 pounds of "ice melt."

There is ample evidence in this record from which the jury could find that defendant was guilty of negligence.

Defendant next contends that plaintiff "accepted a known risk," i.e., walked across an ice-covered parking lot and is therefore guilty of negligence as a matter of law.

In Hellon v. Trotwood Apartments, Inc., 62 Tenn. App. 203, 460 S.W.2d 372 (1970), plaintiff, a tenant in Trotwood Apartments, walked on a sidewalk covered with mud and water. The sidewalk had been in this condition for some time and the condition was known to both plaintiff and defendant. Plaintiff slipped, fell, and was seriously injured. Judge Todd, writing for the Court, stated:

In the first place, equal knowledge does not absolve the defendant of negligence. If a defendant fails to exercise ordinry care under the circumstances, the defendant is negligent, regardless of who knows of the resulting danger. Knowledge on the part of the injured party may impute contributory negligence to the plaintiff and may relieve the defendant for liability for his negligence.

In the next place, it is not every case in which knowledge of danger conclusively imputes contributory negligence to the plaintiff; and contributory negligence, if imputed, may be proximate or remote. Where the danger is one which might be readily avoided by stepping around it (Manes v. Hines), (Collins v. A & P), (Standard Knitting Mills v. Hickman), or by special attention to details in dim light (Campbell v. Francis), or in like situations, it is the failure of the plaintiff to utilize his opportunity to avoid the known danger, and not merely the knowledge of danger, which forms the contributory negligence which may bar his recovery.

Where, however, the known danger is not readily avoidable and is such as to effectively obstruct the path of plaintiff, plaintiff is put to the decision of whether he will take the inevitable risk of proceeding through the danger or will abandon his intended course and destination altogether. When such a situation presents itself, the question of whether the plaintiff undertook a greater risk than an ordinarily prudent person would take under the circumstances is usually for the jury.
Id., 62 Tenn. App. at 210-211, 460 S.W.2d at 375.

In this case the known danger, i.e., the iced-over parking lot, was not readily avoidable and effectively obstructed plaintiff's path in getting to his automobile. Whether plaintiff took a greater risk than an ordinary prudent person would have taken under the same or similar circumstances is a qustion for the jury. Here, the jury, under proper instructions from the Trial Judge, resolved the question in plaintiff's favor.

Defendant next argues that the Trial Court erred in its charge to the jury. In support of this argument, defendant cites the following portion of the charge:

I had a lawyer on a jury which ultimately handed down the biggest verdict in Davidson County at one time. It was an Opryland case where a little child was allegedly shot at the Shooting Gallery. Nobody knew there was a lawyer on the jury and the lawyer went back into the Jury Room and took a stand and refused to see all the eleven other people's points of view.

What I'm saying, Mr. Story, as jurors, I'm suspicious of lawyers. So I warn you, so perhaps in your case you will listen to all the discussions before you take a stand. Either they will listen to you every intently or definitely go against you because you are a lawyer.

If you are in agreement with him, that is fine. I accept that, but I will instruct you that just because he cites a case, you must decide in your own mind and, likewise, listen to what he has to say. He does have a particular expertise.

I guess the best way to compare it is if you were to have a malpractice case and there was a physician on the jury. I can promise you that the eleven other jurors would do the opposite of what the physician does. That's human nature.

We do not believe that it could in any way be argued that these gratuituous statements of the Trial Judge did anything to enlighten the jury or to help in their deliberations. However, taking the entire charge into consideration, we cannot say that the portion quoted above in any way affected the jury deliberations. The Trial Judge, immediately after making these gratuitous statements, charged the jury: "You will hopefully be able to reach a verdict in this case. A good rule of thumb is to disagree but don't be disagreeable. Change and recede if shown good reason to recede, but if you have a strong conviction do not recede from that conviction."

There is a duty on the defendant in this case to point out any alleged error in the jury instructions at trial and defendant's failure to do so denies it the right to predicate an appeal upon any such alleged error. Rule v. Empire Gas Corporation, 563 S.W.2d 551 (Tenn. 1978).

In this case defendant's attorney, at oral argument, admits that he was concerned with this charge at trial but did not request the Trial Judge to amplify the charge or to do anything to remove any doubt which might be created in the jury's mind.

In any event, there has been no showing that this error, if it be error, in any way affected the outcome of this case. If error, it was harmless and a judgment will not be set aside because of harmless error. Rule 36(b), Tenn. R. App. P.

The defendant's issues are without merit.

We next discuss the plaintiff's issue of "[W]hether the Trial Judge abused his discretion by granting a remittitur."

The Trial Court in this case granted a remittitur "based on the Court's conclusion that the plaintiff was guilty of remote contributory negligence which should substantially mitigate damages" in that plaintiff carried a cinder block "in disregard for his own safety under the weather conditions then and there existing." The Trial Court, in its Memorandum, stated that this was "the motivating cause for the remittitur."

This case was tried to a jury. The jury heard all of the evidence, including the fact that plaintiff was carrying the cinder block at the time he fell.

While the defendant did not plead either contributory negligence or remote contributory negligence, the Trial Judge did give a full charge regarding contributory negligence and remote contributory negligence. In part, the Trial Judge charged:

You must determine in this case whether proximate cause was the snow and ice or whether proximate cause or contributing cause was the contributory negligence of the Plaintiff and you should consider the so-called cinder block and what part that entered, whether it was proximate cause that was remote or whether it was remote contributory negligence and, therefore, remotely caused his injury.

You must apply the laws as to negligence, remote negligence, and proximate cause.

Now, if he was negligent in something he did that a reasonable and prudent person would not do under similar circumstances, but what he did was so remote in time or place or causative force, you may lower the recovery which you would otherwise award him in proportion to his contribution to the injury.

We must assume that the jury, when properly charged by the court, follows that charge. In this instance, the jury was charged that if it found that the cinder block remotely contributed to the injuries received by the plaintiff, this remote negligence could be used to reduce the amount of recovery. There is a presumption that the jury will follow the charge of the court. Memphis Street Railway Co. v. Cooper, 203 Tenn. 425, 313 S.W.2d 444 (1958). On appeal, it will be assumed that the jury followed the court's instructions in the absence of a showing that the jury did otherwise. Cherry v. Floyd, 60 Tenn. App. 521, 448 S.W.2d 444 (1969).

The jury in this case was charged by the Trial Court that it could consider the fact that the plaintiff was carrying a cinder block across an icy parking lot and could determine whether this was contributory negligence or remote contributory negligence. There is nothing in this record to show that the jury did anything other than to follow the charge is given it by the Trial Court regarding remote contributory negligence. In this case, there is evidence that plaintiff's present and future medical expenses will total in excess of $8,000. The evidence is that plaintiff was hospitalized, that an open reduction operation was performed on his arm and a metal plate was inserted and held in place by four screws. He has two scars as a result of this operation. He had to wear a plaster cast on his arm for thirteen weeks. He suffered considerable pain and he is not able to engage in the physical activities which he engaged in prior to the injury. He will have to have another operation to remove the metal plate. We are of the opinion that the injuries he received and the pain and suffering involved would support a verdict in excess of the $23,000 awarded by the jury. There is nothing in the record to support the Trial Judge's further reduction of the judgment by remittitur.

