

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

ROBERT C. JONES, : Appeal No. C-040111
Executor of the Estate of :
BETTY ANN JONES, Deceased, : Trial No. B-020111

Plaintiff-Appellant, :

vs. :

PEOPLES HOSPITAL, INC., : P L E
O.B. GYNN M.D.'S :
JOHN SMITH M.D., : M

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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**I. TABLE OF CONTENTS
AND
ASSIGNMENTS OF ERROR**

I. TABLE OF CONTENTS AND ASSIGNMENTS OF ERROR	ii-iii
II. STATEMENT OF THE CASE	1
A. Procedural Posture	1
B. Statement of Facts	1
III. ASSIGNMENTS OF ERROR AND ARGUMENT	2
FIRST ASSIGNMENT OF ERROR	2
The Trial Court Erred in Granting Summary Judgment for Defendant-Appellee, John Smith M.D.	
Issue Presented for Review and Argument	2
1. 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, a prima facie case of medical malpractice is established and Smith is not entitled to summary judgment.	
<i>Bruni v. Tatsumi</i> (1976), 46 Ohio St. 2d 127, 346 N.E.2d 67	2
<i>Cooper v. Sisters of Charity</i> (1971), 27 Ohio St.2d 242, 272 N.E.2d 97	2
<i>Miller v. Walton</i> , 163 Ohio App.3d 703, 2005-Ohio-4855, 840 N.E.2d 222	2
<i>Estate of Haas v. Grange Mut. Cas. Co.</i> , 161 Ohio App.3d 623, 2005-Ohio-3031, 831 N.E.2d 515	2
Ohio R.Civ.P. 56(C)	2
SECOND ASSIGNMENT OF ERROR	2
The Trial Court Erred in Granting Summary Judgment for Defendant-Appellee Cardiology Plus, Inc.	

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 liable for negligent acts or omissions of its physician employee. 3

Academy of Medicine of Cincinnati v. Aetna Health, Inc., 108 Ohio St.3d 185, 2006-Ohio-657, 842 N.E.2d 488 3

Cervelli v. Kleinman (1983), 8 Ohio App. 3d 247, 456 N.E.2d 1322 3
6

Prince v. St. Francis-St. George Hospital, Inc. (1985), 20 Ohio App. 3d 4, 484 N.E.2d 265 3
3

Littlejohn v. Parris, 163 Ohio App.3d 456, 2005-Ohio-4850, 839 N.E.2d 49

IV. CONCLUSION 3

CERTIFICATE OF SERVICE 4

II. Statement of the Case

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

A. Procedural Posture

Plaintiff-appellant Robert C. Jones, as executor of Betty Ann Jones' 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. Peoples Hospital, Inc. was dismissed by stipulation under Ohio R.Civ.P. 41(A)(1)(b).

In December 2004, defendants John Smith and Cardiology, Inc. moved for summary judgment. Following oral argument, the trial court erroneously granted Smith's and Cardiology, Inc.'s motion for summary judgment as to plaintiff-appellant's claim for the wrongful death of Betty Ann Jones.

B. Statement of Facts

In December 1999, plaintiff's spouse, 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, Inc. 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, 1999, she went into pulmonary edema and died.¹ The child was delivered by cesarean section.

In his deposition, Alan E. Expert M.D. concluded that she suffered from peri partum cardiomyopathy, an uncommon form of congestive heart failure affecting pregnant women near the time of delivery. He testified that Smith fell below the standard of care for cardiologists in treating Betty Ann Jones in not promptly delivering the baby upon admission to the hospital.² 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 proximately caused injury and death to Betty Ann Jones.³

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.

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.

* * *

[Legal Argument]

¹ T.d. 24, pp. 62-63.

² T.d. 24 pp. 62-63, 68.

³ T.d. 24 pp. 29, 46-47.

SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN GRANTING THE MOTION FOR SUMMARY JUDGMENT OF DEFENDANT-APPELLEE CARDIOLOGY PLUS, INC.⁴

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.⁵

* * *

[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, deceased, and that deviation was causally related to her death. It is uncontradicted that Smith was acting in the scope of his employment with Cardiology, Inc., when he negligently rendered care and treatment to Betty Ann Jones, thus also subjecting it to liability under the doctrine of respondeat superior. The trial court's order granting defendants-appellees' motion for summary judgment should be reversed.

⁴ T.d. 35

⁵ *Cervelli v. Kleinman* (1983), 8 Ohio App. 3d 247, 456 N.E.2d 1322; *Prince v. St. Francis-St. George Hospital, Inc.* (1985), 20 Ohio App. 3d 4; *Littlejohn v. Parris*, 163 Ohio App.3d 456, 2005-Ohio-4850, 839 N.E.2d 49.

Respectfully submitted,

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S A M P L E
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 Street, Cincinnati, Ohio 45202, and on Monice Ann Simpson, Attorney for Appellee Cardiology, Inc., at 123 Central Trust Tower, Cincinnati, Ohio 45202, via ordinary U.S. mail this 17th day of April, 2007.

J. Fiddler Sidebar

SPECIAL NOTES:

1. A copy of final order of the trial court must be attached to appellant's brief. See Local Rule (B)(1)(b).
2. If the brief is stapled, cover the staples. See Local Rule 6(A).