ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

RONNIE ANTHONY McDANIEL, et al. v.
PAYSON HEALTHCARE MGMT., INC., et al.
CV-20-0333-PR

PARTIES:

Petitioners/Defendants: Payson Healthcare Management, Inc. d/b/a Payson Regional Bone and Joint ("PHM"); 4C Medical Group, PLC and Amar Parkash Sharma, M.D.

Respondents/Plaintiffs: Ronnie Anthony McDaniel, Conservator of the Estate of Dallas R. Haught; Roy G. Haught and Marie Haught, natural parents of Dallas R. Haught.

FACTS:

The Injury and Treatment. In July 2011, Dallas Haught fell from his dirt-bike and suffered a serious cut on his right knee. He went to the Payson Regional Medical Center (affiliated with PHM), received treatment, and was discharged. Haught was soon admitted again and saw a PHM-affiliated orthopedic surgeon, Dr. Michael Darnell. Among other things, Darnell ordered a CRP test, which measures inflammation and the degree to which a wound is infected.

After draining and debriding the wound, Darnell transferred Haught to the Scottsdale Shea Medical Center. At Shea, Haught was initially treated by Dr. Amar Parkash Sharma, a hospitalist, and Dr. John Cory, an orthopedic surgeon. Sharma collected and organized Haught's medical records and test results for the other physicians, but omitted the CRP results entirely from his report. Haught also was examined by Dr. John Burge, an infectious disease physician. On July 23, a different hospitalist and Dr. David Friedman, another infectious disease physician, assumed responsibility for Haught's case, replacing Sharma and Burge. Also on that date, Cory performed two operations on Haught to drain his knee and relieve pressure on muscles around his knee.

On July 26, Dr. Timothy Schaub, a plastic surgeon, examined Haught and thought he might be suffering from necrotizing fasciitis, an acute disease in which inflammation is associated with a bacterial infection that destroys tissue. After consulting with Cory, Schaub confirmed his diagnosis and performed a "radical debridement" on Haught's right leg, removing the affected skin and soft tissue. Haught was later discharged in October 2011.

The Lawsuit. In July 2013, Haught filed an malpractice action against some of his treating physicians and associated hospitals and business entities, including Dr. Sharma (and his business, 4C Medical Group PLC), PHM (but not Dr. Darnell), and Dr. Cory (and his medical practice). Haught's liability theory was that the defendants had "failed to timely manage, investigate, diagnose or treat both his life threatening infection (necrotizing fasciitis) and his worsening compartment syndrome," resulting in all of the skin on his right leg being surgically removed.

Haught contended that Sharma should have conveyed the CRP test results to the other treating physicians, which delayed them from diagnosing necrotizing fasciitis. He further contended that if his infection had been diagnosed earlier, he would have avoided major surgery.

PHM's Attempt to Designate Cory as a Nonparty at Fault. In June 2016, Cory moved for summary judgment "on causation due to Plaintiffs' failure to show that any alleged breach of the standard of care by Dr. Cory caused and/or contributed to any of . . . Haught's actual injuries." PHM and the other defendants did not respond to the motion. Haught filed a response stating he did not oppose Cory's motion, conceding that Cory had not breached "the standard of care in his unique role as a consulting surgeon." The court then granted summary judgment in Cory's favor.

Two weeks later, PHM filed a "reply" to Cory's motion, arguing that while it agreed with his causation argument, it opposed granting him summary judgment on the "standard of care" ground admitted by Haught. About a week later, it filed a request asking the court to withdraw its order granting summary judgment. The court denied the "request" because PHM failed to file a timely response to Cory's summary judgment motion. In June 2017, PHM filed a motion for leave to name Cory as a nonparty at fault, offering multiple arguments about why the entry of summary judgment in Cory's favor did not bar it from doing so. In September 2017, the court denied the motion, but did not explain the reasons for its ruling.

Challenged Trial Testimony of Non-Defendant Treating Physicians. During trial, besides offering the testimony of Drs. Sharma and Darnell, the defendants offered testimony from four of Haught's other treating physicians: Drs. Friedman, Schaub, Berge, and Cory. Of the four, only Cory was a defendant and, by the time trial began, he had been dismissed from the case on summary judgment. The defendants did not disclose any of the four as expert witnesses.

During trial, Haught objected to portions of each of the four witnesses' testimony on the ground that they were offering expert testimony in violation of the "one-expert-per-side rule" in Civil Procedure Rule 26(b)(4)(F)(i). In the case of Friedman and Schaub, Haught objected to portions of their testimony in which they said that knowing the results of the CRP tests would not have made a difference in treatment and, more generally, CRP test results were not significant in making diagnostic judgments. Neither physician had seen the CRP test results here. The court overruled Haught's objections. Ultimately, the jury returned a defense verdict.

The Court of Appeals' Opinion. The Court of Appeals reversed and remanded the case to hold a new trial. Among other things, the court ruled: (1) the treating physicians' testimony about the significance of CRP test results in diagnosing necrotizing fasciitis violated the "one-expert-per-side rule" in Civil Procedure Rule 26(b)(4)(F); and (2) the Court of Appeals lacked appellate jurisdiction to consider whether the trial court erred in not allowing PHM to designate a Cory as a nonparty at fault under Civil Procedure Rule 26(b)(5) because Cory was an "indispensable party" in the appeal and PHM had failed to serve him with PHM's notice of appeal.

ISSUES: The Supreme Court will be addressing two issues:

(1) Did the Court of Appeals err as a matter of law in using a de novo standard of review, and ruling that the treating physicians' testimony constituted independent expert "standard of care" testimony that violated Rule 26(b)(4)(F), Ariz. R. Civ. P., the "one-expert-per-side rule"?

(2) Did the Court of Appeals err in determining that it lacked jurisdiction to review the trial court's ruling denying a motion to name a former defendant as a nonparty at fault because the former defendant was an indispensable party in the appeal?