T.C.A. § 20-10-102(b) provides:

If, in the opinion of said Court of Appeals, the verdict of the jury should not have been reduced, but the judgment of the trial court is correct in other respects, the case shall be reversed to that extent, and the judgment shall be rendered in the Court of Appeals for the full amount originally awarded by the jury in the trial court.

We are of the opinion after a review of this record that the verdict of the jury should not have been reduced. The judgment of the Trial Court in reducing the verdict is reversed and judgment shall be rendered in this Court for $23,000, the full amount originally awarded by the jury in the Trial Court. In all other respects, the judgment of the Trial Court is affirmed.

Costs of this appeal are taxed to the defendant and the cause is remanded to the Trial Court for the collection of costs and any further necessary proceedings.

CONCUR: HENRY F. TODD, Presiding Judge, M.S., BEN H. CANTRELL, Judge

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LEVEL 1 - 1 OF 3 CASES

James D. Hodgson, Secretary of Labor, United States Department of Labor, Plaintiff v. George W. Hubbard Hospital Of Meharry Medical College, Inc., Defendant

Hodgson v. George W. Hubbard Hosp. of Meharry Med. College, Inc.

No. 5334

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION

351 F. Supp. 1295; 9 Fair Empl. Prac. Cas. (BNA) 698; 66 Lab. Cas. (CCH) P32,572; 4 Empl. Prac. Dec. (CCH) P7546

October 12, 1971

Before Dr. Foster

JUDGES: Morton, D.J.

OPINIONBY: MORTON

OPINION: [*1295]

MORTON, D.J.:

The complaint was filed by the Secretary of Labor against the defendant, George W. Hubbard Hospital of Meharry Medical College, Inc., seeking to enjoin said defendant from alleged violations of § 6(d) and § 15(a)(2) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq., and such other and further relief as may be necessary and appropriate, including the restraint of any withholding of wages found to be due to employees under the Act.

Jurisdiction is conferred in this Court by § 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 217.

The averred violations deal with the allegedly discriminatory payment of salaries to nurse aides (females) and nurse attendants (males) which is prohibited by the equal pay provisions of the Equal [*1296] Pay Amendment to the Fair Labor Standards Act. The defense as proffered by the defendant is that the nurse attendants (male) perform additional tasks which (1) require extra effort, (2) consume a significant amount of time, and (3) are of an economic value commensurate with the pay differential.

Findings of Facts

The stipulated facts are as follows:

(1) George W. Hubbard Hospital (hereinafter called Hubbard Hospital or Hospital) is owned and operated by, and as a division of, Meharry Medical College. Hubbard Hospital has an annual gross volume of sales or business done of approximately $3,000,000. The hospital is located at 1005 18th Avenue, North, in Nashville, and has been in operation at this location since 1931. It is a full service hospital, open to the general public, and normally has

approximately 200 patients. The hospital generally employs some 450 employees, and operates on three shifts: 7 a.m. until 3 p.m., 3 p.m. until 11 p.m., and 11 p.m. until 7 a.m.

Hubbard Hospital generally employs some 50 to 60 female "nurse aides" and some 20 to 25 male "nurse attendants." Prior training or experience is not a prerequisite to employment and the starting pay within each classification is the same regardless of prior training or experience. At the beginning of employment both nurse aides and nurse attendants are given three to six weeks of on-the-job training and orientation. The training for the aides and attendants is essentially the same.

(2) Nurse aides and nurse attendants work on all three shifts. The routine patient care is essentially the same on all three shifts. The normal workweek for these employees consists of five 8-hour shifts or a total of 40 hours a week. With the exception of Obstetrics-Gynecology, the various nursing service areas throughout the hospital contain both male and female patients. There are no male attendants assigned to pediatrics, cardiology, female surgery, or obstetrics; both male and female aides are assigned to male surgery, private surgery, recovery room, emergency room, and internal medicine; and they are indiscriminately assigned to care for patients of the opposite sex. The pay of the employees within each classification, basically, does not vary because of the shift or nursing service departments to which they are assigned.

(3) The female nurse aides and male nurse attendants are assigned to and do perform essentially the same routine patient care, examples of which are as follows: give bed baths, back care, and change linen and make beds; give and assist with personal hygiene; feed patients and provide ice and drinking water; provide care for incontinent patients; take and record vital signs (temperature, pulse, respiration, weight and blood pressure); provide and remove bedpans and urinals; answer patients' signal lights; assist patients in and out of bed; perform simple treatments; collect specimens; measure intake and output; report on and off duty to nurse in charge and hear patient reports; participate in in-service educational programs; give enemas and perform urine-sugar tests; shave patients; wheel and walk patients; and dress or help dress patients.

(4) The work of the employees within the classifications in question has been substantially the same throughout the period since February 1, 1967.

(5) The work of the female nurse aides and male nurse attendants is substantially equal in terms of skill and responsibility. The jobs are performed within the same establishment and under similar working conditions. The performance evaluation records maintained by defendant with respect to the female nurse aides and the male nurse attendants show that overall the performance rating of the employees is substantially equal.

(6) During the period pertinent to this case the weekly starting rates for [*1297] 40-hour workweeks for the men and women in question have been as follows:

Period Covered	Female Nurse Aides	Male Nurse Attendants
2-1-67 to 2-1-68	$ 40	$ 46
2-1-68 to 6-30-68	46	51
7-1-68 to 2-1-69	49	54
2-1-69 to 6-30-69	52	58

7-1-69 to 2-1-70	58	80
2-1-70 to 6-30-70	58	80
7-1-70 to Present	64	80

During the period since 1968, the wage rate differential between the male and female employees in question has averaged 30 cents an hour.

(7) The defendant does not contend that the wage rate differentials are based on a merit system, a seniority system or on a system which measures earnings on the basis of quality or quanity of production.

(8) If the Court finds that the work of all the nurse aides and nurse attendants is substantially equal within the meaning of the Act, then $68,949 is owed to 115 female nurse aides for the period January 1, 1968, to January 1, 1971.

(9) Hubbard Hospital was first investigated by the Department of Labor in April, 1967, again in August, 1968, and finally in February, 1971. The Department in its first, and in subsequent investigations, has advised the defendant that it considers the jobs of the female nurse aides and male nurse attendants to be substantially equal and that the current wage rate differential is in violation of the Act. The defendant's basic position, as set forth in the letter from the Hospital Administrator to Mr. C.W. Carden of the Department of Labor (Exhibit 3 to the Vanstone Deposition), in the first and all subsequent investigations, is that the aforesaid jobs are not equal in terms of effort and that a wage rate differential is not in violation of the Act.

This Court is required to determine whether the male attendants performed additional duties which consume a significant amount of their time and require extra effort, with an economic value commensurate with the pay differential.

The determination of these facts requires the evaluation of the testimony given by the respective witnesses, said witnesses consisting of two classes in general, i.e., nurse aides and attendants, and the hospital's supervisory staff. It is of interest that the persons who were more closely associated with the activities of the nurse aides and nurse attendants, the "charge nurses," who have direct supervision of the nurse aides and nurse attendants were not called to testify. Although one or two of the supervisory personnel who did testify were former charge nurses, they had been removed from this position for some time prior to the period in question and prior to the date of trial.

