Serial: **114978**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2004-IA-01309-SCT

RIVER OAKS HEALTH SYSTEM D/B/A WOMAN'S HOSPITAL — ***Petitioner***

v.

LASHAWN STEPTOE-FINLEY AND WILLIS FINLEY, INDIVIDUALLY AND AS THE PARENTS AND NEXT FRIEND OF KAITLYN JAI STEPTOE-FINLEY — ***Respondents***

ORDER

This matter is before the Court en banc, on the Emergency Petition for Stay of the Proceedings and for Interlocutory Appeal filed by counsel for River Oaks Health System, d/b/a Woman's Hospital. Having considered the petition, the Court finds that it should be granted. The Court further finds that further record preparation and briefing is not needed, and that the merits of the petition may be decided at this time.

River Oaks seeks interlocutory appeal of the trial court's denial of its motion for change of venue based on the pre-trial publicity stemming from a June 1, 2004, article in the *Clarion-Ledger* newspaper. The trial in this matter is scheduled to begin on July 19, 2004.

Ordinarily, a single newspaper article would not justify a change in venue. We would rely on the trial judge and counsel to closely question potential jurors during voir dire, and to excuse those who may have read the article or otherwise been exposed to its content. For several reasons, however, this case is distinguishable.

The article was printed in the *Clarion Ledger*, the newspaper with the largest circulation in Mississippi, and the primary daily newspaper in Hinds County. The first nine paragraphs of the article were printed on the front page, above the fold, just under the *Clarion Ledger* banner. The balance of the story was printed on page seven.

The entire content of the front page portion of the article was dedicated to a recitation of the facts of the case from the plaintiff's point of view. The portion of the article printed on page seven contained ten more paragraphs addressing the plaintiff's case.

Plaintiff's counsel urges us to accept that the interview with the reporter was initiated by the reporter, not plaintiff's counsel. We take counsel at her word. However, the identity of the party who initiated the interview is not the issue here. Rather, we are concerned with whether the article (the content of which was substantially provided by plaintiff and two of her counsel) has created a substantial risk of prejudice to the defendants.

The article presents a compelling story, presented by a skillful reporter, of a terrified mother, bleeding and in pain, who gives birth to a severely brain-damaged child. The opening paragraphs of the article, all printed on the front page, state:

> **It wasn't so much the blood or the discomfort that bothered [the mother], as she sat in the lobby of the hospital four years ago.**
>
> **It was the excruciatingly long wait.**
>
> **It was the terror of fearing her baby was dying inside her and no doctor was there to help, she said.**
>
> **Ten minutes passed. Fifteen minutes. Then 25, 30 minutes.**
>
> **Finally, after 55 minutes, [the mother] said she was taken into an operating room for an emergency Caesarean section.**

By then it was too late.

The little girl she had named Kaitlyn (sic) was severely brain damaged. Four years later, [the mother] is still haunted by the events of that day.

The article goes on to allege that the defendants were responsible, explaining the specific acts of negligence, as claimed by the plaintiff. The article ends this way:

[The mother] waits for a July trial date

She has been told to expect little progress and a shortened life expectancy for Kaitlyn (sic).

"If you met her, you would fall in love with her," she said.

We find that a person reading the article could reasonably be expected to experience considerable emotion and sympathy for Katlyn and her family. Plaintiff's counsel states, "Certainly, a severely brain damaged child is heart-wrenching and invokes sympathy." We agree.

Plaintiff's counsel points out that the headline to the article referred to "tort reform," rather than Katlyn's case. That fact certainly does not dilute the impact or prejudicial quality of the article. "Tort reform" is a highly-emotional subject which was, and is, prominent in the public eye. At the time the article was printed, numerous special interest groups on both sides of the issue were taking passionate positions on proposed tort reform legislation which was before a special session of the legislature, which had been called by the Governor to address tort reform. To say that "tort reform" was a subject of great public interest would be an understatement. It is beyond dispute that, during the special legislative session, a front-page article in the *Clarion Ledger* related to the tort reform "clash" would be of high public interest.

