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## Joplin v. Cassin, 252 A.3d 271 (R.I. 2021)

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**Civil Procedure.** *Joplin v. Cassin*, 252 A.3d 271 (R.I. 2021). A trial judge is not required to reference all evidence that was elicited during trial in determining whether to grant or deny a motion for a new trial. However, the trial justice is required to reference, discuss, and consider enough evidence for the Rhode Island Supreme Court to be satisfied that the correct standard was applied.

#### FACTS AND TRAVEL

In early 2011, Patricia Kinney experienced dizziness and shortness of breath while participating in everyday activities.<sup>1</sup> She followed up with her primary care physician, Gloria Sun, M.D. who then referred her to James Smythe, M.D., a hematologist/oncologist.<sup>2</sup> Dr. Smythe conducted his own evaluation of Mrs. Kinney and ordered various tests including computerized tomography (CT) scans of her chest, abdomen, and pelvis.<sup>3</sup> The CT scan results indicated that Mrs. Kinney obtained a “complex pelvic mass on the left adnexa.”<sup>4</sup> Dr. Smythe ordered a pelvic ultrasound that confirmed the left adnexal mass to be predominantly cystic. Subsequently, Dr. Smythe referred Mrs. Kinney to Dr. Cassin for further gynecological evaluation.<sup>5</sup>

On June 13, 2011, Mrs. Kinney visited Dr. Cassin’s office for an initial consultation of the adnexal mass.<sup>6</sup> During this visit, Dr. Cassin performed a physical examination of Mrs. Kinney’s pelvis and “documented an approximately five-centimeter firm, moderately tender mass.”<sup>7</sup> Dr. Cassin suspected the mass to be an

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1. *Joplin v. Cassin*, 252 A.3d 271, 274 (R.I. 2021).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* Mrs. Kinney had previously sought treatment from Dr. Cassin in the 1990s and early 2000s when she suffered from severe endometriosis, and thus required a total abdominal hysterectomy. *Id.* & n.3.

6. *Joplin*, 252 A.3d at 274.

7. *Id.*

“endometrioma in remnant or implant.”<sup>8</sup> In Mrs. Kinney’s chart, Dr. Cassin noted that Mrs. Kinney’s sister had died of ovarian cancer.<sup>9</sup> Dr. Cassin also noted that she had discussed the options of close follow-up imaging versus surgery for a more definitive diagnosis.<sup>10</sup> However, Mrs. Kinney opted to have a preoperative office visit on July 5, 2011 followed by surgery.<sup>11</sup>

Dr. Cassin operated on Mrs. Kinney on July 13, 2011, at South County Hospital.<sup>12</sup> During surgery, Dr. Cassin determined that she could not safely remove the adnexal mass in one piece because a portion of it was attached to the ureter.<sup>13</sup> Nevertheless, Dr. Cassin still removed fluid contents and extracted tissue samples, known as frozen sections, to send to the pathology department for analysis.<sup>14</sup> The pathologist, James Carlsten, M.D., called the operating room to inform Dr. Cassin that his initial impression of the tissue samples and fluid content revealed that the adnexal mass was an endometrioma.<sup>15</sup> However, “he could not definitively rule out cancer.”<sup>16</sup> Prior to closing the incision, Dr. Cassin examined Mrs. Kinney’s bowel and saw no signs of injury.<sup>17</sup> Mrs. Kinney remained at South County Hospital for postsurgical observation.<sup>18</sup>

On July 14, 2011, while Mrs. Kinney was still admitted at the hospital, Dr. Cassin received a cytology report that revealed the fluid content collected during surgery contained “[h]ighly atypical cells” that were “worrisome for a cystic neoplasm.”<sup>19</sup> Dr. Carlsten discussed his findings with Dr. Cassin and indicated that he suspected Mrs. Kinney’s adnexal mass to be cancerous, “despite the

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8. *Id.* An endometrioma is a “mass of endometrial tissue” that is out of place within the body. *STEDMAN’S MEDICAL DICTIONARY* 641 (28th ed. 2006). *Id.* at n.4.

9. *Id.* at 274.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Joplin*, 252 A.3d at 274.