After weighing all of the testimony, observing the demeanor of the witnesses and judging the reasonableness of their testimony, the Court finds that the contentions of the defendant are without merit or supporting evidence. The activities of the male nurse attendants which the defendant contends requires extra effort are summarized as follows: (a) mopping floors, (b) transporting bodies to the morgue, (c) assisting the undertaker in release of bodies from the morgue, (d) moving helpless patients into and out of bed, (e) transporting large gas cylinders to and from the storage area and patients' bedside, (f) delivering heavy supplies to wards, (g) changing mattresses, (h) transporting stretcher patients to and from the operating rooms, the emergency room and the admission office, and (i) placing helpless patients in the bathtub. Special emphasis is placed upon the fact that male nurse attendants were called for temporary emergency duty to other areas of the hospital. After performing temporary emergency services, they returned to their regular stations.

Although it may be true that these extra duties were to be assigned only to male nurse attendants, the proof shows that both nurse aides and nurse attendants performed and assisted each other [*1298] in performing these aforementioned tasks. The Court notes that occasionally an emergency would arise which required the expenditure of a special effort on the part of the nurse attendants without any assistance on the part of the nurse aides. However, the general practice and general experience in this particular hospital indicates that such events arose only occasionally. In the general operation of the hospital, both the female nurse aides and the male nurse attendants were called upon and did perform these services as a unit without regard to job classification.

Conclusions of Law

The Court concludes the following:

(1) The duties performed by the nurse aides and nurse attendants are substantially identical.

(2) The defendant having stipulated that the jobs are equal in terms of skill, responsibility and working conditions, failed to sustain its burden of proof that the alleged additional duties, as performed, rendered the job unequal in terms of effort. See Shultz v. Wheaton Glass Co., 421 F.2d 259 (3rd Cir. 1970).

(3) The defendant has violated § 6(d) and § 15(a)(2) of the Fair Labor Standards Act of 1938, as amended.

(4) The 115 female nurse aides are entitled to be paid the sum of $68,949, as stipulated.

In reaching this decision, the Court was not persuaded that the pay differential was justified by any occasional extra effort expended by the male attendants. The question of occasional extra effort as justification for pay differential has been, in the opinion of this Court, correctly dissected and resolved by the Fifth Circuit Court of Appeals.

"The equal effort criterion has received substantial play in the reported cases to date. As the doctrine is emerging, jobs do not entail equal effort, even though they entail most of the same routine duties, if the more highly paid job involves additional tasks which (1) require extra effort, (2) consume a significant amount of the time of all those whose pay differentials are to be justified in terms of them, and (3) are of an economic value commensurate with the pay differential. We are persuaded that this approach to the application of the statutory 'equal effort' criterion is in keeping with the fundamental purposes of the Equal Pay Act, and adopt it here. Employers may not be permitted to frustrate the purposes of the Act by calling for extra effort only occasionally, or only from one or two male employees, or by paying males substantially more than females for the performance of tasks which command a low rate of pay when performed full time by other personnel in the same establishment." Hodgson v. Brookhaven General Hospital, 436 F.2d 719, 725 (5th Cir. 1970).

In connection with the investigation of the defendant, minor underpayment of wages in other categories was discovered. This defendant made no question about its obligation to comply with the Fair Labor Standards Act, and immediately paid said amount. The defendant has maintained its position, based on competent legal advice, that it was not guilty of discrimination in the payment of salaries to the female nurse aides and the male nurse attendants. This was based on what it and its attorney thought was the proper application of the statutory law. The defendant is an outstanding medical institution consisting of both a medical school and a hospital. Based on the testimony in this record, this Court can find no indication that this defendant has intended to violate the law in the past or has any intention of violating the law in the future. Therefore, by reason of the discretion vested in this Court, this Court does not find justification for the issuance of an injunction, and the application therefor is hereby denied.

An appropriate order will be prepared by the attorney for the plaintiff, submitted to the attorney for the defendant, and then to the Court for approval.

LEVEL 1 - 2 OF 3 CASES

ROBERT ALLEN WALKER, Plaintiff/Appellant, v. DOROTHY BROOKS, MEHARRY MEDICAL COLLEGE, and HUBBARD HOSPITAL, Defendants/Appellees.

WALKER v. BROOKS

Appeal No. 01-A-01-9307-CV-00291

COURT OF APPEALS OF TENNESSEE, MIDDLE SECTION, AT NASHVILLE

1993 Tenn. App. LEXIS 710

November 17, 1993, Filed

PRIOR HISTORY: [*1]

APPEAL FROM THE CIRCUIT COURT OF DAVIDSON COUNTY AT NASHVILLE, TENNESSEE. No. 89C-1973. HONORABLE WALTER C. KURTZ, JUDGE

DISPOSITION: AFFIRMED AND REMANDED

COUNSEL: For PLAINTIFF/APPELLANT, PRO SE, ROBERT ALLEN WALKER # 95188, Nashville, Tennessee.

For DEFENDANTS/APPELLEES: Thomas A. Wiseman, III, Martha O. Erwin, GIDEON & WISEMAN, Nashville, Tennessee.

JUDGES: TODD, LEWIS, CANTRELL

OPINIONBY: HENRY F. TODD

OPINION: MEMORANDUM OPINION n1

- - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - - -

n1 Rule 10(b) of the Rules of this Court provides: MEMORANDUM OPINION. The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

- - - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - -

The captioned plaintiff has appealed from a summary judgment dismissing his suit against the captioned defendants for alleged personal injury in June, [*2] 1988, by a faulty administration of an injection by the defendant, Brooks, an employee of Hubbard Hospital, contractually associated with Meharry Medical College.

In particular, the complaint alleged that the injection needle penetrated and permanently injured plaintiff's sciatic nerve thereby causing permanent disability of his right leg.

Plaintiff presents a single issue for review as follows:

The Fifth Circuit Court of Davidson erred in granting Defendants' Summary Judgment.

Defendants' joint motion for summary judgment is based upon a supporting brief which is not contained in the record. The following evidence is found in the record: 1. The affidavit of defendant, Brooks, states that all statements of the complaint regarding alleged irregularities in her administration of the injection are untrue and that all of her nursing services to plaintiff complied with acceptable standards of nursing care. 2. The affidavit of Patrick L. LeCorps states that he is an orthopedic surgeon, that he treated plaintiff for low back pain while plaintiff was a patient at Hubbard Hospital during parts of May, June, July, and August, 1988, and thereafter at the State Prison; that the patient complained [*3] of low back pain of three to four years duration; and the low back pain of which the patient complained was not due from the insertion of a hypodermic needle into the sciatic nerve.

No other relevant evidence is found in the record.

This suit is based upon two factual allegations, both of which must be shown to be true if plaintiff is to succeed. The first allegation is that Nurse Brooks was negligent in her treatment of plaintiff. The second allegation is that plaintiff sustained a disability of his right leg as a proximate result of the negligence of Nurse Brooks.

At trial, plaintiff would be required to prove both allegations, and failure to prove either would be fatal to his suit. Redbud Co-op Corp. v. Clayton, Tenn. App. 1985, 700 S.W.2d 551.

However, defendants' motion for summary judgment must be sustained if defendants produce uncontradicted evidence that either allegation is not true, T.R.C.P. Rule 56.03. Defendants have produced such evidence as to one of the necessary elements of plaintiff's suit, but not as to the other.

