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orally.[499] In such cases, the courts have found it is an abuse of discretion not to provide the nonmoving party an opportunity for oral argument.

In contrast, the majority view, which allows a district court to dispose of a motion for summary judgment without an oral hearing, appears to arise out of an understanding that a court can "hear" a matter as well on paper as it can through the process of oral argument.[500] *Coakley & Williams* aligns the Fourth Circuit with the majority of the other circuits that have addressed the question of whether a district court may grant a motion for summary judgment without allowing the opposing party an opportunity for an oral hearing.[501]

K. HOSPITALS

Baber v. Hospital Corp. of America

977 F.2d 872 (4th Cir. 1992)

In 1985, as a portion of the Omnibus Budget Reconciliation Act, Congress enacted the Emergency Medical Treatment and Active Labor Act (EMTALA).[502] The purpose of this act was to prevent hospitals from engaging

499. *See, e.g.*, Dredge Corp. v. Penny, 338 F.2d 456, 461-62 (9th Cir. 1964) (holding that because summary judgment motion disposes of action on merits with prejudice, district court may not deny request for oral hearing of party opposing motion unless it denies motion); *see also* Season-All Indus. Inc. v. Turkiye Sise Ve Cam Fabrikalari, 425 F.2d 34, 39 (3d Cir. 1970) (expressing view that courts should not deny hearing on motion for summary judgment except in very narrow circumstances because granting motion disposes of claim or defense with finality).

500. *See* CIA. Petrolera Caribe, Inc. v. Arco Caribbean, Inc., 754 F.2d 404, 411 (1st Cir. 1985) (noting five other circuits' holdings that reference in Rule 56(c) of Federal Rules of Civil Procedure to "hearing" does not necessarily imply oral argument); Hazen v. S. Hills Nat'l Bank, 414 F.2d 778, 780 (10th Cir. 1969) (stating that trial court does not abuse its discretion by not permitting oral argument if parties filed comprehensive briefs); Sarelas v. Porikos, 320 F.2d 827, 828 (7th Cir. 1963) (holding that because judgment entered was based on pleadings, motions, affidavits, and exhaustive briefs, court did not abuse discretion in denying hearing); Skolnick v. Martin, 317 F.2d 855, 857 (7th Cir. 1963) (same), *cert. denied*, 375 U.S. 908 (1964).

501. *See* CIA. Petrolera Caribe, Inc. v. Arco Caribbean, Inc., 754 F.2d 404, 411 (1st Cir. 1985) (holding that trial court did not err in denying request for oral argument before rendering summary judgment because briefs sufficiently set out legal arguments); Spark v. Catholic Univ., 510 F.2d 1277, 1280 (D.C. Cir. 1975) (holding that court may dispense with oral argument on motion for summary judgment in appropriate circumstances); Parish v. Howard, 459 F.2d 616, 620 (8th Cir. 1972) (same); Season-All Indus. Inc. v. Turkiye Sise Ve Cam Fabrikalari, 425 F.2d 34, 39 (3d Cir. 1970) (same); Hazen v. S. Hills Nat'l Bank, 414 F.2d 778, 780 (10th Cir. 1969) (holding that when parties filed comprehensive briefs, court did not err in denying hearing before ruling on motion for summary judgment); Skolnick v. Martin, 317 F.2d 855, 857 (7th Cir. 1963) (same), *cert. denied*, 375 U.S. 908 (1964).

502. 42 U.S.C. § 1395dd (1992). The Emergency Medical Treatment and Active Labor Act states, in relevant parts, that "if any individual comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination . . . to determine whether an emergency medical condition . . . exists." 42 U.S.C. § 1395dd(a). Additionally, if the hospital determines that an emergency medical condition exists, the hospital must provide either "(A)

in "patient dumping."[503] This practice involves hospitals refusing to see, or transferring to other institutions, patients who are unable to pay for their medical services, even though the hospital possesses the necessary resources to provide care.[504]

EMTALA specifically provides a private cause of action against hospitals for violations of the act.[505] The language of the act does not, however, enumerate a private cause of action against a physician.[506] Most courts have thus interpreted EMTALA as not providing for any private cause of action against individual physicians, and have refused to allow individuals to bring such suits under the act.[507]

In *Baber v. Hospital Corp. of America*[508] the United States Court of Appeals for the Fourth Circuit considered three questions: (1) whether a patient can bring a claim under EMTALA against individual physicians, and if so whether appellant, as Administrator of the estate of Brenda Baber, stated a claim able to withstand a motion for summary judgment; (2) whether the appellant established a claim under EMTALA against the Appellee hospitals sufficient to survive a motion for summary judgment; and (3) whether a claim under EMTALA against the parent corporations of the hospitals was sufficient to survive a motion for summary judgment.

