



## McCourt v. Abernathy

McCourt v. Abernathy 457 S.E. 2d 603 (S.C. 1995)

**Country:** United States

**Region:** Americas

**Year:** 1995

**Court:** Supreme Court of South Carolina

**Health Topics:** Health care and health services, Medical malpractice

**Human Rights:** Right to health

### Facts

Respondent, Steven McCourt, as representative of his wife, Wendy McCourt, brought wrongful death and survival causes of action against appellant physicians, Glenn Abernathy and J.D. Clyde and Family Medicine Associates.

Decedent Wendy McCourt sought treatment from appellants in December 1987. Dr. Abernathy obtained a history from Wendy revealing a history of liver problems. In March 1988, Wendy was injured and treated by Dr. Abernathy for a pulled muscle. A few days later, her condition worsened and Wendy went to the Anderson Memorial ER. She was experiencing greater pain and difficulty breathing. Dr. Clyde examined Wendy and treated her for a pulled chest muscle. There is also evidence she was treated for a puncture wound on her finger. She was given Motrin and tylenol and sent home.

The next day, Wendy's condition became significantly worse and she returned to the ER. After blood tests, Wendy was admitted to the hospital and prescribed antibiotics for the injured finger. Dr. Abernathy and Dr. Clyde saw Wendy during their round and consulted an internist but did not express any urgency. After the consult, Wendy was immediately shifted to the ICU with a diagnosis of sepsis where she continued to deteriorate until she died within a few days.

Expert witnesses testified that Dr. Clyde and Dr. Abernathy's failure to treat Wendy with antibiotics, order lab tests and immobilize the finger earlier, fell below the standard care. The Circuit Court entered judgement for the McCourts and awarded damages totaling to \$2.55 million. Physicians appealed.

### Decision and Reasoning

The Court first considered the Appellant's contention that the trial judge erred in failing to charge several jury instructions relating to mistake in diagnosis error in judgment in a medical malpractice cause of action. The Court disagreed. In reaching this conclusion, the Court noted that appellants cited no caselaw to support this argument. The Court also felt that the requested charges would confuse the jury and impose an unrealistic burden on the plaintiffs to prove the physician acted on bad faith. Next the Court considered whether the trial judge erred in denying appellant's motion for a new trial on the basis of excessive damages. Here, the Court disagreed again. The Court found that the record demonstrates that both physicians failed to exercise due care in treating Wendy. This finding was based on their failure to diagnose and treat Wendy on three occasions, failure to order tests, failure to appreciate the seriousness of her condition, failure to monitor her deterioration, and failure to promptly seek aid of a specialist. These actions, the Court felt, met the standard for punitive damages which requires that there must be evidence of willful, wanton or reckless disregard for plaintiff's rights. Lastly, the Court considered the appellant's argument that the trial judge erred in failing to instruct the jury on the factors to be included in post-trial review. Here again, the Court disagreed. The Court found that the trial judge's instructions were sufficiently reasonable to withstand constitutional challenge since it included that the: "the degree of recklessness requisite to a punitive damage award; that such an

award was to punish a defendant, or to deter or stop him and others from similar conduct in the future; that it must find actual damages before awarding punitive damages; and in calculating the amount of such damages, it may consider the defendant's ability to pay.â€•Â McCourt By and Through McCourt v. Abernathy, 457 S.E.2d 603, 608 (S.C. 1995)The decision was affirmed.

### Decision Excerpts

â€œSome of the charges imply to the jury that an error in judgment is actionable only if made in bad faith. Such an instruction would impose an unrealistic burden on the plaintiff to prove the doctor's judgment was rendered with less than good faith.â€• McCourt By and Through McCourt v. Abernathy, 457 S.E.2d 603, 606 (S.C. 1995)&nbsp;â€œA conscious failure to exercise due care constitutes wilfulness.Â Id.Â The trial judge alone has the power to grant a new trialÂ nisiÂ when he finds the amount of the verdict to be merely inadequate or excessive and the denial of such a motion will not be reversed on appeal absent an abuse in the trial judge's discretion.â€• McCourt By and Through McCourt v. Abernathy, 457 S.E.2d 603, 607 (S.C. 1995)&nbsp;â€œThe trial judge should grant a new trial based on excessiveness of the verdict only if the amount is not merely different from that which he would have awarded, but is so grossly excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of caprice, passion, prejudice, partiality, corruption, or other improper motives.Â McCourt By and Through McCourt v. Abernathy, 457 S.E.2d 603, 607 (S.C. 1995)â€œWhile the evidence indicates a more severe degree of culpability on the part of Dr. Abernathy than Dr. Clyde, the record contains sufficient evidence of conduct on the part of both doctors to support the awards of punitive damages. The jury's determination of damages is entitled to substantial deference.â€• McCourt By and Through McCourt v. Abernathy, 457 S.E.2d 603, 608 (S.C. 1995)