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RECENT DEVELOPMENT

COPSEY V. PARK: WHEN RELEVANT AND NECESSARY, A DEFENDANT MAY PRESENT EVIDENCE OF A NON-PARTY'S NEGLIGENCE TO PROVE THAT THE DEFENDANT WAS EITHER NOT NEGLIGENT OR THAT A SUPERSEDING CAUSE CONTRIBUTED TO THE ALLEGED HARM.

By: Genevieve Hornik

The Court of Appeals of Maryland held that evidence of a non-party's negligence is admissible if it is relevant and necessary for the defendant to prove that they were either not negligent or that other independent causes contributed to the alleged harm. *Copsey v. Park*, 453 Md. 141, 148, 160 A.3d 623, 626-27 (2017). Evidence of a non-party's negligence is necessary to provide a defendant a fair trial because the jury needs the evidence to determine causation. *Id.* at 156, 160 A.3d at 632. Therefore, the court held that any alleged prejudice caused by admitting the evidence did not outweigh its probative value. *Id.*

Lance D. Copsey ("Copsey") went to the emergency room on February 4, 2010, after slipping, falling, and hitting his head during a game of racquetball. After a normal CT scan, Copsey was released from the hospital. Copsey sought medical treatment on May 26 and June 1, 2010, due to his worsening symptoms. On June 4, 2010, Dr. Charles Iliff ("Dr. Iliff") ordered a CT scan and MRI/MRA for Copsey. The defendant, Dr. Park, interpreted the results and reported that the images were normal. On June 5, 2010 Dr. Larry Blum ("Dr. Blum") independently reviewed the MRI and MRA images and concurred there were no abnormalities.

On June 9, 2010, after Copsey's symptoms returned, he visited Dr. Blum who ordered a new MRI and requested an urgent interpretation of the image. Dr. Vijay Viswanathan ("Dr. Viswanathan") interpreted the MRI and noted abnormalities, including brain cell death caused by insufficient flow of blood. Dr. Viswanathan failed to relay his findings to Dr. Blum or Copsey. Thereafter, Dr. Blum reviewed the images with Copsey, without Dr. Viswanathan's report, found no abnormalities, and released Copsey from the hospital. After Copsey went home, Dr. Viswanathan discussed the abnormal results of the MRI with Dr. Damanhuri Alkaitis ("Dr. Alkaitis"), the covering physician for Dr. Blum. Copsey was never told about the abnormal scan and suffered a stroke the next day. He died on June 13, 2010 from complications related to the stroke.

On September 27, 2011, Jenny J. Copsey ("Mrs. Copsey") filed survival and wrongful death actions against Dr. Park, Dr. Viswanathan, Dr. Blum, and Dr. Alkaitis. All the parties, aside from Dr. Park, were dismissed following pre-trial settlements. Mrs. Copsey filed a motion in limine to

exclude evidence relating to Dr. Blum's and Dr. Alkaitis' prior statuses as defendants. She also attempted to prevent Dr. Park from raising the defense that the negligence of subsequent treating physicians lead to Copesey's death. The circuit court denied both motions. On September 24, 2014, the jury found that Dr. Park did not breach the standard of care and acted as a reasonable physician under the circumstances. Copesey filed a timely appeal.

The Court of Special Appeals of Maryland affirmed, upholding the introduction of evidence of a non-party's negligence and causation. Mrs. Copesey filed a petition for *writ of certiorari*. The Court of Appeals of Maryland granted certiorari to determine if the trial court erred by admitting evidence of non-party subsequent treating physicians' negligence. It also analyzed whether the trial court erred in instructing the jury on superseding cause, when the negligence of all the treating physicians amounted to one indivisible injury, Copesey's death.

