



Yebuah v. Center for Urological Treatment (TN Ct. App.)

Topics Covered: Abusive Litigation Against Physicians, Tort Reform

Issue

The issue in this case is whether the \$750,000 statutory cap on noneconomic damages in Tenn. Code Ann. § 29-39-102 is constitutional.

AMA Interest

The AMA supports caps on non-economic damages in medical malpractice lawsuits. Also, the AMA opposes abusive lawsuits against physicians.

Case Summary

Drs. Ernest R. Smith, Jr. and F. Frank Lohrasbi removed Cynthia Yebuah's (Cynthia's) kidney. During the surgery, a 5 1/2-inch gel port – used to facilitate the surgery—was placed inside Cynthia. Unfortunately, part of the gel port was left inside her. Through a subsequent surgery, the tubular device was discovered and removed.

Cynthia then sued her physicians and the facilities in which she had received treatment. She claimed negligence and malpractice.

The case proceeded to trial, where a jury awarded \$4 million to Cynthia for pain and suffering. Cynthia did not demonstrate any economic damages, and none were awarded. The trial court then applied the statutory limit under Tennessee law to reduce Cynthia's award to \$750,000. The trial court did not rule on the constitutionality of the cap, finding that Cynthia had waived any constitutional challenge by not asserting it prior to entry of the judgment.

Cynthia has now appealed the reduction of her award to the Tennessee Court of Appeals, where briefing is underway. Cynthia claims that her challenge to the cap was asserted at the appropriate time and that the cap on noneconomic damages is unconstitutional. She claims that the cap violates: 1) the right to jury trial, 2) separation of powers, and 3) equal protection.

Litigation Center Involvement

The Litigation Center, along with the Tennessee Medical Association and other organizations, filed an amicus brief on behalf of the defendants with the Tennessee Supreme Court.

Tennessee Court of Appeals brief