

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 11, 2023 Session

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**JOHN STANLEY JARNAGIN v. VANDERBILT UNIVERSITY MEDICAL
CENTER ET AL.**

**Appeal from the Circuit Court for Davidson County
No. 20C1221 Judge Kelvin D. Jones, III**

No. M2022-01012-COA-R3-CV

The Plaintiff brought suit alleging the Defendants failed to obtain informed consent prior to conducting a medical procedure. The Defendants responded with a consent form signed by the Plaintiff detailing the potential side effects of the procedure of which the Plaintiff asserted he had not been informed, and they moved for summary judgment. The Plaintiff argued the consent form in the present case was inadequate to establish informed consent. The trial court granted summary judgment in favor of the Defendants. The Plaintiff appealed, challenging the validity of the signed consent form based on an alleged misrepresentation and his inability to read because of an eye condition, and arguing, therefore, that there is a material question of fact as to whether informed consent was obtained. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JEFFREY USMAN, J., delivered the opinion of the Court, in which ANDY D. BENNETT and W. NEAL MCBRAYER, JJ., joined.

Michael Mason Thomas and W. Neil Thomas, III, Chattanooga, Tennessee, for the appellant, John Stanley Jarnagin.

Sara Reynolds and Ashley B. Tipton, Nashville, Tennessee, for the appellees, Vanderbilt University Medical Center and Elizabeth Anne Christina Hevert, M.D.

OPINION

I.

In 2018, John Jarnagin underwent a CT scan that revealed a 3.2 cm enhancing mass on his left kidney, which raised concerns for renal cell carcinoma, a form of kidney cancer. Mr. Jarnagin was presented with the option of undergoing a surgical procedure that would involve removing one to three quarters of his kidney as a means of removing the mass; however, he was also informed by his doctor that cryoablation was an alternative option that could be used to remove the mass from his kidney.¹ After hearing a brief description of this procedure, Mr. Jarnagin informed his doctor that he was interested in learning more about cryoablation, and he was referred to Dr. Elizabeth Hevert.

Mr. Jarnagin and his wife met with Dr. Hevert at the interventional radiology center at Vanderbilt University Medical Center (VUMC) on January 7, 2019. During the meeting, Dr. Hevert provided an overview of the procedure. The parties disagree as to the details of what was discussed in this meeting including whether the full extent of the risks associated with the procedure were disclosed by Dr. Hevert. According to affidavits submitted by both Mr. Jarnagin and his wife, who was present with her husband at the meeting with Dr. Hevert, Dr. Hevert stated that cryoablation would be “the safest option for Mr. Jarnagin,” that she was “the best in her field” and “had a 100% success rate,” that the only potential complication was the possibility of an infection at the insertion site of the needle, and that Mr. Jarnagin would need to keep the skin around the insertion site clean to avoid infection. Conversely, Dr. Hevert submitted a sworn declaration stating that she discussed the full list of possible risks from the cryoablation procedure during the January 7 meeting, including “bleeding, pain, infection, damage to surrounding structures, failure of treatment, need for additional treatment, risk of renal failure, stroke, and death.” Dr. Hevert’s declaration is consistent with notes kept on file from the appointment.

After meeting with Dr. Hevert, Mr. Jarnagin decided to move forward with the cryoablation procedure. The record includes an informed consent document signed by Mr. Jarnagin on January 7, 2019, following his meeting with Dr. Hevert. This document describes the full range of risks associated with the cryoablation procedure. Mr. Jarnagin states that “he does not specifically remember” signing the informed consent document. He does not contend, however, that he did not sign the form. The affidavit of Mr. Jarnagin’s wife, who was present at the January 7 meeting, states that Dr. Hevert’s assistant asked Mr. Jarnagin to sign the document and explained “that the document discussed the information that Dr. Hevert disclosed” during the meeting. Based on that explanation, Mr. Jarnagin signed the informed consent document.

The cryoablation procedure was performed more than two weeks later on January 25, 2019. Following the procedure, Mr. Jarnagin experienced hypertension and pain, and he was kept at VUMC overnight. He was released the following day, January 26, once his symptoms were controlled. During his drive home to Chattanooga, Mr. Jarnagin began

¹ Cryoablation is an interventional radiology procedure in which extreme cold is used to destroy a tumor.

experiencing intense pain and went to the hospital in Chattanooga. There, Mr. Jarnagin was treated for a large subcapsular hematoma² and was diagnosed with kidney damage.

