

5th Circuit Appeals Court Embraces Hospital's Summary Judgment Motion

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As reported in the January/February 2010 issue of *Common Sense*, in June 2009 the U.S. District Court for the Southern District of Texas granted a hospital's motion for summary judgment, finding that the hospital did not violate EMTALA in handling a boy treated and later transferred by the hospital's emergency department. The plaintiffs, Wendy and Dominic Guzman, who sued Memorial Hermann Southeast Hospital (Memorial) on behalf of their son Tristan, appealed the 2009 federal district court ruling. On February 1, 2011, the 5th Circuit Court of Appeals affirmed the lower court decision, holding that Memorial had fulfilled its obligation under EMTALA to screen Tristan for an emergency medical condition (Guzman v. Memorial Hermann Hospital System, 5th Cir., No. 09-20780, unpublished opinion 2/1/11).

The Facts

In February 2006, seven-year old Tristan was taken to the ED at Memorial, where Guzman reported that her son had vomited during the night and had been running a fever. The triage nurse recorded the child's temperature as 98.1 degrees, his blood pressure as 110/67, and his heart rate as 145. Under Memorial's policy, all pediatric patients with a heart rate above 140 are categorized as "Emergent Level 2" and must be seen by a physician. In accordance with this policy, the nurse took the child to an examination room to be seen by Dr. Haynes. Haynes first took Tristan's medical history and examined him. Believing that Tristan likely had a virus, Haynes ordered several laboratory tests, including a manual white blood cell differential test.

Knowing that Tristan's heart rate had decreased, that he was receiving fluids and everything he needed, and that the Guzmans were interested in going home, absent knowing the white blood cell differential test results, Haynes diagnosed a urinary tract infection. Haynes made the decision to discharge and Tristan was released from the hospital. Upon discharge, Haynes told the Guzmans that their son's condition should begin to improve within 24 hours but to return to the ED if it did not. The Guzmans brought Tristan back to Memorial's ED the following morning. Tristan was complaining of fever, abdominal and chest pain, was vomiting, and had diarrhea. His condition worsened. By late in the afternoon, Tristan was transported to Memorial Hermann Children's Hospital, where he was hospitalized in the intensive care unit. Tristan remained at Memorial Hermann Children's Hospital for several weeks. Diagnosed with septic shock, which caused organ injury, Tristan still requires follow-up medical care and therapy.

The Guzmans sued Memorial alleging that Memorial Hermann committed EMTALA violations. In June 2009, the U.S. District Court for the Southern District of Texas iterated that "negligence in the screening process or providing a faulty screening or making a misdiagnosis, as opposed to refusing to screen or providing disparate screening, does not violate EMTALA . . ." Finding that "Guzman's allegations and the summary judgment evidence . . . do not as a matter of law support a claim under EMTALA that the screening examination was not appropriate," summary judgment was granted on Guzman's EMTALA screening claim. Also on the Guzman claim of a failure to stabilize an emergency medical condition, the court wrote that "[w]hether a patient is in fact suffering from an emergency medical condition is 'irrelevant for purposes of [EMTALA] . . . The statutory language makes clear that 'what

matters is the hospital's determination of the patient's medical status. The standard is a subjective one.'" Determining that there was no dispute as to the hospital's actual lack of knowledge of an emergency medical condition and that Guzman did not present any evidence of a difference of opinion within the hospital staff as to Tristan's condition, the district court granted Memorial's motion for partial summary judgment on the Guzman EMTALA failure to stabilize claim (Guzman v. Memorial Hermann Hospital System, S.D. Tex., No. 4:07-cv-3973, 6/16/09).

Fifth Circuit Court Ruling

On appeal from the U.S. District Court for the Southern District of Texas, the Fifth Circuit Court of Appeals determined that the Guzman complaint was unsuccessful in raising a genuine issue of material fact as to whether the hospital failed to follow its guidelines for screening Tristan when he arrived at Memorial's ED. The court rejected Guzman's complaint that Memorial's failure to follow its own screening guidelines constituted a violation of EMTALA, stating that the hospital's "Triage Guidelines" specify only the steps to follow during triage, not after the physician's examination.

Plaintiff did not present evidence that Memorial's policy required that a physician could not discharge patients until after all test results were read. The court also determined that a physician's testimony that "he normally reviewed all available results did not establish a standard of care for the entire hospital." Finding no evidence to support that an EMTALA violation had occurred, the appeals court affirmed the district court's grant of summary judgment on behalf of the hospital.

Hospital Found Liable for EMTALA Violation, but Relief on EMTALA Claim Denied

On March 25, 2011, the U.S. District Court for the District of Maine denied a hospital post-verdict motions – for a new trial or for judgment as a matter of law – where the hospital had been found liable on an EMTALA failure-to-stabilize claim. The initial complaint was brought by a woman who presented to a hospital ED with contractions, but was discharged only to later deliver her dead fetus at home. While the federal court decision left intact a \$50,000 compensatory damages award and a \$150,000 punitive damages award, the court denied the woman's post-trial motion for equitable relief, determining that it lacked authority under EMTALA to grant any general relief requiring the hospital to change its policies regarding women having contractions and whose discharge would pose a threat of harm to them or their fetus (Morin v. Eastern Maine Medical Center, D. Me., No. 1:09-cv-258, 3/25/11).

The Facts

On July 1, 2007, Lorraine Morin, who was sixteen weeks pregnant, was experiencing pain and suprapubic cramps ten minutes apart. Having been advised by her obstetrician/gynecologist to go to the hospital if she had any problems – given that her pregnancy was high-risk due to a history of cervical cancer, a miscarriage, a previous caesarian section, and pregnancy-induced hypertension – Morin and her boyfriend traveled from Millinocket, ME, to Bangor, arriving at 4:37 a.m. at the ED at Eastern Maine Medical Center (EMMC). Relating her symptoms and medical history to the triage nurse,

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she was brought to an examining room, where she saw another nurse and repeated her symptoms and history, although there is no notation in the record of Morin describing that she had a high-risk pregnancy.

