

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Adam Webber at 937.224.3333 or send an email to arwebber@green-law.com.

Court of Appeals: Ninth Appellate District

Case Name: *Segedy et al. v. Cardiothoracic and Vascular Surgery of Akron Inc.*,
2009-Ohio-2460

Decided: May 27, 2009

Issue(s): Medical Malpractice and Interrogatory/Verdict Consistency

Summary of Opinion: Christina Segedy suffered from heart and lung problems and was diagnosed with mitral stenosis. Dr. Robert Netzley scheduled mitral valve replacement surgery and advised Mrs. Segedy to remain in the hospital until the operation was completed. Contrary to that advice, Mrs. Segedy signed herself out of the hospital for a weekend and returned in time for the procedure. Following the operation, Dr. Netzley determined Mrs. Segedy was stable, but soon complications arose with her heart; she eventually went brain dead and was removed from life support thereafter.

Mr. Segedy sued Dr. Netzley and Cardiothoracic and Vascular Surgery of Akron Inc. (CVSA) alleging medical negligence. At trial, Mr. Segedy argued that Dr. Netzley violated a duty of care by transferring his wife too early from the operating room, and failing to return her to it for appropriate treatment following the operation. The jury returned a general verdict for Mr. Segedy against Dr. Netzley in the amount of \$1,755,300, reduced by Mrs. Segedy's comparative negligence of twenty-two percent.

A month later the trial court granted Dr. Netzley's motion for a new trial based on juror confusion related to contradictory responses to interrogatories. It denied his motion for judgment notwithstanding the verdict. It also denied Mr. Segedy's motion for a directed verdict. Both parties appealed the judgment.

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The Ninth District Court of Appeals reasoned that although Mr. Segedy's medical expert may have been conflicted with his answers on cross-examination, that conflict was not a rescission of his testimony that Dr. Netzley's actions were the proximate cause of Mrs. Segedy's death. Although the coroner's report supported Dr. Netzley's argument, Mr. Segedy's medical expert contested those findings, which created a question of fact for the jury. It was the jury's duty to consider what amount of credibility to give to expert testimony, and it was reasonable for it to conclude that Dr. Netzley proximately caused Mrs. Segedy's death.

Additionally, Mr. Segedy argued that the trial court erred in granting Dr. Netzley a new trial pursuant to Civ.R. 49(B). The court explained that when the three fourths of a jury that sign liability interrogatories is different than the three fourths that sign the general verdict, the "same juror" rule applies. However, the court reasoned that although complications arose throughout the interrogatory process, the trial court accurately instructed the jurors to reconsider their responses without harming either party. Therefore, since there were no inconsistencies between the *final* interrogatory responses and the *final* verdict, the trial court *had no discretion to order a new trial* under Civ.R. 49(B).

Finally, Mr. Segedy argued that the trial court erred in denying his motion for a directed verdict as it related to Mrs. Segedy's comparative negligence. The court sustained this assignment of error reasoning that since Dr. Netzley had failed to show any evidence that Mrs. Segedy's *absence from the hospital, or her smoking before the operation*, were in any way proximately related to the cause of her death, a reasonable jury could not conclude that those actions contributed to her death.

The judgment of the trial court was reversed and remanded.

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