IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2025-CA-00544-COA

MARCIA HAYS AND JANICE HAYS ON BEHALF OF WRONGFUL DEATH BENEFICIARIES OF CURTIS HAYS, DECEASED — **APPELLANTS**

v.

SINGING RIVER HEALTH SYSTEM — **APPELLEE**

DATE OF JUDGMENT:	04/07/2025
TRIAL JUDGE:	HON. CALVIN D. TAYLOR
COURT FROM WHICH APPEALED:	JACKSON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANTS:	TAMEKIA ROCHELLE GOLIDAY
ATTORNEYS FOR APPELLEE:	WILLIAM ROBERTS NORMAN BRETT K. WILLIAMS
NATURE OF THE CASE:	CIVIL - WRONGFUL DEATH
DISPOSITION:	AFFIRMED - 11/03/2026
MOTION FOR REHEARING FILED:	

BEFORE WILSON, P.J., WESTBROOKS AND McCARTY, JJ.

McCARTY, J., FOR THE COURT:

¶1. After her father died of a heart attack, the daughter and his other beneficiary filed a medical malpractice lawsuit against a hospital. A trial court granted summary judgment in favor of the hospital after the family failed to provide expert testimony. On appeal, the family argues that additional time should have been granted to determine the employment status of the treating doctors and nurses at the hospital.

¶2. Since the record establishes that the medical providers in question were independent contractors or non-employees of the hospital, and the family had the opportunity to otherwise conduct discovery on this point, we affirm.

FACTS

¶3. In spring 2017, sixty-six-year-old Curtis Hays was transferred from Biloxi Regional Medical Center to Singing River Health System's Emergency Department in Ocean Springs. It was suspected that he had a heart attack. Notably, Mr. Hays had a prior history of high blood pressure, coronary artery disease, and an irregular heartbeat requiring an implanted defibrillator.

¶4. Within thirty minutes of arrival, medical providers at Singing River[1] performed a cardiac catheterization on Mr. Hays. It revealed "severe wall motion abnormalities" and narrowing in his left ventricle, along with a full obstruction in his mid-right coronary artery. Subsequently, medical providers removed a blood clot lodged in his right artery, and performed an angioplasty to further open his artery and improve blood flow throughout his heart.

¶5. Despite surgery, Mr. Hays continued to experience a decline in his heart's output. In fact, imaging estimated that with each heartbeat, Mr. Hays' left ventricle was only pumping blood at 15% efficiency. Additional testing showed advanced congestive heart failure.

¶6. In an attempt to alleviate the workload on Mr. Hays' heart and increase blood flow, an Intra-Aortic Balloon Pump was inserted two hours later. The balloon pump was placed by cardiologist, Dr. Michael Cunningham. Following placement, Mr. Hays was admitted to

[1] Dr. Eva Magiros and Nurse Alexandrea Hults are listed as some of the medical providers who treated Mr. Hays, but the record is silent as to their specific roles during his stay.

the Intensive Care Unit where Registered Nurses Tangela Burkes and Cheryl Longfellow assisted in his treatment and recovery.

¶7. Dr. Cunningham set the balloon pump to inflate and deflate in sync with each heartbeat at a 1:1 setting. The goal was that as Mr. Hays' status progressed, he would be weaned off the balloon pump.

¶8. But over the course of the next day, Mr. Hays was treated for low blood pressure. He also received increasing doses of dopamine for pain management. And he experienced an episode of rapid abnormal heartbeat so intense it triggered his implanted defibrillator.

¶9. One day later, another cardiologist, Dr. Jack Brand, ordered the balloon pump settings to be changed. Dr. Brand requested it be set at 1:2, inflating and deflating with every other heartbeat. Nursing notes document that Nurse Longfellow followed through with the orders and adjusted the settings accordingly.

¶10. Throughout the next few hours Mr. Hays "continue[d] to be restless" and "refus[ed] pain med[ication.]" Dr. Cunningham then removed the balloon pump and used a device to apply pressure to the site to control bleeding. Nursing notes show that Mr. Hays "tolerated [the] procedure fairly well," but was "in a lot of pain[.]" That night Mr. Hays was medicated, and his "pain [was] much improved[,] however, [his] respiratory rate continue[d] to be in the 30's[.]"