The material facts in *Baber* were essentially undisputed. On August 5, 1987, Brenda Baber entered the emergency room at Raleigh General Hospital accompanied by her brother. She had ceased taking her antipsychosis medicine and had been drinking heavily. Ms. Baber was nauseous, agitated, tremulous, suffered from disorderly thought patterns and felt that she might

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within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or (B) for the transfer of the individual to another medical facility in accordance with subsection (c) of this section." 42 U.S.C. § 1395dd(b). The Act's only exception to these requirements is if the patient refuses treatment, or refuses transfer under subsection (c) of the act. *Id.* Enforcement of the act involves civil money penalties and provides for administrative and monetary sanctions and for a private cause of action:

> Any individual who suffers personal harm as a direct result of a participating hospitals violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the state in which the hospital is located, and such equitable relief as is appropriate.

42 U.S.C. § 1395dd(d)(2)(A).

503. 42 U.S.C. § 1395dd; 42 U.S.C. § 1395dd(c)(2)(A)-(B). EMTALA also deals with the treatment of women in active labor, but those provisions are irrelevant to this case.

504. *See* Baber v. Hospital Corp. of Am., 977 F.2d 872, 873 n.1 (4th Cir. 1992); Melissa K. Stull, Annotation, *Construction and Application of Emergency Treatment and Active Labor Act (42 U.S.C.S. § 1395dd)*, 104 A.L.R. FED. 166, 175 (1991).

505. 42 U.S.C. § 1395dd(d)(2)(A).

506. 42 U.S.C. § 1395dd(d)(1); 42 U.S.C. § 1395dd(d)(2)(B). The language of the statute allows enforcement of EMTALA against a physician only by the Department of Health and Human Services.

507. *See infra* note 500 and accompanying text (citing cases from two jurisdictions that support Fourth Circuit's interpretation of EMTALA as not providing private cause of action against physician).

508. 977 F.2d 872 (4th Cir. 1992).

be pregnant. The attending physician, Dr. Kline, examined Ms. Baber, ordered several tests and administered medication to calm her.

Later, while roaming the emergency department, Ms. Baber suffered from a convulsion and fell, striking her head upon a table and lacerating her scalp. Dr. Kline examined her again, sutured the injury, and ordered a blood gas test to check for oxygen deprivation and acidosis. Ms. Baber was able to move her head, eyes and limbs without discomfort, and could speak. Dr. Kline determined that Ms. Baber's anxiety, disorientation, restlessness and speech problems were caused by pre-existing psychiatric problems and alcohol withdrawal.

Dr. Kline then contacted Ms. Baber's psychiatrist of two years, Dr. Whelan. Dr. Whelan opined that Ms. Baber was an undifferentiated schizophrenic and an alcohol abuser, and that her behavior at Raleigh General Hospital was consistent with a relapse of her mental illness. Both doctors agreed that she needed further treatment which could best be provided at Beckley Appalachian Regional Hospital's psychiatric ward, where Ms. Baber had been treated previously.

After her admittance to the Beckley psychiatric ward the staff put Ms. Baber under restraint and checked her condition every fifteen minutes. Later that morning Ms. Baber suffered a grand mal seizure. Upon the discovery of this condition the staff transferred her to the emergency unit and performed a computerized tomography scan which revealed a fractured skull and a subdural hematoma. The staff then transferred Ms. Baber back to Raleigh General Hospital for examination by a neurosurgeon. She was comatose when she arrived at Raleigh General Hospital, and died later that day.

Barry Baber brought suit against Dr. Kline, Raleigh General Hospital, and the hospital's parent corporation, alleging that the defendants violated EMTALA in three ways. First, he alleged that they violated the act by failing to provide an "appropriate medical screening" to Ms. Baber as required under EMTALA. Second, Mr. Baber charged that defendants violated the act by failing to stabilize Ms. Baber's "emergency medical condition." Finally, he alleged that Kline, Raleigh General hospital, and the parent corporation violated EMTALA by transferring Ms. Baber to Beckley Appalachian Regional Hospital without providing stabilizing treatment. Mr. Baber also alleged that Dr. Whelan, Beckley Appalachian Regional Hospital, and the parent corporation failed to provide Ms. Baber with "appropriate medical screening" when she was admitted to Beckley Appalachian Regional Hospital.

The district court found for the defendants on all counts and granted summary judgment. The district court held that EMTALA did not grant patients a private cause of action against their doctors. The district court also held that the hospitals', and by implication their parent corporations', conduct in treating Ms. Baber was not in violation of the act.

The United State Court of Appeals for the Fourth Circuit affirmed the district court's decision on all counts. The Fourth Circuit first addressed the question of whether a patient could bring an action against a physician under

the act. Mr. Baber offered two cases as support for his proposition that the court should allow a cause of action against individual physicians: *Burditt v. United States Department of Health and Human Services*[509] and *Sorrells v. Babcock*.[510] The Fourth Circuit found both cases inapposite. *Burditt* involved a physician's appeal of administrative sanctions imposed under the act. The Fourth Circuit reasoned that the fact that individual physicians were subject to administrative sanctions did not imply a similar subjection to private suits. The court therefore held that *Burditt* did not support a cause of action against an individual doctor. The *Sorrells* case contained district court dicta questioning whether Congress intended to allow a private cause of action against physicians, while limiting the recovery of civil monetary penalties to the Secretary of Health and Human Services. The Fourth Circuit refused to second guess congressional intent in this manner, and instead chose to rely upon the language of the statute. The court determined that no language in the statute provided for a private individual to recover damages from a physician. Further, the court reasoned that the legislative history of the act made clear a congressional intent to limit patient suits to those against hospitals, reserving actions against individual physicians to those brought by the Department of Health and Human Services.[511]