As to negligence, Nurse Brooks has sworn in effect that she was guilty of no negligence in treating plaintiff. Plaintiff [*4] has filed no sworn evidence to contradict the affidavit of Nurse Brooks. Therefore, the evidence is uncontradicted that Nurse Brooks was not negligent. In this state of the record, the defendants are entitled to summary judgment.

Although irrelevant to the disposition of this appeal, it should be pointed out that defendants did not produce evidence that the disability of plaintiff's right leg was not the proximate result of negligent treatment of Nurse Brooks. The evidence of Dr. LeCorps related to low back pain and not to a disabled right leg.

Although not contained in the plaintiff's statement of issues, plaintiff argues that the Trial Court erred in denying a stay of proceedings until the termination of his incarceration. Plaintiff concedes that such a stay is discretionary with the Trial Court, but that it was error to deny the stay where the movant is without counsel. This Court does not agree that a civil litigant is entitled to free counsel, even if he is a pauper.

Plaintiff is not entitled to counsel or personal presence in pre-trial proceedings, including motions for summary judgment. Dozier v. Ford Motor Co., D.C. Cir. 1983, 227 U.S. App. D.C. 1, 702 F.2d 1189; [*5] Holt v. Pitts, 6th Cir. 1980, 619 F.2d 558; Whisnant v. Byrd, Tenn. 1975, 525 S.W.2d 152.

This suit was filed on May 4, 1989. Defendants' motion for summary judgment with supporting affidavits was filed on December 7, 1989. On January 23, 1990, an order was entered directing a plaintiff to respond to the motion for summary judgment. On February 5, 1990, defendant filed an unsworn response. On March 6, 1990, the Trial Court granted six additional months for plaintiff's further response. On October 8, 1990, plaintiff filed another unsworn response. On August 18, 1992, the Trial Court ordered plaintiff to respond further by October 16, 1992, or summary judgment would be entered. On September 30, 1992, plaintiff filed yet another unsworn response. The plaintiff never filed even his own affidavit verifying the allegations of his complaint. Summary judgment was entered on April 6, 1993, three years and four months after the filing of motion for summary judgment with supporting affidavits.

No error is found in the denial of further delay in the disposition of the motion for summary judgment.

The judgment of the Trial Court is affirmed. [*6] Costs of this appeal are taxed against the plaintiff-appellant. The cause is remanded to the Trial Court for enforcement of its judgment.

Affirmed and Remanded.

HENRY F. TODD, PRESIDING JUDGE

CONCUR:

SAMUEL L. LEWIS, JUDGE

BEN H. CANTRELL, JUDGE

ANGINETTA E. LEWIS, by next friend, PAULA E. LEWIS
Plaintiff-Appellee and PAULA E. LEWIS and ANNIE MAI NORTH
Plaintiffs v. MEHARRY MEDICAL COLLEGE, INC., d/b/a GEORGE W.
HUBBARD HOSPITAL Defendant-Appellant and KIMBERLY SERVICES
INC. d/b/a KIMBERLY NURSES Defendant

LEWIS v. MEHARRY MED. COLLEGE, INC.

No. 86-178-II

Court of Appeals of Tennessee, Middle Section

Slip Opinion

October 31, 1986, Filed

PRIOR HISTORY:

APPEALED FROM THE SECOND CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE, THE HONORABLE HARRY S. LESTER, JUDGE

DISPOSITION: AFFIRMED AND REMANDED

COUNSEL: LEE W. RAMSEY, RANDALL L. KINNARD; FOR PLAINTIFF-APPELLEE

W. A. MOODY, MOODY AND MOODY; FOR DEFENDANT-APPELLANT

OPINIONBY: LEWIS

OPINION: SAMUEL L. LEWIS, JUDGE

OPINION

The issue in this case is whether a defendant in a negligence case is entitled to a setoff pursuant to Tenn. Code Ann. § 29-11-101 et seq. against a judgment rendered for one plaintiff against that defendant for sums paid in a settlement to two other plaintiffs by a former co-defendant.

The facts out of which this appeal arose are as follows:

Plaintiff Anginetta Lewis, b/n/f, sued defendants Meharry Medical College, Inc., d/b/a George W. Hubbard Hospital (Meharry), and Kimberly Services, Inc., d/b/a Kimberly Nurses (Kimberly), for injuries she received while a patient at Meharry.

Annie Mai North, grandmother of Anginetta Lewis, sued Meharry and Kimberly and alleged " that she has incurred damages in respect to medical bills" on behalf of her granddaughter as a result of the injuries she received while a patient at Meharry.

Paula E. Lewis, Anginetta Lewis' mother, sued Meharry and Kimberly and alleged that she was at the time of the filing of suit a minor seventeen years of age but that when she "becomes a majority age in the future, she will be responsible for the expense and medical care and treatment on behalf of

Anginetta E. Lewis."

On the date of trial and prior to jury selection, plaintiffs Annie Mai North and Paula E. Lewis entered voluntary non-suits against both defendants. Meharry also took a non-suit as to the cross-complaint it had previously filed against Kimberly. Prior to the introduction of proof, Meharry admitted liability and at that time the remaining plaintiff, Anginetta E. Lewis, took a voluntary non-suit of her case against Kimberly.

The case was tried before the jury solely on the issue of damages. The jury returned a verdict in favor of Anginetta E. Lewis in the amount of $72,500.

On October 15, 1985, the trial court approved a settlement between the minor Anginetta and Kimberly whereby Kimberly paid $20,000 for and on behalf of Anginetta. In connection with the settlement of Anginetta Lewis' claim, Kimberly paid $3,000 to Annie Mai North in settlement of her claim against Kimberly and $2,000 to Paule E. Lewis in settlement of her claim.

On January 3, 1986, after its motion for a new trial had been overruled, Meharry filed a motion seeking "a set off in the amount of $25,000.00 in accordance with the provisions of the medical malpractice statute for payment made to the plaintiffs by another entity in settling the same claim, which was litigated, as provided by 29-26-119, T.C.A." n1

n1 DAMAGES. In a malpractice action in which liability is admitted or established, the damages awarded may include (in addition to other elements of damages authorized by law) actual economic losses suffered by the claimant by reason of the personal injury, including, but not limited to cost of reasonable and necessary medical care, rehabilitation services, and custodial care, loss of services and loss of earned income, but only to the extent that such costs are not paid or payable and such losses are not replaced, or indemnified in whole or in part, by insurance provided by an employer either governmental or private, by social security benefits, service benefit programs, unemployment benefits, or any other source except the assets of the claimants or of the members of the claimants' immediate family and insurance purchased in whole or in part, privately and individually. Tenn. Code Ann. § 29-26-119 (1980).

The plaintiff Anginetta Lewis agreed that Meharry was entitled to a setoff in the amount of $20,000, the sum paid to Anginetta Lewis by Kimberly. The trial court entered an order granting Meharry a setoff in the amount of $20,000 but denied a setoff for the $3,000 paid to Annie Mai North and the $2,000 paid to Paula E. Lewis.

Meharry has appealed and insists that it is entitled to a setoff of the $5,000 paid to Annie Mai North and Paula E. Lewis.

At no point in its brief nor at oral argument does Meharry set forth under what theory it is entitled to a setoff pursuant to Tenn. Code Ann. § 29-16-119.

We have read and reread Tenn. Code Ann. § 29-16-119 and, under the facts of this case, can find no applicability.

While Meharry did not in its motion rely on Tenn. Code Ann. § 29-11-105, this is undoubtedly the section under which the trial court allowed the $20,000 reduction.