Mr. Jarnagin filed suit against VUMC and Dr. Hevert on June 5, 2020, asserting that he was not properly informed of the risks associated with the cryoablation procedure. He initially asserted that no informed consent document was read to or signed by him. Mr. Jarnagin is seeking monetary compensation for damages resulting from the failure of the Defendants to obtain informed consent prior to the procedure.

Mr. Jarnagin asserts that he was not properly informed of the risks associated with the cryoablation procedure because of an amalgamation of the oral statements made by Dr. Hevert during the meeting and by the assistant when asking Mr. Jarnagin to sign the informed consent document, as well as his inability to read due to macular degeneration, which he has been diagnosed with since 2008. There is no allegation in the complaint or any other filing that Mr. Jarnagin specifically asked the assistant to read the document aloud to him prior to signing, nor that Dr. Hevert, VUMC, or any other person present at the meeting, other than his wife, was aware of his inability to read. Mr. Jarnagin insists that he would not have agreed to the cryoablation procedure had he known of the potential side effects of the procedure.

Addressing the issue of informed consent, Mr. Jarnagin supplied expert testimony from Dr. Gaurav Bandi. Dr. Bandi opined that “Dr. Hevert and Vanderbilt did not comply with the informed consent requirement before the procedure. However, this opinion may change based on Vanderbilt and/or Dr. Hevert providing the Cryoablation consent form executed by Jarnagin.” When Dr. Bandi gave this opinion, he was not aware that Mr. Jarnagin had actually signed an informed consent document following the meeting with Dr. Hevert on January 7, 2019. Mr. Jarnagin only requested in discovery documents from his procedure on January 25-26, 2019, not the records from the initial meeting with Dr. Hevert on January 7, 2019.

Defendants moved for summary judgment based on the existence of a consent form signed by Mr. Jarnagin on January 7, 2019, and the failure of the expert testimony put forth by Mr. Jarnagin to address this document. The trial court granted the Defendants’ motion for summary judgment, stating that other than Dr. Bandi’s expert opinion, which did not consider the signed informed consent document, “Plaintiff has provided no other expert proof to prove misrepresentation, inadequate disclosure, forgery, or lack of capacity. Based upon this testimony, there is no genuine issue of material fact that Plaintiff received informed consent prior to the procedure.” Mr. Jarnagin appealed the trial court’s grant of summary judgment to VUMC and Dr. Hevert (the Defendants), who in turn defend the trial court’s ruling on appeal.

² Subcapsular hematoma is bleeding inside the lining around the kidney.

II.

Turning first to our standard of review, this court “review[s] a trial court’s ruling on a motion for summary judgment de novo, without a presumption of correctness.” *Rye v. Women’s Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). Accordingly, we must “make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied.” *Id.* We must “view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party’s favor.” *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002). Summary judgment is appropriate when “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.” Tenn. R. Civ. P. 56.04; *Rye*, 477 S.W.3d at 250.

III.

Mr. Jarnagin challenges the validity of the signed informed consent document on the basis that the information in the document was misrepresented to him both by Dr. Hevert and by the assistant who asked him to sign the document and informed him of its contents. He also argues that he could not read the document due to his macular degeneration and that the document was never read aloud to him prior to signing. Therefore, Mr. Jarnagin contends, the trial court improperly granted the Defendants’ motion for summary judgment because there was a material question of fact as to whether there was valid informed consent.

The Defendants argue the signed consent document created a presumption of informed consent and that Mr. Jarnagin failed to rebut that presumption by showing misrepresentation, inadequate disclosure, forgery, or lack of capacity. The Defendants contend the circumstances alleged by Mr. Jarnagin are insufficient to overcome the presumption of informed consent or to invalidate the signed consent document. They assert Mr. Jarnagin was presented with and signed a document delineating the full range of risks and side effects of the procedure, and he would have been aware of them if he had taken ordinary diligence by asking someone to read the document aloud to him before signing. The Defendants also note the absence of expert testimony addressing the circumstances relating to the signing of the consent form.