¶11. Four hours later, a "Code Blue" was called—Mr. Hays was experiencing cardiac arrest. Dr. Shawn French responded to the call but was unable to resuscitate him. After

thirty-five minutes of code, Mr. Hays was pronounced dead.

PROCEDURAL HISTORY

¶12. About a year later, in 2018, Mr. Hays' daughter, Marcia J. Hays, and wife, Janice Hays, filed a wrongful death lawsuit against Singing River as the sole defendant. The Hayses claimed that "employees . . . failed to meet the minimal standard of care required of a minimally competent physician and nurses" when they "abruptly discontinued" Mr. Hays' balloon pump, resulting in his death. Further, that "[t]he acts, omissions and commissions of . . . any other employees who may have been involved in the care and treatment of Curtis [Hays], [were] imputed" to the hospital.

¶13. Singing River was served with the Complaint several months later and timely filed its Answer denying liability at the end of November 2018. Within its Answer, the hospital "expressly addressed the employment status of every medical provider named in [the Hayses'] Complaint."

¶14. Three months later, the hospital propounded written discovery requests to the Hayses. But the Hayses failed to respond for four months. Further compounding the matter, the Hayses only answered the Interrogatories, and not the Requests for the Production of Documents.

¶15. In response, Singing River sent two good faith letters and several informal requests for production before the Hayses supplemented their responses in late 2020. Partial responses for the Requests for Production arrived two months later. Finally, in fall 2021, the

Hayses completed the discovery requests—over a year and a half after the requests had been initially propounded.

¶16. The hospital's request for depositions met a similar prolonged timeline. Originally scheduled in fall 2020, the depositions of Marcia and Janice Hays were scheduled and re-scheduled repeatedly.

¶17. In mid-2022, Singing River filed a Motion to Dismiss for Failure to Prosecute. In response, Hays' counsel cited to medical issues[2] and COVID-19 shutdowns as the cause of the various delays. In lieu of dismissal, Hays' counsel asked the trial court to compel depositions. However, before a hearing could occur, the parties agreed to schedule the Hayses' depositions in August 2022, foregoing a ruling on the matter.

¶18. In December 2022, the trial court entered an Agreed Scheduling Order, setting the matter as a bench trial to be heard on October 23, 2023. Based on the Agreed Scheduling Order, Hays' Expert Designation was due at the end of February 2023, with Singing River's Expert Designation to follow one month later. Meanwhile, the parties' Discovery deadline was scheduled to end in April 2023.

¶19. The day before their expert designation was due, the Hayses filed a Motion for Additional Time, alleging that their consulted expert retired from practice. A 30-day

[2] Cited medical issues included: a leg injury requiring surgery and physical therapy from July 2018 to December 2018; a cancer diagnosis in October 2020; a stroke suffered by counsel's law partner in June 2021 requiring a shift in caseload; and counsel contracting COVID-19 at the end of June 2022 requiring quarantine.

extension was granted. But when that deadline approached, the Hayses once again failed to designate an expert. Another 30-day extension followed, met by another failure to designate.

¶20. The following month, the trial court advised the parties that the trial date would have to be rescheduled. In August 2023 an Amended Agreed Scheduling Order was entered pushing trial back to the end of October 2024. As a result, Hays' Expert Designation was extended to April 2024, and the Discovery deadline to the end of June 2024.

¶21. Despite the year long extension, the Hayses failed for a fourth time to designate an expert. Subsequently, Singing River filed a Motion for Summary Judgment.

¶22. In lieu of a response, Hays' counsel once again filed a Motion for Additional Time. The trial court granted the motion, and provided the Hayses "until June 14, 2024 to designate an expert witness and to respond to the Defendant's Motion for Summary Judgment."