Several hours later after returning home, Morin locked her boyfriend out of the bathroom and delivered the dead fetus at around 9 p.m. on the bathroom floor. Through the night Morin was bleeding. The next morning, she called her obstetrician, who immediately admitted her into EMMC for surgery to stop her bleeding and to remove the remaining placenta. Morin subsequently sued the hospital in U.S. District Court, claiming that doctors violated EMTALA when they discharged a patient in an emergency medical condition.

In July 2010, the U.S. District Court ruled that EMTALA is not inapplicable merely because fetal demise has been confirmed and the mother is not, therefore, in active labor. Rather, the question is whether the patient has an emergency medical condition that places her in a medically unstable condition, posing a threat to her health or safety if she is discharged without necessary stabilizing treatment. In this case the patient had a medical condition requiring stabilization, that is, delivery of her fetus before being allowed to leave the hospital. To support this finding, the court accepted an experienced labor and delivery nurse's testimony as an expert witness on the possible complications this patient was facing when she was discharged [*Morin v. Eastern Maine Med. Ctr.*, ___ F. Supp. 2d ___, 2010 WL 3000286 (D. Me., July 28, 2010)].

On October 20, 2010, a jury issued a verdict finding that EMMC had violated EMTALA and that its EMTALA violation had directly caused Morin to suffer personal harm. The jury awarded compensatory damages of \$50,000.00. In addition, the jury found that Ms. Morin had proven her claim for punitive damages against EMMC by clear and convincing evidence and awarded \$150,000.00 in punitive damages. The Court reduced the verdict to Judgment. Morin then moved for an order granting equitable relief against the EMMC, "seeking a court order directing the Defendant to change its policies for women facing contractions whose discharge poses a threat of harm to themselves or their unborn children."

On November 16, 2010, EMMC renewed its motion for judgment as a matter of law and for a new trial, claiming that EMTALA distinguishes between viable and non-viable pregnancies, that the court erred in allowing a nurse to testify as an expert, and that the trial evidence did not sustain the verdict.

The Ruling

Plaintiff's order for equitable relief –

The court concluded it had no basis to order EMMC to "change its policies for women facing contractions whose discharge poses a threat of harm to themselves or their unborn children." First, the court found that while EMTALA's language limits equitable relief to remedy the personal harm the plaintiff herself sustained as a consequence of a violation, it was questionable whether the court is statutorily authorized to order generalized relief to individuals who are not parties to the laws. Even if EMTALA authorizes generalized equitable relief, the court wrote that "Morin's request fails as a matter of proof. She did not begin to provide the Court with an evidentiary basis to impose such a sweeping judicial directive against EMMCs medical policies . . . [I]t is not sensible for a judge

to arrogate for himself the authority of highly trained and licensed physicians to act in the best medical interest of their patients. If there is a case where a court should intervene in such an invasion fashion into the practice of medicine, this is not it." The court denied plaintiff's claim for equitable relief.

Defendant's motion for new trial or for judgment as a matter of law – The court rejected EMMC's challenge of the award by first ruling that there was substantial evidence to support the jury's verdict: "EMMC has taken the untenable position that EMTALA entitles it to treat pregnant women carrying dead fetuses with less care than it treats women carrying viable fetuses. The Court extensively addressed EMMC's argument in its July 28, 2010, Order on EMMC's motion for summary judgment, and it adopts that opinion in response to EMMC's reiterated position . . . From the Court's perspective, EMMC's position is legally wrong and morally questionable . . . EMMC's contention is not justified by the language of the statute or its implementing regulations and has disturbing policy implications. There is simply no suggestion that Congress ever intended such a harsh and callous result for women who, like Ms. Morin, are carrying a non-viable fetus."

The federal court also dismissed the hospital's claim that the court had erred in allowing the testimony of an on-duty nurse by rejecting "EMMC's blanket contention that nurses are not experts." Finding that the nurse's testimony was properly focused, the court likewise ruled that its jury instructions appropriately stated the law: "It was a jury question whether Nurse O'Brien was less or more persuasive than the EMMC's three physician experts. During final instructions, the Court gave the jury the standard instruction regarding expert testimony, informing them that they were entitled to judge expert testimony 'like any other testimony', that they could 'accept it or reject it', and could give it as much weight as [they] think it deserves considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case . . . Nurses are nursing experts, not physician experts, but this limitation goes to weight, not admissibility."

Furthermore, owing to the distance between the ED in Bangor and Morin's residence in Millinocket, the court acknowledged that the physician's decision to discharge the patient effectively consigned her to miscarry at home. "Simple math compels the conclusion that if she miscarried within two hours of discharge, there was not enough time to return to Millinocket and get back to the EMMC . . . The jury was fully capable of applying the time frames of the doctors' testimony to the time-distance from EMMC to Ms. Morin's home in Millinocket and back to EMMC . . . It was also capable of finding that EMMC had discharged Ms. Morin while she was still having contractions, before she had delivered the fetus, and with a risk to her health and safety."

Rejecting EMMC's contention that the trial evidence was inadequate to sustain the verdict, the federal court determined that both damage awards were supported by the jury's conclusion that Morin was subjected to both physical and emotional injury, and that the hospital acted maliciously in how it treated Morin. The court denied defendant's motion for judgment as a matter of law and motion for new trial, and ordered that a final judgment consistent with the verdict be issued in favor of plaintiff.