Tennessee Code Annotated § 29-11-105 provides that when a release or covenant not to sue or to enforce a judgment is given in good faith to one of two or more persons liable in tort for the same injury, the release or covenant not to sue given by another tortfeasor may be introduced by defendant "upon motion after judgment to reduce the judgment by the amount stipulated by the release or the covenant or by the amount of the consideration paid for it by whichever is greater."

Meharry has cited three cases at the close of its brief. n2 None of these cases support Maharry's contention that a joint tortfeasor is entitled to a setoff of all amounts paid in settlement to multiple claimants by a co-defendant where one of the plaintiffs has been awarded judgment against the non-settling defendant.

n2

One of the purposes of Tenn. Code Ann. § 29-11-105 is to prevent a plaintiff from receiving in excess of his adjudged damages while allowing him to release a joint tortfeasor. Nothing in Tenn. Code Ann. § 29-11-101 et seq., and specifically § 29-11-105, contemplates that a settling plaintiff is prohibited from receiving the total amount of the damages to which the jury determined she was entitled because she and her co-plaintiffs have settled with a co-defendant.

Under Meharry's contention, the plaintiff Anginetta Lewis would be prohibited from receiving the total amount of the damages to which the jury determined she was entitled since the amounts paid to her co-plaintiffs would be setoff against her.

In a case such as we have before us, nothing in Tenn. Code Ann. § 29-11-101 et seq. provides that a defendant is entitled to a setoff of amounts paid to co-plaintiffs by a co-defendant against a judgment rendered for one of the plaintiffs against that defendant.

Holden v. City Service Co., 514 F. Supp. 662 (E.D.Tenn. 1980); Yett v. Smokey Mountain Aviation, Inc., 555 S.W.2d 867 (Tenn. App. 1977); McDaniel v. General Care Corp., 627 S.W.2d 129 (Tenn. App. 1981).

The trial court properly denied Meharry's motion for a setoff of the amounts paid to Anginetta Lewis' co-plaintiffs by the co-defendant Kimberly and properly allowed the setoff of the amount paid to Anginetta Lewis by Kimberly.

The judgment of the trial court is affirmed with costs assessed against Meharry and the cause remanded to the trial court for the collection of costs, the enforcement of its judgment and any further necessary proceedings.

CONCUR: HENRY F. TODD, Presiding Judge, M.S., WILLIAM C. KOCH, JR., Judge

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YOUR FOCUS SEARCH REQUEST AT THE TIME THIS MAIL-IT WAS REQUESTED:
NAME (MEHARRY) AND NOT NAME(MEHARRY MEDICAL COLLEGE)

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These case provide no information as to the facts or allegations in the underlying causes of action.

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FOCUS - 4 CASES

No info

1. Xerox Corporation, Plaintiff-Appellee v. Meharry Allied Health Learning Center, Inc., Defendant-Appellant, No. 86-2008 n* NOT RECOMMENDED FOR FULL-TEXT PUBLICATION SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 831 F.2d 298; 1987 U.S. App. LEXIS 13847, October 15, 1987, Filed

"

2. IN RE: SHAW COLLEGE AT DETROIT INCOPORATED, A NON-STOCK CORPORATION, Debtor; INTERNATIONAL EDUCATORS CONSORTIUM, Appellant, v. MEHARRY ALLIED LEARNING CENTER, A MICHIGAN CORPORATION; NEAL SUTHERLAND, TRUSTEE IN BANKRUPTCY, Appellee No. 85-1499 Not Recommended for full-text Publiation Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copyt must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, Slip Opinion, July 15, 1985

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3. IN RE: SHAW COLLEGE AT DETROIT INCOPORATED, A NON-STOCK CORPORATION, Debtor; INTERNATIONAL EDUCATORS CONSORTIUM, Appellant, v. MEHARRY ALLIED LEARNING CENTER, A MICHIGAN CORPORATION; NEAL SUTHERLAND, TRUSTEE IN BANKRUPTCY, Appellee No. 85-1499 Not Recommended for full-text Publiation Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copyt must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 770 F.2d 166, July 15, 1985, Reported as a Full-Text Slip Opinion July 15, 1985.

"

4. IN RE: SHAW COLLEGE AT DETROIT INCOPORATED, A NON-STOCK CORPORATION, Debtor; INTERNATIONAL EDUCATORS CONSORTIUM, Appellant, v. MEHARRY ALLIED LEARNING CENTER, A MICHIGAN CORPORATION; NEAL SUTHERLAND, TRUSTEE IN BANKRUPTCY, Appellee No. 85-1499 Not Recommended for full-text Publiation Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copyt must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 770 F.2d 167, July 15, 1985, Reported as a Full-Text Slip Opinion July 15, 1985.

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These cases mostly cite to cases which named Meharry or mention treatment at Meharry or evaluation by Psych. at Meharry in criminal trials.

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LEVEL 1 - 65 CASES

1. REGENTS OF THE UNIVERSITY OF CALIFORNIA v. BAKKE, No. 76-811, SUPREME COURT OF THE UNITED STATES, 438 U.S. 265; 98 S. Ct. 2733; 1978 U.S. LEXIS 5; 57 L. Ed. 2d 750; 17 Fair Empl. Prac. Cas. (BNA) 1000; 17 Empl. Prac. Dec. (CCH) P8402, October 12, 1977, Argued, June 28, 1978, Decided

2. CHARLES L. GARAVAGLIA, CYNTHIA SULLIVAN, GEORGE W. ROGERS and BRANCH INTERNATIONAL SERVICES, INC., Plaintiffs-Appellants v. JAMES A. BUDDE, JOSEPH ELLERY, JOHN DOE, and MARY ROE, Defendants-Appellees., NO. 93-2542, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 1994 U.S. App. LEXIS 36161, December 19, 1994, FILED, NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

3. THOMAS BEN CANADAY, Individually and on behalf of those similarly situated, Petitioner-Appellant, v. FRANK J. KELLEY, Attorney General, Individually and in his capacity as Attorney General of the State of Michigan, et al., Defendants-Appellees., No. 93-1860, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 1994 U.S. App. LEXIS 29186, October 14, 1994, Filed, NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED., Reported in Table Case Format at: 37 F.3d 1498, 1994 U.S. App. LEXIS 35097.

4. ROGER VANHOOSE, Petitioner-Appellant, v. MICHAEL O'DEA, Warden, Respondent-Appellee., No. 93-6399, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 1994 U.S. App. LEXIS 6610, March 25, 1994, Filed, NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED., Reported in Table Case Format at: 19 F.3d 1435, 1994 U.S. App. LEXIS 12797.

5. PAMELA L. McGEE, Plaintiff-Appellant, v. GENESCO, INC.,; JIM HARDIN; and JIM HALE, Defendants-Appellees., NO. 92-6230, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 1994 U.S. App. LEXIS 229, January 6, 1994, Filed, NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED., Reported in Table Case Format at: 14 F.3d 601, 1994 U.S. App. LEXIS 5179.

6. PATSY E. COLE, Plaintiff-Appellant, v. CULLY A. COBB, VANDERBILT MEDICAL CENTER, Defendants-Appellees, B. B. MELSUNGEN, TRI-HAWK INTERNATIONAL, INC., KAREN WONCIK, RAY W. METTETAL, Defendants, No. 91-5557, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 1992 U.S. App. LEXIS 10263, May 4, 1992, Filed NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED., Reported as Table Case at 961 F.2d 1576, 1992 U.S.