14. *Id.* at 275.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Joplin*, 252 A.3d at 275.

initial frozen sections having been suggestive of an endometrioma.”<sup>20</sup>

After being discharged a couple days later, Mrs. Kinney called Dr. Cassin to report that she was experiencing “copious wound drainage.”<sup>21</sup> Dr. Cassin suspected that Mrs. Kinney might have a fistula and arranged for her to be admitted to South County Hospital.<sup>22</sup> On July 21, 2011, Allison McAteer, M.D., a general surgeon, admitted Mrs. Kinney to the hospital and discussed her care plan with Dr. Cassin.<sup>23</sup> During this time, Dr. Cassin learned that the final pathology report indicated that Mrs. Kinney had clear cell adenocarcinoma, a rare form of ovarian cancer.<sup>24</sup> Mrs. Kinney remained in the hospital receiving treatment for her fistula until August 8, 2011.<sup>25</sup>

Dr. McAteer informed Dr. Cassin that Mrs. Kinney would be transferred to Roger Williams General Hospital for further evaluation and possible surgery, performed by Joseph Espat, M.D., to repair the fistula.<sup>26</sup> Dr. Espat and Dr. Cassin discussed Mrs. Kinney’s care plan which provided that Dr. Espat planned to perform surgery followed by chemotherapy to treat her ovarian cancer.<sup>27</sup> Dr. Cassin informed Dr. Espat that she believed Mrs. Kinney still had a residual tumor in her left lower quadrant.<sup>28</sup> On September 7, 2011, Dr. Espat operated on Mrs. Kinney, however, he noted that he did not find any lower left quadrant mass during the operation.<sup>29</sup>

Several doctors, including Dr. McAteer, Dr. Sun, Dr. Smythe, and Dr. Espat, continued to oversee Mrs. Kinney but no additional surgery was performed to assess or treat Mrs. Kinney’s ovarian cancer.<sup>30</sup> In the early months of 2012, “CT scans revealed the presence

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20. *Id.*

21. *Id.*

22. *Id.* During trial, a “fistula” was described as a hole in the bowel that permitted “contents from the intestine to leak into the abdominal cavity.” *Id.* at n.5.

23. *Id.*

24. Joplin, 252 A.3d at 275.

25. *Id.*

26. *Id.* at 275–76.

27. *Id.* at 276.

28. *Id.*

29. Joplin, 252 A.3d at 276.

30. *Id.*

of a four-centimeter complex mass in Mrs. Kinney's left adnexa."<sup>31</sup> By April 2012, this mass was classified as metastatic, and Mrs. Kinney died of ovarian cancer on November 25, 2014.<sup>32</sup>

Prior to her passing, Mrs. Kinney filed this civil action against Dr. Cassin alleging that she had negligently performed a surgical procedure.<sup>33</sup> The arguments of the parties revolved around the required standard of care before, during, and after Mrs. Kinney's July 13, 2011 surgery.<sup>34</sup> At trial, the plaintiff argued that the standard of care required Dr. Cassin to refer Mrs. Kinney to a gynecologic oncologist prior to the July 13, 2011 surgery because Mrs. Kinney presented multiple related risk factors for ovarian cancer.<sup>35</sup> The expert witness for the plaintiff, Julian Schink, M.D., testified that if Mrs. Kinney's surgery had been performed by a gynecologic oncologist, the entire mass would have been removed and eliminated her chances of developing cancer.<sup>36</sup> Furthermore, Dr. Schink testified that the post-surgery standard of care required Dr. Cassin to refer Mrs. Kinney to a gynecologic oncologist after the surgical pathologist indicated that Mrs. Kinney's mass was cancerous.<sup>37</sup>

In contrast, Dr. Cassin testified that she was not required to refer Mrs. Kinney to a gynecologic oncologist because her medical history indicated that the mass was likely an endometrioma, not cancer.<sup>38</sup> Even so, Dr. Cassin gave Mrs. Kinney the option of referral to a gynecologic oncologist during her initial consultation, and Mrs. Kinney elected for Dr. Cassin to perform the surgery instead.<sup>39</sup> The defendant's expert witness, Mary Susan Schilling, M.D., testified that Dr. Cassin met the required standard of care at all times because the pathology report during surgery indicated that the mass was consistent with an endometrioma, and thus it was

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31. *Id.*

32. *Id.*

33. *Id.* When Mrs. Kinney passed, the complaint was amended to reflect that Mrs. Joplin brought this action individually and in her capacity as executrix of the estate of Patricia A. Kinney and on behalf of her siblings Michelle Kinney, Donald Kinney, and Jason Kinney. *Id.* at 274 n.1.

34. *Joplin*, 252 A.3d at 276-77.