The article includes an assertion from one of the plaintiff's lawyers (identifying him by name) that a medical procedure performed by one of the defendants in his office, should have been performed in a hospital. Stating where the procedure was performed, was factual. Stating where the procedure *should*

have been performed was a matter of opinion which goes beyond the general nature of the claim. Such specific opinions of wrongful conduct should not be provided by counsel to the press, where the opinions are likely to be published to the public, including potential jurors, and likely to influence opinions about the case.

Another lawyer representing the plaintiff, who was also identified by name in the article, supplied the reporter who wrote the article with video depositions taken in the case, including the deposition of at least one of the defendants.[1] The article recites the substance of deposition testimony from this defendant. This pretrial dissemination to the public (including potential jurors) of sworn testimony, potentially to be used at trial, was improper, and has the potential to prejudice the defendants, and to impact witness sequestration at trial.

For the reasons stated herein, we find that, should this case proceed to trial in Hinds County, there exists a substantial likelihood of material prejudice against the defendants. Accordingly, we grant the motion for interlocutory appeal, and render our opinion herewith.

We reverse the denial of the motion to change venue and we remand to the trial court with instructions that an order be entered transferring venue. In the event the parties are unable to agree on a new venue for the trial, the trial judge is instructed to transfer the venue to a county located a substantial distance from Hinds County, where the *Clarion Ledger* is not the primary daily newspaper. Such counties could include those bordering the Coast, within the circulation area of the New Orleans and Gulfport daily

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[1]We are compelled to point out that we find nothing improper in the conduct of the newspaper or its reporter in conducting the interviews and printing the story. However, because the newspaper now has an advance copy of sworn testimony from potential trial witnesses, along with video from which pictures could be extracted, we are mindful of the substantial risk of additional prejudicial publicity as the trial date draws near, prior to jury selection.

newspapers, and those which border Tennessee, within the primary circulation area for Memphis and other daily papers.

We are mindful of the added expense and delay in moving this trial. However, we are also mindful that the plaintiff and her counsel voluntarily submitted to the interview with the reporter. It further appears that plaintiff's counsel approved and set up the interview for the reporter with the plaintiff, and provided the video depositions to the reporter. Thus, this change in venue falls squarely on the shoulders of the plaintiff and her counsel, who should have known better.

Plaintiff's counsel informs us that the genesis of the article was the reporter's continuing coverage of the tort reform debate and the "special legislative session" on tort reform. She further informs us that the circumstances which led to the article occurred because the reporter "was in search of a medical malpractice victim." Thus, we conclude that plaintiff's counsel agreed to be interviewed, arranged the interview with their client, and supplied the reporter with video depositions, in an effort to contribute to the debate on tort reform.

We wish to make it clear that this Order should not be read or interpreted in any manner, or in any respect, as a criticism of plaintiff's counsel for exercising their Constitutional right to engage in political speech. We note that one of plaintiff's counsel is a former president of the Mississippi Trial Lawyers Association, and his opinions and observations regarding tort reform would be of great interest to many legislators, and to many members of the public.

However, if plaintiff's counsel wish to provide an example of a "medical malpractice victim," the safe and prudent course would be to select a client, or former client, who has already completed the trial and appellate process. To do otherwise exposes counsel and the client to the risk of prejudicial pretrial publicity which, as here, mandates a change in venue.

IT IS THEREFORE ORDERED that the emergency Petition for Stay of the Proceedings and for Interlocutory Appeal is granted as to the request for permission to appeal. The order denying transfer of venue is reversed, and this matter is remanded to the trial court for proceedings consistent with this order. The Petitioner's motion for stay is dismissed as moot.

SO ORDERED, this the 13th day of July, 2004.

/s/ Jess H. Dickinson

JESS H. DICKINSON, JUSTICE

NOT PARTICIPATING: DIAZ, J.