

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ROBERT C. JONES,	:	Appeal No. C-120111
Executor of the Estate of		
BETTY ANN JONES, Deceased,	:	Trial No. A-1000111
 Plaintiff-Appellant,	 :	
 vs.	 :	
 JOHN SMITH, M.D.,	 :	
 and	 :	
 CARDIOLOGY PLUS, INC.,	 :	
 Defendants-Appellees.	 :	

Appeal from the Hamilton County Court of Common Pleas

**BRIEF OF PLAINTIFF-APPELLANT
ROBERT C. JONES, EXECUTOR OF THE ESTATE OF
BETTY ANN JONES, DECEASED**

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II. Statement of the Case

In a medical-malpractice case, the trial court erred in granting summary judgment when expert evidence established a prima facie case of malpractice. And the corporation employing the doctor is liable under respondeat superior.

A. Statement of Jurisdiction

This appeal was timely filed on September 15, 2011, and was taken from the trial court's entry of summary judgment on August 31, 2011. T.d. 35. The trial court's entry of summary judgment in favor of both defendants is a final appealable order. R.C. 2505.02.

B. Procedural Posture

Plaintiff-appellant Robert C. Jones, as executor of Betty Ann Jones's estate, filed a complaint for the wrongful death of Betty Ann Jones asserting that defendants, O.B. Gynn M.D., John Smith M.D., Cardiology, Inc., and Peoples Hospital, Inc., failed to diagnose and render medical care and treatment to decedent according to applicable standards of care in the community. Following the defendants' answers, the parties engaged in discovery. O.B. Gynn, M.D., and Peoples Hospital, Inc. were dismissed by stipulation under Civ.R. 41(A)(1)(b).

In June 2011, defendants John Smith and Cardiology Plus, Inc., moved for summary judgment. Following oral argument, the trial court erroneously granted Smith's and Cardiology Plus's motions for summary judgment as to Robert Jones's claim for the wrongful death of Betty Ann Jones.

C. Statement of Facts

In December 2009, Betty Ann Jones, then forty-two years old and in her thirty-seventh week of pregnancy, was seen by her family physician. He observed that she was bloated and experiencing extreme shortness of breath and irregular heart beat. He referred her immediately to Smith, a cardiologist employed by Cardiology Plus. After his examination and

an echo-cardiogram, Smith's diagnosis of her condition was severe congestive heart failure probably caused by cardiomyopathy. Following her admission to People's Hospital, Smith attempted to stabilize Mrs. Jones, but on December 12, 2009, she went into pulmonary edema and died. T.d. 24, pp. 62-63. The child was delivered by cesarean section.

In his deposition, Alan E. Expert, M.D., concluded that Mrs. Jones had suffered from peripartum cardiomyopathy, an uncommon form of congestive heart failure affecting pregnant women near the time of delivery. Expert testified that Smith had fallen below the standard of care for cardiologists in treating Mrs. Jones in not promptly delivering the baby upon admission to the hospital. T.d. 24 pp. 62-63, 68. Dr. Expert was also of the opinion that Smith's failure to render treatment in accordance with the standard of care of a cardiologist under the same or similar circumstances had proximately caused injury and death to Betty Ann Jones. T.d. 24 pp. 29, 46-47.

III. Assignments of Error and Argument

FIRST ASSIGNMENT OF ERROR

The Trial Court erred in granting the motion for summary judgment of defendant-appellee, John Smith, M.D. T.d. 35.

Issue Presented for Review and Argument

Where there is expert testimony that defendant-appellee, John Smith, M.D., fell below the standard of care for a cardiologist in rendering care and treatment to Betty Ann Jones, deceased, proximately causing a prima facie case of medical malpractice is established and Smith is not entitled to summary judgment.

* * *

Under Civ.R. 56(C), a motion for summary judgment may be granted only when no genuine issue of material fact remains to be litigated, the moving party is entitled to judgment as a matter of law, and it appears from the evidence that reasonable minds can come to but one

conclusion, and with the evidence construed most strongly in favor of the nonmoving party, that conclusion is adverse to that party. *See State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 639 N.E.2d 1189 (1994). The appellate court reviews a ruling on summary judgment de novo. *Jorg v. Cincinnati Black United Front*, 153 Ohio App.3d 258, 2003-Ohio-3668, 792 N.E.2d 781 (1st Dist.).

[Legal Argument]

SECOND ASSIGNMENT OF ERROR

The Trial Court erred in granting the motion for summary judgment of Defendant-Appellee, Cardiology Plus, Inc. T.d. 35.

Issue Presented for Review and Argument

Where a physician acting in the course and scope of his employment with a corporation negligently causes a patient injury or death, the corporation is held liable for negligent acts or omissions of its physician employee.

It is axiomatic in Ohio that under the doctrine of respondeat superior a corporation is responsible for negligent acts or omissions of its employees when the acts or omissions occur during the course of and arising out of the employment. *Cervelli v. Kleinman*, 8 Ohio App. 3d 247, 456 N.E.2d 1322 (8th Dist.1983); *Prince v. St. Francis-St. George Hospital, Inc.*, 20 Ohio App. 3d 4, 484 N.E.2d 265 (1st Dist.1985); *Littlejohn v. Parrish*, 163 Ohio App.3d 456, 2005-Ohio-4850, 839 N.E.2d 49 (1st. Dist.).

* * *

[Further argument]

IV. Conclusion

Dr. Expert's deposition is conclusive evidence that Smith's conduct fell below the standard of care for cardiologists under the same or similar circumstances in rendering care and treatment to Betty Ann Jones, and that that deviation was causally related to her death. It is unchallenged that Smith was acting in the scope of his employment with Cardiology Plus when he negligently rendered care and treatment to Betty Ann Jones, thus also subjecting Cardiology Plus to liability under the doctrine of respondeat superior. The trial court's order granting defendants-appellees' motions for summary judgment should be reversed.

Respectfully submitted,



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Certificate of Service

I certify that a copy of the Brief of Appellant Robert C. Jones has been served on Edgar Rambo, Attorney for Appellee, John Smith, M.D., at 400 Fountain Square Bldg., 505 Walnut St., Cincinnati, Ohio 45202, and on Monica Ann Simpson, Attorney for Appellee, Cardiology Plus, Inc., at 123 Central Trust Tower, Cincinnati, Ohio 45202, via ordinary U.S. mail this 17th day of April, 2012.

J. Fiddler Sidebar

Special Notes:

1. A copy of the final order of the trial court must be attached to appellant's brief. *See* Loc.R. 16.1(A)(6)(a).
2. If the brief is stapled, cover the staples. *See* Loc.R. 18.1(B).

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