The Court of Appeals of Maryland began by reviewing the lower court's reliance on *Martinez* in allowing evidence of non-party negligence to be admitted. *Copsey*, 453 Md. at 159, 160 A.3d at 633. *Martinez* justified the admittance of evidence of prior third parties' negligence in a medical injury case. *Copsey*, 435 Md. at 159, 160 A.3d at 633 (citing *Martinez v. Johns Hopkins Hosp.*, 212 Md.App. 634, 70 A.3d 397). Mrs. Copesey argued that *Martinez* did not apply since the *Martinez* court dealt with evidence prior to the physician's treatment. In contrast, Dr. Park argued that the evidence of superseding negligence broke the causal link. *Copsey*, 435 Md. at 158, 160 A.3d at 633. Mrs. Copesey further claimed that the lower court erred by allowing evidence of non-parties' negligence, because it diverted the jury's attention away from Dr. Park's actions. *Id.* at 158, 160 A.3d at 632. Furthermore, she claimed that the admission could sway the jury into finding that all the guilty parties had settled leaving the only innocent party, Dr. Park, to fight the suit on his own. *Id.* at 158, 160 A.3d at 632. The court ultimately applied *Martinez* since it addressed whether a physician accused of negligence could present evidence of a non-party's negligence as a defense. *Id.* at 161, A.3d at 635. The Court of Appeals of Maryland found that the issue of whether the non-parties' treatment of the patient was before or after the accused physician's treatment was irrelevant. *Id.* Instead, the court found the relevant issue to be whether the jury had a materially complete picture of the facts. *Id.* at 161-62, A.3d at 635. Because barring evidence of the non-parties' negligence would have given the jury an incomplete picture of the facts, the court found the evidence relevant and admissible. *Id.*

Next, the court reviewed the trial court's jury instruction on superseding cause. *Copsey*, 435 Md. at 163, A.3d at 636. A superseding cause defense arises when "unusual" and/or "extraordinary" independent intervening negligent acts occur. *Copsey*, at 166, 160 A.3d at 637 (citing *Pittway Corp. v. Collins*, 409 Md. 218, 249, 973 A.2d 771, 789(2009)). Mrs. Copesey argued that Dr. Park's negligence began a six-day delay that proximately caused Copesey's death. *Copsey*, 435 Md. at 158, 160 A.3d at 633. Dr. Park

denied negligence, but argued if he was negligent, he was not the proximate cause of Copsey's death. *Id.* at 165, 160 A.3d at 636. He claimed that the evidence showed the superseding negligence of the other treating physicians broke his causal link to Copsey's death. *Id.* at 158, 160 A.3d at 633.

The court noted that both sides presented expert testimony regarding whether Dr. Park was acting within the standard of care. *Copsey*, 453 Md. at 167, 160 A.3d at 638. After the testimony, the jury was free to weigh the evidence and decide whose expert was more credible. *Id.* at 167, 160 A.3d at 639. The expert testimony supported a reasonable jury finding that Dr. Park's alleged negligence or the negligence of the superseding doctors caused Copsey's death. *Id.* The court stated that because the facts presented supported more than one reasonable inference, the jury had to determine whether Dr. Park was a part of a single chain of negligence or if superseding negligence broke his causal tie to Copsey's death. *Id.* at 166, 160 A.3d at 638 (citing *Pittway*, 409 Md. at 253, 973 A.2d at 792). Therefore, the trial court was correct to give the jury instruction on proximate cause, since the jury was presented with evidence relevant to proximate cause. *Copsey*, 453 Md. at 167, 160 A.3d at 638.

The Court of Appeals of Maryland held that evidence of a non-party's negligence is admissible if the evidence is used to prove a defendant is not negligent or is not the proximate cause of the negligence. This ruling allows defendants to offer more evidence, apart from their own actions, in defense of negligent charges against them. This ruling also affects non-party physicians who treated a plaintiff in a negligence case because it allows for the non-party physicians' treatment to be scrutinized by a jury. This could lead to more time and money spent during discovery for medical malpractice cases because more records and interviews may be needed from multiple treating physicians.