App. LEXIS 15996.

7. UNITED STATES OF AMERICA, Plaintiff-Appellee, v. L. DAVID GRABLE; VALERIE A. GRABLE; WARREN GRABLE, Defendants-Appellants., No. 91-1784, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 1992 U.S. App. LEXIS 6403, March 26, 1992, Filed, NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED., Reported as Table Case at 959 F.2d 236, 1992 U.S. App. LEXIS 12825.

8. PATRICIA SMITH, Individually and as Administratrix of the Estate of Brent Robin Smith, Plaintiff-Appellant, v. JAMES FRELAND; PETER SCHULCZ; and the CITY OF SPRINGDALE, OHIO, Defendants-Appellees., Nos. 91-3469, 91-3470, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 954 F.2d 343; 1992 U.S. App. LEXIS 74, November 21, 1991, Argued, January 6, 1992, Decided, January 6, 1992, Filed, As Corrected. Second Correction.

9. QUALICARE-WALSH, INC., a Louisiana corporation; HARRY P. WALSH; CHRISTINE WALSH, Plaintiffs-Appellants, v. JAMES E. WARD; AARON WARD; GEORGE HOLDER; WARD DRYWALL COMPANY, INC., a Tennessee corporation; JAMES E. WARD & ASSOCIATES, INC., also a Tennessee corporation, Defendants-Appellees, No. 90-6556, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 947 F.2d 823; 1991 U.S. App. LEXIS 25032, September 10, 1991, Submitted, October 25, 1991, Decided, October 25, 1991, Filed, As Corrected.

10. UNITED STATES OF AMERICA, Plaintiff-Appellee, v. LESLIE GRABLE (91-1152); and MARSHA K. BLANCHARD (91-1153), Defendants-Appellees, Nos. 91-1152, 91-1153, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 1991 U.S. App. LEXIS 24484 October 8, 1991, Filed, NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARITES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED., Reported as Table Case at 946 F.2d 896, 1991 U.S. App. LEXIS 29090.

11. TEDRIC LEIGHTON BEVERLY, Plaintiff-Appellant, v. JOHN GLUCH; MR. GARBOW; MARY SAUVEY, Dr.; MR. CHURCH; MR. MCKUTCHEN; CARLOS DOE; MARK DOE; GEORGE DOE; KAY BARATH; MARSHAWN DOE, Defendants-Appellees, No. 89-1915 NOT RECOMMENDED FOR FULL-TEXT PUBLICATION SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 902 F.2d 1568; 1990 U.S. App. LEXIS 8472, May 23, 1990, Filed

12. ROBERT D. LITTLETON, Plaintiff-Appellant, v. PAUL ALEXANDER, M.D.; PHILLIP GARDNER, P.A.C.; NANETTE VASQUEZ, L.P.N.; STATE OF TENNESSEE; MEHARRY MEDICAL COLLEGE, Defendants-Appellees, No. 88-5378 NOT RECOMMENDED FOR FULL-TEXT PUBLICATION SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 857 F.2d 1474; 1988 U.S. App. LEXIS 12193,

September 2, 1988, Filed

13. Xerox Corporation, Plaintiff-Appellee v. Meharry Allied Health Learning Center, Inc., Defendant-Appellant, No. 86-2008 n* NOT RECOMMENDED FOR FULL-TEXT PUBLICATION SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 831 F.2d 298; 1987 U.S. App. LEXIS 13847, October 15, 1987, Filed

14. Robert D. Littleton, Plaintiff-Appellant v. Paul Alexander, M.D.; Phillip Gardner, P.A.C.; Nanette Vasquez, L.P.N.; State of Tennessee; and Meharry Medical College, Defendants-Appellees, No. 87-5414 * NOT RECOMMENDED FOR FULL-TEXT PUBLICATION SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 830 F.2d 194; 1987 U.S. App. LEXIS 12983, October 1, 1987, Filed

15. Hazel Hewitt, Plaintiff-Appellant, v. Secretary of Health and Human Services, Defendant-Appellee, No. 86-5808 n* NOT RECOMMENDED FOR FULL-TEXT PUBLICATION SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 825 F.2d 411; 1987 U.S. App. LEXIS 10183, July 31, 1987, Filed

16. Gerald R. Bergman, Ph.D, Plaintiff-Appellant, v. Bowling Green State University; Hollis Moore, as President of Bowling Green State University; Michael Ferrari, Ph.D., individually and as Provost of Bowling Green State University, Defendant-Appellees, No. 86-3031 n* NOT RECOMMENDED FOR FULL-TEXT PUBLICATION SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 820 F.2d 1224; 1987 U.S. App. LEXIS 7719; 43 Empl. Prac. Dec. (CCH) P37,167, June 16, 1987, Filed

17. JOHN M. STONE, M.D., Plaintiff-Appellant, Cross-Appellee, v. WILLIAM BEAUMONT HOSPITAL, SEYMOUR GORDON, M.D., GERALD TIMMIS, M.D., and GORDON-TIMMIS & ASSOCIATES, P.C., Defendants-Appellees, Cross-Appellants, Nos. 84-1086, 84-1149, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 782 F.2d 609; 1986-1 Trade Cas. (CCH) P66,932, April 1, 1985, Argued, January 30, 1986, Decided, Petition for Rehearing En Banc Denied March 21, 1986

18. UNITED STATES OF AMERICA, Plaintiff-Appellee, v. MYRON R. RUGGLES, Defendant-Appellant, No. 85-3181 * * NOT RECOMMENDED FOR FULL-TEXT PUBLICATION Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 782 F.2d 1044, December 23, 1985

19. IN RE: SHAW COLLEGE AT DETROIT INCOPORATED, A NON-STOCK CORPORATION, Debtor; INTERNATIONAL EDUCATORS CONSORTIUM, Appellant, v. MEHARRY ALLIED LEARNING CENTER, A MICHIGAN CORPORATION; NEAL SUTHERLAND, TRUSTEE IN BANKRUPTCY, Appellee No. 85-1499 Not Recommended for full-text Publiation Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copyt must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, Slip Opinion, July 15, 1985

20. IN RE: SHAW COLLEGE AT DETROIT INCOPORATED, A NON-STOCK CORPORATION, Debtor; INTERNATIONAL EDUCATORS CONSORTIUM, Appellant, v. MEHARRY ALLIED LEARNING CENTER, A MICHIGAN CORPORATION; NEAL SUTHERLAND, TRUSTEE IN BANKRUPTCY, Appellee No. 85-1499 Not Recommended for full-text Publiation Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copyt must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 770 F.2d 166, July 15, 1985, Reported as a Full-Text Slip Opinion July 15, 1985.

21. IN RE: SHAW COLLEGE AT DETROIT INCOPORATED, A NON-STOCK CORPORATION, Debtor; INTERNATIONAL EDUCATORS CONSORTIUM, Appellant, v. MEHARRY ALLIED LEARNING CENTER, A MICHIGAN CORPORATION; NEAL SUTHERLAND, TRUSTEE IN BANKRUPTCY, Appellee No. 85-1499 Not Recommended for full-text Publiation Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copyt must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 770 F.2d 167, July 15, 1985, Reported as a Full-Text Slip Opinion July 15, 1985.

