

2022 Ark.App. 324

**DEBORAH JOHNSON, INDIVIDUALLY,
AND AS REPRESENTATIVE OF THE
ESTATE OF SAMUEL GOODMAN,
DECEASED APPELLANT**

v.

**UNIVERSAL HEALTH SERVICES, INC.;
UHS OF DELAWARE, INC.; UHS OF
BENTON, LLC, F/K/A UHS OF BENTON,
INC., D/B/A RIVENDELL BEHAVIORAL
HEALTH SERVICES OF ARKANSAS; AND
DR. DAVID STRETT APPELLEES**

No. CV-21-468

Court of Appeals of Arkansas, Division III

September 14, 2022

APPEAL FROM THE PULASKI COUNTY
CIRCUIT COURT, FIFTH DIVISION [NO. 60CV-
20-2447] HONORABLE WENDELL GRIFFEN,
JUDGE AFFIRMED.

Potts Law Firm, L.L.P., by: Adam T. Funk,
for appellant.

Reece Moore McNeill Pendergraft, by: Paul
D. McNeill and Dustin R. Darst; and Cox & Estes,
PLLC, by: James R. Estes, for separate appellees
UHS of Delaware, Inc.; Universal Health Services,
Inc.; UHS of Benton, LLC; and Dr. David Streett.

N. MARK KLAPPENBACH, JUDGE.

Deborah Johnson appeals the order of the
Pulaski County Circuit Court granting summary
judgment to appellees Universal Health Services,
Inc.; UHS of Delaware, Inc.; UHS of Benton, LLC,
f/k/a UHS of Benton, Inc., d/b/a Rivendell
Behavioral Health Services of Arkansas; and Dr.
David Streett. We affirm.

Johnson was the mother of Samuel
Goodman, who died on or before January 15,
2019. In March 2020, Johnson filed suit against
appellees asserting claims for medical

malpractice, wrongful death, and survivorship.
Johnson's complaint was filed "Individually,

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and as the Personal Representative of the Estate
of Samuel Goodman, Deceased." In it, Johnson
identifies herself as the personal representative of
Goodman's estate and his only heir. On January
27, 2021, more than two years after Goodman's
death, appellees moved for summary judgment.
Appellees alleged that Johnson had not been
legally appointed as the personal representative of
Goodman's estate and that she was not
Goodman's only heir. [1]Accordingly, appellees
argued that Johnson lacked legal standing to
bring the lawsuit, that the claims were now time-
barred under the two-year statute of limitations
for causes of action for medical injury, and that
Johnson could not now amend the complaint
because the original complaint was a nullity. The
circuit court agreed and dismissed Johnson's case
with prejudice upon finding that appellees were
entitled to judgment as a matter of law.

Summary judgment is appropriate when
there are no genuine issues of material fact, and
the moving party is entitled to judgment as a
matter of law. *Davis v. Parham*, 362 Ark. 352,
208 S.W.3d 162 (2005). Once the moving party
has established a prima facie entitlement to
summary judgment, the opposing party must
meet proof with proof and demonstrate the
existence of a material issue of fact. *Id.* On appeal,
we determine if summary judgment was
appropriate by deciding whether the evidentiary
items presented by the moving party in support of
the motion leave a material question of fact
unanswered. *Id.* Ordinarily, on appeal from a
summary-judgment disposition, the evidence is
viewed in the light most favorable to the party
resisting the motion. *Branch v. St. Bernards
Healthcare*, 2022 Ark.App. 123, 643 S.W.3d 22.

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When the parties agree on the facts, however, this
court simply determines whether the appellee was
entitled to judgment as a matter of law. *Id.* As to

issues of law presented, this court's review is de novo. *Id.*

Arkansas Code Annotated section 16-62-102(a)(1) (Supp. 2021) provides in part that a tortfeasor may be liable "whenever the death of a person . . . is caused by a wrongful act, neglect, or default, and the act, neglect, or default would have entitled the party injured to maintain an action and recover damages in respect thereof if death had not ensued." A wrongful-death action "shall be brought by and in the name of the personal representative of the deceased person. If there is no personal representative, then the action shall be brought by the heirs at law of the deceased person." Ark. Code Ann. § 16-62-102(b). For the purposes of the wrongful-death statute, the term "heirs at law" as used in section 16-62-102(b) means "beneficiaries" as used in section 16-62-102(d). *Brewer v. Poole*, 362 Ark. 1, 207 S.W.3d 458 (2005). Where there is no personal representative at the time of filing, all statutory beneficiaries must be joined as plaintiffs to the action. *Branch, supra*. While most wrongful-death actions must be brought within three years of the death of the person alleged to have been wrongfully killed, Ark. Code Ann. § 16-62-102(c)(1), a wrongful-death action alleging medical malpractice must be brought within the two-year statute of limitations for such claims. *Id.*

Johnson concedes that Goodman had two other statutory beneficiaries, a daughter and a sister, who were not named as plaintiffs in her action as required by the wrongful-death statute. However, she argues that the purpose of the wrongful-death pleading

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requirements was satisfied because the beneficiaries were made known to appellees through discovery. We agree with appellees that whether they knew of the identity of Goodman's beneficiaries through discovery is irrelevant to whether Johnson had standing pursuant to the statute.

