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Superior Court Affirms Dismissal of Paxil Birth Defect Case Lacking Proximate Causation

By Emily J. Hanlon

In its March 4, 2013 non-precedential decision in *Pettit v. GlaxoSmithKline, LLC*, No. 850 EDA 2012, the Pennsylvania Superior Court (applying Ohio law) affirmed an order of Philadelphia Court of Common Pleas Judge Sandra Mazer Moss granting summary judgment to GlaxoSmithKline (GSK) in a case alleging that the GSK-manufactured antidepressant medication Paxil caused birth defects.

Plaintiffs-appellants Mary and Dean Pettit and the estate of their deceased daughter, Danielle Pettit, claimed that Mary having ingested Paxil during the first trimester of her pregnancy was the cause of Danielle's congenital heart defect, known as hypoplastic left heart syndrome, which led to her death. In their complaint, the Pettits brought negligent failure to warn, negligent misrepresentation, and design defect claims against GSK.

The trial court dismissed these claims for lack of proximate causation, finding that the Pettits failed to present evidence (other than their own testimony) that Mary took Paxil before, during, or after her pregnancy. There were no available medical records or physician testimony establishing that Mary took the medication.

Additionally, the trial court found no evidence of proximate causation for plaintiffs' negligent warning claim. In particular, Mary's physician testified that he could not recall ever reading Paxil labeling and therefore, there was no evidence that he relied upon information presented in GSK's labeling. The trial court reasoned that under Ohio's learned intermediary doctrine, the physician's failure to read and rely on the manufacturer's warnings constitutes "the intervening, independent and sole proximate cause" of plaintiffs' injuries. Finding that its decision to grant summary judgment on the failure to warn claim "eclipse[d] the entire action," the court also dismissed plaintiffs' negligent misrepresentation and design defect claims.

In its opinion, the Superior Court rejected the trial court's finding that plaintiffs-appellants failed to present a genuine issue of material fact as to whether Mary actually ingested Paxil, concluding that the Pettits' testimony was sufficient to create a disputed factual issue requiring a jury determination. It ultimately affirmed, however, because the Pettits waived their appeal as to proximate causation by failing to raise the issue in their concise statement of errors on appeal. By only raising the sufficiency of the evidence that Mary ingested Paxil in their concise statement, plaintiffs-appellants prevented the Superior Court from reviewing the trial court's decision as to the learned intermediary doctrine and the dismissal of their negligent misrepresentation and design defect claims. ◆

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