22. W. THOMAS McELHINNEY, M.D., Plaintiff-Appellant v. THE MEDICAL PROTECTIVE CO., et al., Defendants, No. 82-5636 n1 n1 NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced., UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 738 F.2d 439; 1984-1 Trade Cas. (CCH) P66,054, June 5, 1984

23. UNITED STATES OF AMERICA, Plaintiff-Appellee, v. KENNETH E. HOLLIS, Defendant-Appellant, No. 83-5071, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 725 F.2d 377, October 8, 1983, Argued, January 16, 1984, Decided, Petition for Rehearing En Banc Denied March 2, 1984.

24. Dr. Gadson J. Tarleton, Plaintiff-Appellant, v. Meharry Medical College, Dr. Ralph J. Cazort, Dean, School of Medicine, Dr. Lloyd Elam, President, Meharry Medical College, Florence Gaynor, Director Hospital and Health Services, Board of Trustees of Meharry Medical College, Defendants-Appellees, No. 82-5449, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 717 F.2d 1523; 1983-2 Trade Cas. (CCH) P65,625, September 20, 1983

25. PETER J. BRENNAN, Secretary of Labor, United States Department of Labor, Plaintiff-Appellant, v. OWENSBORO-DAVIESS COUNTY HOSPITAL, a Corporation; CITY

OF OWENSBORO, KENTUCKY; and DAVIESS COUNTY, KENTUCKY, Defendants-Appellees, No. 73-1261, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 523 F.2d 1013; 11 Fair Empl. Prac. Cas. (BNA) 600; 78 Lab. Cas. (CCH) P33,339; 10 Empl. Prac. Dec. (CCH) P10,404, September 30, 1975, Decided

26. NASHVILLE I-40 STEERING COMMITTEE, etc., et al., Plaintiffs-Appellants v. Buford ELLINGTON, Governor, et al., Defendants-Appellees, No. 18288, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, 387 F.2d 179, December 18, 1967 As Amended December 26, 1967. Certiorari Denied January 29, 1968.

27. Wardell PEGRAM, Appellant, v. UNITED STATES of America, Appellee., No. 13767., United States Court of Appeals Sixth Circuit., 267 F.2d 781, June 17, 1959.

28. MICHAEL D. DAVIS v. CONNECTICUT GENERAL LIFE INSURANCE COMPANY AND CIGNA CORPORATION, Docket No. 3-88-0978, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION, 743 F. Supp. 535; 1990 U.S. Dist. LEXIS 11039, July 12, 1990, Decided, July 13, 1990, Entered

29. ROBERT G. WATSON v. STEVE NORRIS, et al., No. 3-87-0699, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION, 729 F. Supp. 581; 1989 U.S. Dist. LEXIS 15210, December 6, 1989, Decided, December 7, 1989, Entered

30. WILLIAM GROSECLOSE, ET AL EX REL. RONALD HARRIES Petitioners VS. MICHAEL DUTTON, WARDEN, ET AL; RONALD HARRIES, Plaintiff, VS. MICHAEL DUTTON, WARDEN, ET AL., DOCKET NO. 3-84-0579, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION, 594 F. Supp. 949, August 17, 1984

31. NURSE MIDWIFERY ASSOCIATES, ET AL v. B. K. HIBBETT, M.D., ET AL., No. 82-3208, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION, 577 F. Supp. 1273; 1984-1 Trade Cas. (CCH) P65,957, December 9, 1983

32. James D. Hodgson, Secretary of Labor, United States Department of Labor, Plaintiff v. George W. Hubbard Hospital Of Meharry Medical College, Inc., Defendant, No. 5334, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION, 351 F. Supp. 1295; 9 Fair Empl. Prac. Cas. (BNA) 698; 66 Lab. Cas. (CCH) P32,572; 4 Empl. Prac. Dec. (CCH) P7546, October 12, 1971

33. ROBERTS v. AMERICAN FIRE & CASUALTY CO., Civ. No. 944, UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION, 89 F. Supp. 827 April 10, 1950

34. IN RE: MAXWELL GEORGE HORKINS, JR., and JO ANN N. HORKINS, Debtors., CASE No. 390-08877, CHAPTER 11, UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, 153 Bankr. 793; 1993 Bankr. LEXIS 786, March 29, 1993, Decided, 153 Bankr. 793 at 800.

35. TIMOTHY A. WARE, Plaintiff/Appellant, v. MEHARRY MEDICAL COLLEGE, Defendant/Appellee., No. 01A01-9304-CV-00149, SUPREME COURT OF TENNESSEE, AT NASHVILLE, 1994 Tenn. LEXIS 244, August 1, 1994, Entered

36. RICKY D. SUFFRIDGE, Plaintiff-Appellee, v. K-MART CORPORATION and KM ADMINISTRATIVE SERVICES, Defendants-Appellants, NOT FOR PUBLICATION, Supreme Court of Tennessee, 1989 Tenn. LEXIS 43, February 27, 1989, Filed

37. Christopher J. Corcoran, Plaintiff-Appellant, v. Foster Auto GMC, Inc., a/k/a Foster Auto World, and Orion Group, Inc., Defendants-Appellees, No. 7, Supreme Court of Tennessee, 746 S.W.2d 452; 1988 Tenn. LEXIS 9, February 1, 1988, Filed; Petition to Rehear Denied March 7, 1988

38. Margaret Wade, Plaintiff-Appellee v. Aetna Casualty and Surety Company, Defendant-Appellant, No. 87-11-I, Supreme Court of Tennessee, 735 S.W.2d 215, July 27, 1987, Filed

39. ROBERT A. WILHELM, Plaintiff-Appellee VS. KERN'S, INC., BROWN & GREER, d/b/a KERN'S BAKERY and THE CONTINENTAL INSURANCE COMPANY, Defendants-Appellants, No. 263, Supreme Court of Tennessee, 713 S.W.2d 67, June 30, 1986, Filed

40. KATHRYN H. MARTIREZ, Plaintiff-Appellant, v. MEHARRY MEDICAL COLLEGE, Defendant-Appellee., Supreme Court of Tennessee, at Nashville, 673 S.W.2d 141, July 16, 1984

41. The STATE BOARD OF REGENTS OF the UNIVERSITY and Community College System of Tennessee et al., Appellants, v. Yvonne GRAY, Cheryl Howard and Constance Shelton, Appellees, [NO NUMBER IN ORIGINAL], Supreme Court of Tennessee, 561 S.W.2d 140, January 23, 1978

42. Kenneth SPURLOCK, Plaintiff in Error, v. STATE of Tennessee, [NO NUMBER IN ORIGINAL], Supreme Court of Tennessee, 212 Tenn. 132; 368 S.W.2d 299, June 4, 1963

43. STATE OF TENNESSEE, Appellee v. KEVIN YANT, Appellant, No. 01-C-01-9206-CR-00187, COURT OF CRIMINAL APPEALS OF TENNESSEE, AT NASHVILLE, 1993 Tenn. Crim. App. LEXIS 422, July 8, 1993, Filed

44. STATE OF TENNESSEE, Appellee v. OTHA BOMAR, Appellant, NO. 01C01-9203-CC-00065, COURT OF CRIMINAL APPEALS OF TENNESSEE, AT NASHVILLE, 1992 Tenn. Crim. App. LEXIS 939, December 10, 1992, Filed