35. *Id.* at 276.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

reasonable for Dr. Cassin to rely on those results.<sup>40</sup> Additionally, Mrs. Kinney was under the supervision of Dr. Smythe, a medical oncologist, and Dr. Espat, a surgical oncologist, after the first surgery was conducted and the pathology report results were released.<sup>41</sup>

The jury returned a verdict in favor of plaintiff on the issue of negligence, however, for Dr. Cassin on the issue of proximate cause.<sup>42</sup> The plaintiff filed a timely motion for a new trial and argued “that the jury’s finding on causation was unsupported by the evidence and failed to do substantial justice between the parties.”<sup>43</sup> The defendant argued in opposition of the motion on the grounds that the jury could have found plausible interpretations of the evidence.<sup>44</sup> The trial judge issued a decision from the bench and based on her review of the record held that “[t]he finding of fault without a finding of causation [was] illogical and not based upon the credible evidence.”<sup>45</sup> Furthermore, she stated, “[h]ere, liability and proximate cause are completely interwoven and make it logically impossible to find fault without proximate cause.”<sup>46</sup> The trial justice granted plaintiff’s motion for a new trial on June 11, 2018 and Dr. Cassin filed this timely appeal.<sup>47</sup>

#### ANALYSIS AND HOLDING

The Rhode Island Supreme Court sought to determine whether the trial justice erred when she did not rely on all the evidence elicited during trial in granting a motion for a new trial, and thus replacing the jury’s determination.<sup>48</sup> Upon review, the Court afforded “great weight” to the trial justice’s ruling on the motion for a new

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40. *Id.* at 277.

41. *Joplin*, 252 A.3d at 277.

42. *Id.*

43. *Id.* The plaintiff requested a new trial solely on the basis of causation and damages. However, the trial justice believed that a retrial on those two issues “would create substantial prejudice to the defendant and might result in jury confusion.” *Id.* n.7.

44. *Id.* at 277.

45. *Id.*

46. *Joplin*, 252 A.3d at 277.

47. *Id.*

48. *Id.* at 278.

trial.<sup>49</sup> This is because the trial justice acts as a “super juror” and reviews the evidence in their own judgment in assessing the weight of the evidence and credibility of witnesses.<sup>50</sup> However, the majority opinion held that, while viewing the entirety of the evidence in the light most favorable to the defendant, there was competent evidence to support the jury’s conclusion that found the defendant negligent in her failure to refer Mrs. Kinney to a gynecologic oncologist after July 21, 2011, but this was not the proximate cause of her death.<sup>51</sup>

The majority reasoned that the trial justice overlooked material evidence when she concluded that the issues of “liability and proximate cause [were] completely interwoven” in this case.<sup>52</sup> The Court acknowledged that where negligence is based on the omission of an act, causation may be hard to prove.<sup>53</sup> Nevertheless, the plaintiff still holds the burden to establish that “there was a causal relation between the act or omission of the defendant and injury to the plaintiff,” and this requirement was just not met here.<sup>54</sup>

Further, the Court relied on the premise that the trial justice’s decision on the motion for a new trial only considered the element of causation and “whether Mrs. Kinney would have been cured of her cancer if a gynecologic oncologist had performed the initial surgery.”<sup>55</sup> The trial justice’s decision only encompassed the testimony of Dr. Schink and Dr. Cassin.<sup>56</sup> The Court drew emphasis that this decision contained no reference to Dr. Schilling’s testimony, nor did it address the plaintiff’s multiple theories of breach of duty.<sup>57</sup> Whereas, the Court noted that during trial, the jury relied on the conflicting testimony on whether Dr. Cassin breached her duty of care before, during, or after the July 13, 2011 surgery.<sup>58</sup> Therefore,

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49. *Id.* at 277 (quoting *Bajakian v. Erinakes*, 880 A.2d 843, 852 (R.I. 2005)).

50. *Id.*

51. *Id.* at 281.

52. *Joplin*, 252 A.3d at 281.

53. *Id.* (quoting *Schenck v. Roger Williams General Hospital*, 119 R.I. 510, 517, 382 A.2d 514, 518 (1977)).

54. *Id.*

55. *Id.*

56. *Id.* at 278.

57. *Id.*

58. *Joplin*, 252 A.3d at 278.

the Court found that “the trial justice failed to reference enough evidence for this Court to be satisfied that [she] applied the correct standard.”<sup>59</sup>

For the above reasons and to adhere to the standard of substantial justice, the Court held that the trial justice erroneously granted the motion for a new trial because reasonable minds could have come to different conclusions on the issue of proximate cause.<sup>60</sup> The Court vacated the order of the Superior Court and remanded the case with instructions to reinstate the jury’s verdict.<sup>61</sup>