Johnson also claims that any failure to identify heirs in the complaint was an understandable and excusable mistake, and she should be granted leave to amend pursuant to Rules 15 and 17 of the Arkansas Rules of Civil Procedure. Johnson cites a case from the Eighth Circuit Court of Appeals, *Crowder v. Gordons Transports, Inc.*, 387 F.2d 413 (8th Cir. 1967), in which a widow who filed a wrongful-death suit as administratrix was allowed to substitute herself as mother and next friend of her children as plaintiff after the statute of limitations had run. However, that case ultimately applied Missouri wrongful-death statutes and the Federal Rules of Civil Procedure.^[2] Here, under Arkansas law and the Arkansas Rules of Civil Procedure, Rules 15 and 17 are inapplicable. Where the original complaint is a nullity, Rules 15 and 17 are inapplicable because the original complaint never existed; thus, there is no pleading to amend and nothing to relate back. *Brewer, supra*. In *Brewer*, the appellants argued that they should be allowed to amend their complaint to add plaintiffs

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because they made an "honest mistake." The supreme court disagreed and held that no understandable mistake had occurred, noting that section 16-62-102 specifically details who may maintain a cause of action for wrongful death.

Johnson next argues that the summary judgment should apply only to her cause of action for wrongful death. She contends that other than her claims for wrongful death and survivorship, the rest of the claims in her complaint are covered by the Medical Malpractice Act, codified at Arkansas Code Annotated sections 16-114-201 to -303 (Repl. 2016), and are not subject to the pleading requirements of the wrongful-death statute. Johnson argues that because the Medical Malpractice Act does not require that all heirs bring a claim like the wrongful-death statute does, appellees' arguments fail as to her medical-malpractice claims.

Contrary to Johnson's argument, causes of action for medical malpractice and wrongful

death are not separate and distinct when the cause of death is alleged to have resulted from a medical injury. *See Pastchol v. St. Paul Fire & Marine Ins. Co.*, 326 Ark. 140, 929 S.W.2d 713 (1996). The Medical Malpractice Act states that it applies to "all causes of action for medical injury accruing after April 2, 1979, and, as to such causes of action, shall supersede any inconsistent provision of law." Ark. Code Ann. § 16-114-202. The supreme court has held that the Medical Malpractice Act's two-year limitations period conflicts with the three-year limitations period under the Wrongful Death Act and is therefore controlling when death ensues from medical injuries. *Davis v. Parham*, 362 Ark. 352, 208 S.W.3d 162 (2005). However, the Medical Malpractice Act contains no provision inconsistent with the provision of the wrongful-death statute stating that every action shall be brought by and in

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the name of the personal representative of the decedent, and if there is no personal representative, then by the heirs at law. Accordingly, as in *Brewer, supra*, and *Rice v. Tanner*, 363 Ark. 79, 80, 210 S.W.3d 860, 862 (2005), where plaintiffs filed suit alleging wrongful death due to medical malpractice, Johnson's claims had to have been brought by the proper plaintiffs pursuant to the wrongful-death statute within the two-year limitations period for medical-malpractice claims.^[3]

Johnson's final argument is that the inconsistency between heirs under intestatesuccession law and beneficiaries under the wrongful-death statute should be corrected in the best interest of the public. She claims that the wrongful-death statute unreasonably expands who is a beneficiary "purely for the benefit of any defendant accused of causing the death of another" and that it should be changed to be consistent with the estate code. In addressing a similar argument in *Brewer, supra*, the supreme court noted that the requirements for filing a wrongful-death action were created by the General Assembly and that it is the General

Assembly, not the court, that establishes public policy. Although aware of the supreme court's interpretation of the statute, the General Assembly has made no changes to the requirements. *Brewer, supra*. We are bound to follow the decisions of the supreme court. *Mathews v. Mathews*, 98 Ark.App. 30, 249 S.W.3d 840 (2007).

Affirmed.

BARRETT and HIXSON, JJ., agree.

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Notes:

^[1]Appellees also claimed that an estate for Goodman had never been opened.

^[2]The *Crowder* court quoted an advisory committee comment to Rule 17 of the Federal Rules of Civil Procedure, stating that the rule was "intended to prevent forfeiture when determination of the proper party to sue is difficult or when an understandable mistake has been made." *Crowder*, 387 F.2d at 418. The court held that "[s]ince the administratrix is the proper person to bring a wrongful death action in Arkansas and a reasonable basis exists, as set out in footnote 1, for urging that the substantive law of Arkansas should control, any mistake in bringing the action initially in the name of the administratrix is understandable and excusable." *Id.* at 418-19.

^[3]The survival claim had to be brought by the administrator of Goodman's estate pursuant to Arkansas Code Annotated section 16-62-101(a)(1) (Repl. 2005).