¶23. The Hayses complied with the trial court's Order, designating Dr. Barry F. Uretsky as their expert and responding to Singing River's Summary Judgment motion, resulting in its dismissal. Several new scheduling orders were then entered adjusting the parties' deadlines.

¶24. The hospital timely filed its Expert Designation, and after the close of discovery filed its second Motion for Summary Judgment. It alleged that Hays' expert "failed to identify any deviation from the standard of care by [Singing River] employees." The hospital included its Answer and an Affidavit of Human Resources Officer. The Affidavit swore that of the medical providers named in the lawsuit, only two were Singing River employees: Nurse

Burkes and Nurse Longfellow. The Affidavit further declared that the doctors were independent contractors.

¶25. After receiving two extensions for time, the Hayses responded to the motion one month later. Then the trial court held a hearing.

¶26. During the hearing, Hays' counsel admitted that if their expert found that Singing River's employee "action was not below standards, then you know, we would probably lose the case." The trial court subsequently asked Hays' counsel to consult with their expert, Dr. Uretsky, and to supplement his findings with the court by the end of the week.

¶27. Two days later, Dr. Uretsky's supplemental report was filed. Dr. Uretsky opined that hospital employee, Nurse Longfellow, did not deviate from the required standard of care when she changed the mode on the balloon pump to 1:2.

¶28. Subsequently, the trial court entered an Order Granting Motion for Summary Judgment in favor of Singing River.

¶29. The Hayses now timely appeal arguing that the employment status of Mr. Hays' medical providers is in factual dispute. They contend that further "factual development" of the record is required before a grant of summary judgment can occur.

STANDARD OF REVIEW

¶30. "A trial court's grant of summary judgment is reviewed de novo." *Johnson v. Pace*, 122 So. 3d 66, 68 (¶7) (Miss. 2013). Upon review, "[a]ll evidence will be viewed in the light most favorable to the nonmoving party." *Vicksburg Healthcare LLC v. Dees*, 152 So. 3d

1171, 1174 (¶8) (Miss. 2014).

¶31. Summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." M.R.C.P. 56(c).

¶32. Alternatively, "to survive summary judgment in medical-malpractice cases, plaintiffs are required to produce expert testimony in order to establish a prima facie case." *Lakeland Premier Women's Clinic PLLC v. Jackson*, 426 So. 3d 1062, 1065 (¶9) (Miss. 2025) (citing *Dees*, 152 So. 3d at 1174). "Mere allegations or denials" are insufficient. M.R.C.P. 56(e).

DISCUSSION

Summary judgment was proper due to lack of expert testimony.

¶33. The Hayses argue that the trial court improperly granted Singing River's motion for summary judgment because there still existed a genuine issue of material fact—namely, the employment status of Curtis Hays' treating doctors.

¶34. As a community-owned hospital system, Singing River is subject to the Mississippi Tort Claims Act. The MTCA waives sovereign immunity for "political subdivisions from claims for money damages arising out of the torts of . . . their employees while acting within the course and scope of their employment." Miss. Code Ann. § 11-46-5(1) (Supp. 2025). However this waiver does not extend to the actions or inactions of non-employees or independent contractors. *See Brown v. Delta Reg'l Med. Ctr.*, 997 So. 2d 195, 196-97 (¶¶8-

9) (Miss. 2008) (holding that "while the state may be sued for the tortious acts of its employees, it may not be sued for the tortious acts of its independent contractors").

¶35. A medical malpractice "plaintiff carries the burden of *production* in response to a motion for summary judgment." *Jackson*, 426 So. 3d at 1065 (¶9). More specifically, the Hayses were required to prove all of the elements of their claim at trial, and in turn at the summary judgment stage. That is:

> (1) the existence of a duty by the defendant to conform to a specific standard of conduct for the protection of others against an unreasonable risk of injury;
> (2) a failure to conform to the required standard; and
> (3) an injury to the plaintiff proximately caused by the breach of such duty by the defendant.