The Fourth Circuit next addressed appellant's claim against Raleigh General Hospital. Mr. Baber made two general accusations: first, that the hospital failed to provide an appropriate medical screening to determine that Ms. Baber had an emergency medical condition; and second, that the hospital transferred Ms. Baber before stabilizing her emergency medical condition and had not completed the requisite paperwork to transfer a nonstable patient.

In alleging that the hospital failed to provide an appropriate screening, Baber contended that such a screening must satisfy a national standard of care. The Fourth Circuit disagreed, and again relied on the language of the statute which requires a medical screening that is "within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition . . . exists."[512] The Fourth Circuit interpreted the statute as requiring the hospital to develop a screening procedure to identify critical conditions and to apply this procedure uniformly to all

509. 934 F.2d 1362 (5th Cir. 1991).

510. 733 F. Supp. 1189 (N.D. Ill. 1990).

511. As support for its conclusion, the court cited the decisions of two other jurisdictions that have also held that there is no private cause of action for damages against a physician under EMTALA. *See* Jones v. Wake County Hosp. Sys., Inc., 786 F. Supp. 538, 545 (E.D.N.C. 1991) (holding that EMTALA provides cause of action by individual only against 'participating hospital,' as there is no mention in statute of private cause of action against individual physicians); Delaney v. Cade, 756 F. Supp. 1476, 1487 (D. Kan. 1991) (finding no private cause of action against individual physicians under EMTALA, and relating that Congress knew how to create private cause of action if it so desired).

512. 42 U.S.C. § 1395dd(a) (1992); *see supra* note 491 (giving text of statute).

patients with similar symptoms regardless of financial status. This standard, the court noted, did not guarantee that the emergency personnel will correctly diagnose all patients, and was not intended as a substitute for state law medical malpractice claims. The Fourth Circuit held that the act is satisfied so long as a standard screening procedure is applied uniformly to all patients in similar medical circumstances. The court further found that the attention given Ms. Baber at Raleigh General Hospital satisfied this standard. The Fourth Circuit thus affirmed the district court's summary judgment in favor of Raleigh General Hospital.

As to Mr. Baber's claim that Raleigh General Hospital violated EMTALA by improperly transferring Ms. Baber, the Fourth Circuit found Baber's arguments to clearly contravene the language of the statute. Baber argued that liability should be imposed on the hospital if it failed to provide stabilizing treatment prior to a transfer when they knew or should have known the patient was suffering from an emergency medical condition. The court disagreed, interpreting the act to hold that under section 1395dd(c) in order for the hospital to be liable, claimant must evidence that:

> (1) the patient had an emergency medical condition; (2) the hospital actually knew of that condition; (3) the patient was not stabilized before being transferred; and (4) prior to transfer of the unstable patient, the transferring hospital did not obtain the proper consent or follow the appropriate certification and transfer procedures.[513]

Consequently, the Fourth Circuit held that Mr. Baber failed to provide any proof of actual knowledge by the hospital of Ms. Baber's emergency medical condition, and had therefore not established a claim under EMTALA for a violation of this section of the act.[514]

Mr. Baber's final claim was that Beckley Appalachian Regional Hospital violated EMTALA by failing to perform an appropriate medical screening when Ms. Baber was admitted to the psychiatric ward at that hospital. Once again, the Fourth Circuit found that the language of the act did not support Baber's contention. By its explicit language, section 1395dd(a) applies only where the patient seeks treatment from the emergency department. Ms. Baber was admitted directly to the psychiatric ward, and did not enter the emergency department. The Fourth Circuit concluded from this that no facts supported Mr. Baber's claim against Beckley Appalachian Regional Hospital.

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513. Baber v. Hospital Corp. of Am., 977 F.2d 872, 883 (4th Cir 1992).

514. *See* Gatewood v. Washington Healthcare Corp., 933 F.2d 1037, 1041 (D.C. Cir. 1991) (finding that § 1395dd(b)(1) dictates standard of actual knowledge of emergency medical condition by hospital for violation of EMTALA); Cleland v. Bronson Health Care Group, Inc., 917 F.2d 266, 271 (6th Cir. 1990) (holding that hospital cannot be charged with violation for failing to stabilize patient unless patient's emergency condition is detected); Thornton v. Southwest Detroit Hosp., 895 F.2d 1131, 1134 (6th Cir. 1990) (requiring treatment once patient found to have emergency medical condition); Coleman v. McCurtain Memorial Medical Mgt., Inc., 771 F. Supp. 343, 346 (E.D. Okla. 1991) (holding that provisions in act regarding stabilization apply only when emergency condition is discovered).