The Tennessee Supreme Court has observed that “[u]nder the Health Care Liability Act . . . a standard of care applies to the doctor-patient informed consent discussion.” *Cooper v. Mandy*, 639 S.W.3d 29, 36 (Tenn. 2022) (citing Tenn. Code Ann. § 29-26-118).

The Tennessee General Assembly requires that, when a plaintiff advances a claim related to informed consent,

the plaintiff shall prove by evidence as required by § 29-26-115(b) that the defendant did not supply appropriate information to the patient in obtaining informed consent (to the procedure out of which plaintiff's claim allegedly arose) in accordance with the recognized standard of acceptable professional practice in the profession and in the specialty, if any, that the defendant practices in the community in which the defendant practices and in similar communities.

Tenn. Code Ann. § 29-26-118.

In this case, Mr. Jarnagin put forth the expert testimony of Dr. Bandi, who opined in his affidavit that:

none of the consent paperwork provided included the consent to perform the Cryoblation procedure.

I am unable to ascertain from documentation provided by Vanderbilt whether proper informed consent was received from Jarnagin. The failure to provide the proper informed consent paperwork leads me to the opinion that Dr. Hevert and Vanderbilt did not comply with the informed consent requirement before the procedure.

Dr. Bandi gave his opinion without having been made aware of the informed consent document signed by Mr. Jarnagin on January 7, 2019. Even though he was aware of the Jarnagins' rendition of the oral communications related to informed consent, Dr. Bandi explicitly contemplated that such a document might change his opinion, if it existed. In his affidavit, he stated, "[h]owever, this opinion may change based on Vanderbilt and/or Dr. Hevert providing the Cryoablation consent form executed by Jarnagin." Dr. Bandi reiterated this point by expressly noting that "[w]ith respect to my opinion on informed consent, I reserve the right to amend my opinion should Vanderbilt provide the informed consent document(s) executed by Jarn[a]g[i]n."

In its order granting summary judgment, the trial court noted that "[t]o prove lack of informed consent however, Plaintiff's claims must be proven by expert testimony." The trial court quoted portions of Dr. Bandi's affidavit indicating a lack of informed consent in which he stated that he had not seen any signed consent form, that the absence of such a form was foundational to his opinion, and that his opinion may change upon seeing such a form. The trial court noted that "[w]hen Dr. Bandi gave this opinion, he did not see the informed consent document signed by Plaintiff on January 7, 2019 because it was not

requested by Plaintiff prior to filing suit. Plaintiff requested documents from January 25-26, 2019 only, not the records from the initial consultation on January 7, 2019.”

Dr. Bandi expressly and unmistakably grounded his opinion indicating a lack of informed consent upon the absence of a signed consent form: “The failure to provide the proper informed consent paperwork leads me to the opinion that Dr. Hevert and Vanderbilt did not comply with the informed consent requirement before the procedure.” He expressly and unmistakably indicated that his opinion might be different if there was a signed consent form: “However, this opinion may change based on Vanderbilt and/or Dr. Hevert providing the Cryoablation consent form executed by Jarnagin,” and “With respect to my opinion on informed consent, I reserve the right to amend my opinion should Vanderbilt provide the informed consent document(s) executed by Jarn[a]g[i]n.”

In other words, Dr. Bandi emphasized that the existence of such a form is critical to his opinion. Nevertheless, Mr. Jarnagin has failed to offer any expert testimony addressing whether the manner in which the informed consent document came to be signed in this case is in accordance with the standard of care. Accordingly, even if we accept Mr. Jarnagin’s argument that under the circumstances of this case a signed consent form is not in and of itself conclusive on the question of informed consent, Dr. Bandi set forth his opinion in such a manner that the existence of the document necessitates expert testimony to demonstrate whether the manner of obtaining the signature was inconsistent with the standard of care. Mr. Jarnagin presented no such expert proof.

IV.

In considering the arguments advanced on appeal and for the reasons discussed above, we affirm the judgment of the Circuit Court for Davidson County. Costs of the appeal are taxed to the appellant, John Stanley Jarnagin, for which execution may issue if necessary. The case is remanded for such further proceedings as may be necessary and consistent with this opinion.

JEFFREY USMAN, JUDGE