Williams v. Manhattan Nursing & Rehab. Ctr. LLC, 148 So. 3d 20, 22 (¶10) (Miss. Ct. App. 2014). "Expert testimony is *essential* to establish these elements." *Jackson*, 426 So. 3d at 1065 (¶9) (emphasis in original) (citing *Dees*, 152 So. 3d at 1174 (¶11)). Where "a plaintiff[] fail[s] to provide expert testimony establishing a prima facie case of medical negligence [this Court] generally requires a grant of summary judgment." *Dees*, 152 So. 3d at 1174 (¶11) (citing *Kuiper v. Tarnabine*, 20 So. 3d 658, 661 (Miss. 2009)).

¶36. In this instance, the Hayses designated a medical expert, Dr. Uretsky, to establish their medical malpractice claim. In his expert report, Dr. Uretsky opined that the "weaning of [sic] and removal of the [balloon pump] on 3/20/2017 was inappropriate and below the standard of care." Further, that "[t]he removal of the [balloon pump] . . . likely hastened the patient's death on that day."

¶37. While Dr. Uretsky's opinion satisfied the required elements of duty and breach, it was silent as to the role of Singing River. Specifically, Dr. Uretsky's medical report failed to name any hospital employee as breaching the standard of care and how their specific actions caused Mr. Hays' death.

¶38. Dr. Uretsky later supplemented his report to opine that Nurse Longfellow did not breach a duty, further limiting the Hayses' ability to support the elements of their claim. He explained that:

> [a]s the attending physician directs care of patient, it is the obligation of nursing personnel to carry out orders written by the physician, unless the nurse feels that such an order would be clearly harmful to the patient. Although I do not agree that removing the [balloon pump] was appropriate, I do agree that requesting the [balloon pump] to be weaned to 1:2 was not unreasonable, although based on the existing evidence I am not convinced it was the best medical approach.

¶39. In light of this clarification by the plaintiffs' own retained expert, the trial court granted summary judgment. In dismissing the case, the trial court found that "Plaintiff has submitted no expert testimony that indicates the nurse employed by Singing River Health System proximately caused or contributed to the death of Mr. Hays," and since they "failed to put forth evidence to establish an essential element in the underlying claim," it could not proceed further.

¶40. The Hayses are correct that whether a medical provider is an employee or an independent contractor can be fact-intensive. *See Smith v. Braden*, 765 So. 2d 546, 557 (¶34) (Miss. 2000). But unlike the plaintiffs in *Braden* who were diligent in their discovery

practice, the record in the Hayses' case shows that the Hayses "never propounded any written discovery requests and took no depositions[.]" The Hayses outright failed to develop any information regarding the employment status of the doctors or other providers who treated Mr. Hays.

¶41. Notably, over the course of litigation, it was determined that only two of the seven medical providers named were hospital employees: Nurse Burkes and Nurse Longfellow. Singing River provided a sworn affidavit that the other medical providers were independent contractors. While the Hayses argue that their subjective belief or understanding provides a conflict with this sworn affidavit, no other evidence was submitted at the summary judgment stage to rebut the employment status of the providers.

¶42. To some extent, the Hayses protest that they should have been allowed more time to develop this matter in discovery. But this case was filed in 2018; the discovery period spanned *over six years*. While "Rule 56(f) works as a safety valve when a nonmovant is unable to respond to summary judgment motions due to delays in discovery not fully within their control[,]" it "does not protect dilatory litigants." *Phillips v. Delta Reg'l Med. Ctr.*, 290 So. 3d 386, 391 (¶18) (Miss. Ct. App. 2020).

¶43. As the Hayses did not support their claim for medical malpractice by expert proof showing that any employee of Singing River breached a duty owed to Mr. Hays, we affirm the decision of the trial court to grant summary judgment.

CONCLUSION

¶44. The trial court properly granted summary judgment in finding that there was a lack of expert proof establishing a prima facie case of medical negligence. Accordingly, summary judgment is warranted.

¶45. **AFFIRMED.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., WESTBROOKS, LAWRENCE, EMFINGER AND WEDDLE, JJ., CONCUR. McDONALD, J., CONCURS IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION. LASSITTER ST. PÉ, J., NOT PARTICIPATING.