Justice Flaherty authored a dissenting and concurring in part opinion in which he stressed the importance of plaintiff safekeeping.<sup>62</sup> Justice Flaherty agreed with the majority’s opinion in that the trial justice erred when she concluded that liability and proximate cause were interwoven, and thus “conflated the breach and causation elements of negligence.”<sup>63</sup> However, Justice Flaherty was of the opinion that this case should be remanded to the Superior Court for a rehearing on the plaintiff’s motion with instructions to consider the element of causation in light of the plaintiff’s multiple theories of liability.<sup>64</sup> Justice Flaherty felt that by remanding the case with the instructions to simply reinstate the jury’s verdict denies the plaintiff of a fundamental opportunity.<sup>65</sup> Furthermore, this holding places the burden on the plaintiff for an error that the trial justice may or may not have made when she decided the motion for a new trial.<sup>66</sup> Therefore, it is of Justice Flaherty’s opinion that the plaintiff is entitled to a full hearing on this case in light of the multiple theories of liability introduced during trial.<sup>67</sup>

#### COMMENTARY

The Rhode Island Supreme Court was clearly faced with a complex medical malpractice suit that involved the tragic death of Mrs.

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59. *Id.* at 278.

60. *Id.* at 282.

61. *Id.*

62. *Id.*

63. *Id.*

64. Joplin, 252 A.3d at 283.

65. *Id.*

66. *Id.* at 282.

67. *Id.* at 283.



Kinney. The Court acknowledged the difficulty in ascertaining and proving the elements of negligence—specifically causation—in a medical malpractice suit when there is an act of omission.<sup>68</sup> However, the Court emphasized the important principle of substantial justice in evaluating whether a trial justice erroneously erred by substituting his or her own judgment for that of the jury, based on only selective parts of the record.<sup>69</sup>

This case precisely targets two audiences: plaintiffs in medical malpractice suits and trial judges in determining motions for a new trial. To plaintiffs, this illustrates the importance of proving every element of negligence in their case. Here, the crux of the plaintiff's cause of action was that Dr. Cassin failed to refer her to a gynecologic oncologist, however, no evidence was presented concerning the topic of proximate cause.<sup>70</sup> Thus, in order for a plaintiff to prevail on a negligence cause of action, they must meet their burden of proving the required standard of care, breach of that standard of care, causation, and damages. Moreover, simply asserting multiple theories will not in itself allow the plaintiff to prevail on a motion for a new trial where the jury found negligence but not causation. To trial judges, this demonstrates the important method of weighing all material evidence elicited at trial when considering a motion for a new trial.<sup>71</sup> This is shown to be important as to prevent an appellate court from reversing the decision. The Court emphasizes the important task assigned to juries of weighing contradictory evidence and inferences, analyzing the credibility of witnesses, and to draw the ultimate conclusion as to the facts of the case.<sup>72</sup> This method prohibits trial justice's from reweighing the evidence and setting aside a jury verdict simply because they believe that their opinion is more reasonable than the jury.<sup>73</sup>

The majority meticulously evaluated all the evidence that was presented at trial and correctly held that the trial justice erred in failing to consider and discuss more evidence when she granted the motion for a new trial.<sup>74</sup> However, I sympathize with Justice

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68. *Id.* at 281.

69. *Id.* at 278.

70. *Joplin*, 252 A.3d at 279.

71. *Id.* at 278.

72. *Id.* at 281–82.

73. *Id.* at 282.

74. *Id.* at 281.

Flaherty in his dissenting and concurring in part opinion.<sup>75</sup> Justice Flaherty raised a very interesting point that by simply vacating the order instead of remanding the issue to the Superior Court for a new trial, the plaintiff would have to bear the burden of the trial judge's possible mistake.<sup>76</sup>

Be that as it may, there seems to be a disconnect on what the standard of substantial justice requires. The majority opinion recognizes the importance of a trial judge making a comprehensive decision on a motion for a new trial, and Justice Flaherty seems to recognize that the Court is simultaneously denying the plaintiff that fundamental option, despite concluding that reasonable minds could have differed.

#### CONCLUSION

The Rhode Island Supreme Court remanded the case to the Superior Court with instructions to reinstate that jury's verdict and accordingly enter judgement.<sup>77</sup> The Court held that there was competent evidence to support a finding that Dr. Cassin's negligence related to her omission to refer Mrs. Kinney to a gynecologic oncologist.<sup>78</sup> However, this negligence was not the proximate cause of Mrs. Kinney's death because at that point of time, Mrs. Kinney's ovarian cancer was incurable.<sup>79</sup> Therefore, the Court determined that "reasonable minds in considering such evidence could have come to different conclusions on the question whether the plaintiff had met her burden of establishing that Dr. Cassin's breach was the cause of Mrs. Kinney's death," and thus the new trial motion should not have been granted.<sup>80</sup>

Julyssa Tavares

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75. *Id.* at 282.

76. *Joplin*, 252 A.3d at 282

77. *Id.*

78. *Id.* at 281.

79. *Id.*

80. *Id.* at 282.