45. MARY JEAN BALLARD, APPELLANT v. STATE OF TENNESSEE, APPELLEE, Court of Criminal Appeals of Tennessee, 1988 Tenn. Crim. App. LEXIS 754, December 7, 1988, Filed; Permission to Appeal Denied April 3, 1989

46. State of Tennessee, Appellee v. Wendell Leggs, Appellant, No. 86-210-III, Court of Criminal Appeals of Tennessee, Slip Opinion, November 19, 1987, Filed; Permission to Appeal Denied March 7, 1988

47. STATE OF TENNESSEE, Appellee v. OSCAR KILBURN, Appellant, C.C.A. No. 86-10-III, Court of Criminal Appeals of Tennessee, Slip Opinion, May 23, 1986, Opinion filed; Permission to Appeal Dismissed, September 15, 1986; Petition to Rehear Denied, November 3, 1986

48. CARL TODD and MICHAEL TODD, Appellants v. STATE OF TENNESSEE, Appellee, Court of Criminal Appeals of Tennessee, Nashville, Slip Opinion, May 4, 1984

49. STATE of Tennessee, Appellee, v. Rose Horne LEAPHART, Appellant., APPEAL NO. 83-5-III, Court of Criminal Appeals of Tennessee, at Nashville., 673 S.W.2d 870, December 20, 1983; Permission to Appeal Denied by Supreme Court April 2, 1984.

50. STATE of Tennessee, Appellee, v. Willie Ed TAYLOR, Appellant, [NO NUMBER IN ORIGINAL], Court of Criminal Appeals of Tennessee, at Jackson, 645 S.W.2d 759, October 7, 1982, Permission to Appeal Denied by the Supreme Court December 30, 1982.

51. Jack F. CLARIDAY, Appellant, v. STATE of Tennessee, Appellee, [NO NUMBER IN ORIGINAL], Court of Criminal Appeals of Tennessee, 552 S.W.2d 759, December 30, 1976, Certiorari Denied by Supreme Court April 25, 1977.

52. Robert Lee BATEY, Plaintiff-in-Error, v. STATE of Tennessee, Defendant-in-Error, [NO NUMBER IN ORIGINAL], Court of Criminal Appeals of Tennessee, 527 S.W.2d 148, March 19, 1975, Certiorari Denied by Supreme Court August 11, 1975.

53. Sally Mae GORDON, Plaintiff-in-Error, v. STATE of Tennessee, Defendant-in-Error, [NO NUMBER IN ORIGINAL], Court of Criminal Appeals of Tennessee, 478 S.W.2d 911, November 22, 1971, Certiorari Denied by Supreme Court March 6, 1972.

54. PATRICIA MAYNARD, Plaintiff/Appellant, v. MEHARRY MEDICAL COLLEGE, and RICHARD E. JACKSON, Statutory Agent, and HAROLD JORDAN, M.D., Official Capacity, and RICHARD WHITTEN-STOVALL, M.D., Official Capacity, Defendants/Appellees., Appeal No. 01-A-01-9408-CH-00400, COURT OF APPEALS OF TENNESSEE, MIDDLE SECTION, AT NASHVILLE, 1995 Tenn. App. LEXIS 55, February 1, 1995, FILED

55. LARRY PULLEN, Plaintiff/Appellant, v. TEXTRON, INC., ET AL., Defendant/Appellee., Appeal No. 01-A-01-9404-CV-00193, COURT OF APPEALS OF TENNESSEE, MIDDLE SECTION, AT NASHVILLE, 1994 Tenn. App. LEXIS 591, October 21, 1994, Filed

56. TIMOTHY A. WARE, Plaintiff/Appellee, v. MEHARRY MEDICAL COLLEGE, Defendant/Appellant., Appeal No. 01-A-01-9304-CV-00149, COURT OF APPEALS OF TENNESSEE, MIDDLE SECTION, AT NASHVILLE, 1994 Tenn. App. LEXIS 161, March 30, 1994, Filed, Applications for Permission to Appeal Granted August 1, 1994, Reported at: 1994 Tenn. LEXIS 244.

57. ROBERT ALLEN WALKER, Plaintiff/Appellant, v. DOROTHY BROOKS, MEHARRY MEDICAL COLLEGE, and HUBBARD HOSPITAL, Defendants/Appellees., Appeal No. 01-A-01-9307-CV-00291, COURT OF APPEALS OF TENNESSEE, MIDDLE SECTION, AT NASHVILLE, 1993 Tenn. App. LEXIS 710, November 17, 1993, Filed

58. JEROME CANADY, Plaintiff/Appellant v. MEHARRY MEDICAL COLLEGE, ET AL, Defendants/Appellee, Appeal No. 01-A-01-9009-CH-00312, Court of Appeals of Tennessee, Middle Section, at Nashville, 811 S.W.2d 902; 1991 Tenn. App. LEXIS 43, January 30, 1991, Filed

59. EDDIE HARTMAN, Plaintiff-Appellant v. DR. PATRICK LeCORPS, Defendant-Appellee, Appeal No. 89-188-II, Court of Appeals of Tennessee, Middle Section, at Nashville, 1989 Tenn. App. LEXIS 652, October 4, 1989, Filed

60. SARAH ADAMS WATERS, Plaintiff/Appellant, VS. ROBERT LEE WATERS, Defendant/Appellee, No. 87-77-II, Court of Appeals of Tennessee, Middle Section, 1988 Tenn. App. LEXIS 281, May 13, 1988, Filed; Permission to Appeal Denied August 22, 1988; As Amended August 25, 1988

61. ANGINETTA E. LEWIS, by next friend, PAULA E. LEWIS Plaintiff-Appellee and PAULA E. LEWIS and ANNIE MAI NORTH Plaintiffs v. MEHARRY MEDICAL COLLEGE, INC., d/b/a GEORGE W. HUBBARD HOSPITAL Defendant-Appellant and KIMBERLY SERVICES INC. d/b/a KIMBERLY NURSES Defendant, No. 86-178-II, Court of Appeals of Tennessee, Middle Section, Slip Opinion, October 31, 1986, Filed

62. SADIE SMITH Appellant v. DR. ROBERT T. SPALDING Appellee, C.A. No. 746, Court of Appeals of Tennessee, Eastern Section, Slip Opinion, September 5, 1986, Filed

63. JASPER DAY Plaintiff-Appellant-Appellee VS MEHARRY MEDICAL COLLEGE, d/b/a HERMAN STREET APARTMENTS Defendant-Appellee-Appellant, Court of Appeals of Tennessee, Middle Section at Nashville, Slip Opinion, July 20, 1984

64. Horace MONCRIEF, b/n/f Elaine Moncrief, Plaintiffs-Appellants, v. Dr. William FUQUA, Defendant-Appellee, [NO NUMBER IN ORIGINAL], Court of Appeals of Tennessee, Middle Section, 610 S.W.2d 720, December 28, 1979, Rehearing Denied April 25, 1980. Certiorari Denied by Supreme Court September 2, 1980.

65. WALLER v. SKELETON et al., [NO NUMBER IN ORIGINAL], Court of Appeals of Tennessee, Middle Section, 31 Tenn. App. 103; 212 S.W.2d 690, January 3, 1948, Certiorari Denied by Supreme Court May 3, 1948.