

Appeals Court Revives Lawsuit Against Doctor in Nursing Home Death

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Judge Amanda Mercier. Photo: John Disney/ALM

The Georgia Court of Appeals has revived a lawsuit against a doctor in a small-town nursing home over the treatment of a patient who died after developing an infection there.

Judge Amanda Mercier agreed with Cheryl Fields, daughter of the late Laura Josey, that Laurens County Superior Court Judge Jon Helton was wrong to throw out the case. Mercier, joined by Presiding Judge John Ellington and Judge Elizabeth Branch, reversed Helton's grant of summary judgment to Dr. William Taylor Jr. of Southeast Geriatrics.

"We conclude that, at minimum, Fields raised a genuine issue of material fact as to whether Taylor breached the applicable standard of care," Mercier wrote. The opinion cited a deposition from a medical expert, Dr. John Fullerton, saying Taylor breached the standard of care in

"numerous ways"—failing to set a proper wound care plan, respond to concerns or assess the patient's condition.

"The evidence and law were overwhelmingly in our favor," said Jeffrey Jonap of Jonap & Associates, who represents Fields and her family.

Jonap worked on the case with Eric Hertz, who focuses his practice on nursing home cases and authored a book titled "Nursing Home Abuse and Your Loved Ones."

"This ruling is important to me because it allows the family to actually have their day in court, which they rightfully deserve," Hertz said.

Fields was her mother's primary caregiver, but was unable to continue in September 2010. She placed Josey for what was intended to be a temporary stay at Shamrock Nursing and Rehabilitation Center in Dublin. After four months there, Josey died. The lawsuit alleges the cause of death was a septic infection brought on by pressure ulcers, also called bed sores.

Although the trial judge granted the doctor's motion for summary judgment, he denied the doctor's motion to exclude allegedly unreliable testimony given by the plaintiff's medical experts. The doctor appealed the denial of that motion.

Mercier and her panel ruled on both appeals in one opinion "for the purposes of judicial economy." The panel denied the doctor's appeal.

"Taylor fails to point to why he is due judgment as a matter of law, and instead argues that Fields failed to present testimony from a 'proximate causation' expert," Mercier wrote. "However, there is no requirement in Georgia law that plaintiffs use a 'proximate causation expert,' and it is well established that "[c]ausation may be established by linking the testimony of several different experts."

The doctor's attorney is David Nelson of Chambless Higdon Richardson Katz Griggs in Macon. Nelson could not be reached.

The nursing home is no longer a defendant, having already "confidentially resolved" the dispute, according to plaintiff's counsel.

The cases are: *Fields v. Taylor*, No. A16A1753 and *Taylor v. Fields*, No. A16A1754.

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