



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



Sampson et al. v. Surgery Center et al. CV-20-0024-PR

PARTIES:

Petitioners: Surgery Center of Peoria, LLC, et al. (“Surgery Center”)

Respondents: Michelle Sampson, et al. (“Sampson”)

FACTS:

In March 2012, Sampson took her four-year-old son, Amare’ Burk (“Burk”), to an out-patient surgery center, Surgery Center, for a scheduled tonsillectomy and adenoidectomy to address his obstructive sleep apnea. Dr. Guido administered general anesthesia to Burk and Dr. Libling performed the procedure.

Burk remained in the operating room for approximately thirty minutes and was then transferred to the post-operative anesthesia care unit (the “PACU”). While in the PACU, Burk was assigned to Nurse Kuchar as her only patient. After approximately sixty minutes in the PACU, Nurse Kuchar discharged Burk to his mother’s care.

Sampson and Burk returned to their home. Sampson put Burk to bed; she had been told it was typical for a patient such as Burk to sleep once put to bed. Approximately two hours after Burks’ discharge, Sampson checked on him and discovered he wasn’t breathing. Emergency personnel were unable to resuscitate him.

In November 2013, Sampson brought a wrongful death action against multiple defendants including the Surgery Center. As required by A.R.S. § 12-2603(A), Sampson certified that the case would require expert testimony regarding the standard of care set forth in § 12-563 and that Dr. Greenberg would be the plaintiffs’ causation expert.

After significant discovery, defense attorneys moved for summary judgment, arguing that the plaintiffs’ expert testimony that Burk should have been observed at the Surgery Center for between one and three hours was insufficient to meet the plaintiffs’ burden to prove causation. The trial court agreed, holding that Dr. Greenberg’s deposition failed to state a causal connection between the defendants’ actions, including the length of time Burks was observed in the PACU, and Burks’ death. Sampson appealed the grant of summary judgment in favor of the defendants.

The court of appeals reversed the trial court. According to the court of appeals, “expert testimony on causation is often necessary,” but the court could “perceive no such necessity here. If a jury were to agree that the standard of care was breached as to time, then no expert evidence would be necessary to permit it to infer that a discharge in violation of that standard was the probable cause of a death that occurred within the time the child should have been observed

under the standard of care.” *Sampson v. Surgery Center of Peoria, LLC*, No. 1 CA-CV 18-0113, 2019 WL 7187252, at *4 ¶ 14 (Ariz. Ct. App. Dec. 26, 2019) (mem. decision). The court of appeals thus held there was “a triable issue” as to whether Burks’ “discharge time constituted breach of the standard of care.” *Id.* ¶ 15. This holding implicitly indicated that Dr. Greenberg’s testimony could establish the standard of care for Nurse Kuchar under A.R.S. § 12-2604. The court of appeals thus reversed the grant of summary judgment for defendants and remanded for further proceedings.

ISSUES:

1. Did the Court of Appeals Err In Holding Dr. Greenberg Could Establish The Standard of Care for SCP/Nurse Kuchar?
2. Did the Court of Appeals Err In Holding That Plaintiff Was Not Required To Introduce Expert Testimony To Establish Proximate Causation Of Death—And The Jury Could Instead Infer Causation—If Plaintiff’s Medical Causation Expert Established The Standard Of Care Was Breached?

STATUTES:

Arizona Revised Statute § 12-563 provides:

Both of the following shall be necessary elements of proof that injury resulted from the failure of a health care provider to follow the accepted standard of care:

1. The health care provider failed to exercise that degree of care, skill and learning expected of a reasonable, prudent health care provider in the profession or class to which he belongs within the state acting in the same or similar circumstances.
2. Such failure was a proximate cause of the injury.

Arizona Revised Statutes § 12-2603(A) provides:

If a claim against a health care professional is asserted in a civil action, the claimant or the party designating a nonparty at fault or its attorney shall certify in a written statement that is filed and served with the claim or the designation of nonparty at fault whether or not expert opinion testimony is necessary to prove the health care professional’s standard of care or liability for the claim.

In relevant part, Arizona Revised Statute § 12-2604(A) provides:

In an action alleging medical malpractice, a person shall not give expert testimony on the appropriate standard of practice or care unless the person is licensed as a health professional in this state or another state and the person meets the following criteria:

1. If the party against whom or on whose behalf the testimony is offered is or claims to be a specialist, specializes at the time of the occurrence that is the basis for the

action in the same specialty or claimed specialty as the party against whom or on whose behalf the testimony is offered. If the party against whom or on whose behalf the testimony is offered is or claims to be a specialist who is board certified, the expert witness shall be a specialist who is board certified in that specialty or claimed specialty.

2. During the year immediately preceding the occurrence giving rise to the lawsuit, devoted a majority of the person's professional time to either or both of the following:

(a) The active clinical practice of the same health profession as the defendant and, if the defendant is or claims to be a specialist, in the same specialty or claimed specialty.

(b) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession as the defendant and, if the defendant is or claims to be a specialist, in an accredited health professional school or accredited residency or clinical research program in the same specialty or claimed specialty.

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