

THE ARKANSAS SUPREME COURT HOLDS THAT MEMBERS OF A NURSING HOME’S GOVERNING BODY OWE NO LEGAL DUTY TO THE NURSING HOME’S RESIDENTS AND ARE ONLY LIABLE IN TORT IF THEY WERE PERSONALLY INVOLVED IN THE EVENTS SURROUNDING AN INJURY.

In *Bedell v. Williams*,¹ Brenda Williams, the personal representative of the Estate of Minnie Valentine, sued Donald Bedell, the sole member of Little Rock Health Care and Rehab’s governing body, for ordinary negligence.² On appeal, the Arkansas Supreme Court reversed the lower court’s denial of Bedell’s motions for a directed verdict and a judgment notwithstanding the verdict because it held that he owed no legal duty to the nursing home’s residents and that, therefore, the plaintiff had no valid cause of action against him.³

On May 14, 2004, Minnie Valentine suffered a severe stroke and was admitted to Saint Vincent Hospital.⁴ Shortly thereafter, she was transferred to Little Rock Healthcare and Rehab (“LRHC”), a local nursing home facility.⁵ Throughout her stay at LRHC, Valentine struggled with multitudinous health problems the severity of which required her to be transported twice from LRHC to Arkansas Baptist Hospital on June 10 and July 7, 2004.⁶ After her second discharge from Arkansas Baptist, on August 11, 2004, she was admitted to another nursing home facility, Quapaw Quarter Nursing Center and Rehab.⁷ Despite receiving many treatments, her health continued to decline at Quapaw, and she eventually died in February, 2005.⁸

On February 17, 2006, Brenda Williams, as personal representative of the Estate of Minnie Valentine, sued a series of defendants including Donald Bedell, the sole member of the governing body of LRHC, “alleging claims for ordinary negligence, medical malpractice, violation of the Residents’ Rights Act, and felony neglect.”⁹ At trial, after the circuit court denied Bedell’s motion for a directed verdict, the jury awarded Williams a \$5 million verdict against him on her claim for ordinary negligence.¹⁰ The circuit court subsequently denied Bedell’s motion for judgment notwithstanding the verdict on December 16, 2010.¹¹ Bedell and the other appellants thereafter

1. 2012 Ark. 75. 386 S.W.3d 493 (2012).

2. *Id.* at 3, 386 S.W.3d at 497.

3. *Id.* at 9, 386 S.W.3d at 507.

4. *Id.* at 2, 386 S.W.3d at 497 .

5. *Id.*

6. *Id.* at 2–3, 386 S.W.3d at 497.

7. *Bedell*, 2012 Ark. 75, at 3, 386 S.W.3d at 497.

8. *Id.*

9. *Id.*

10. *Id.* at 4, 386 S.W.3d at 498.

11. *Id.*

appealed the circuit court’s final judgment and its denials of the appellants’ motions for a directed verdict and judgment notwithstanding the verdict.¹² The Arkansas Supreme Court granted review.¹³

On review, the Arkansas Supreme Court articulated the standard of review for denials of motions for a directed-verdict and motions for judgment notwithstanding the verdict, stating that the court will reverse the lower court only if it finds that there is no substantial evidence to support the jury’s verdict, and the moving party is entitled to judgment as a matter of law.¹⁴

Bedell’s primary argument on appeal was that the circuit court erred in denying his motions for a directed verdict and a verdict notwithstanding the verdict because Williams failed to prove that he owed Valentine a legal duty.¹⁵ Williams responded that federal regulation and the nursing home’s internal policy created a legal duty and a cause of action in tort.¹⁶

Beginning its analysis, the court articulated the common law rule that a defendant may only be found guilty of negligence if he owed a legal duty to the plaintiff.¹⁷ The court continued its explanation, stating that even when an individual employed by a corporation does not otherwise owe the plaintiff a legal duty, he may be found liable if he is “personally involved in the events surrounding an injury.”¹⁸ The court noted, however, that Williams made no attempt to prove that Bedell had been personally involved in any of the events at issue in her claims.¹⁹ Rather, she relied solely on the legal duty she alleged was created by federal regulation and LRHC’s internal policy as the basis of Bedell’s liability.²⁰ Specifically, Williams claimed that Title 42 C.F.R. § 483.75(d)²¹ imposed a legal duty on Bedell, which states:

(1)The [nursing home] facility must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies

12. *Id.* at 5, 386 S.W.3d at 498.

13. *Bedell*, 2012 Ark. 75, at 5, 386 S.W.3d at 498.

14. *Id.*, 386 S.W.3d at 498.

15. *Id.* at 5–6, 386 S.W.3d at 498 (quoting *Carter v. Cline*, 2011 Ark. 474, at 10, 385 S.W.3d 745, 752).

16. *Id.* at 6, 8, 386 S.W.3d at 499.

17. *Id.* at 6, 386 S.W.3d at 499.

18. *Id.* (quoting *Bayird v. Floyd*, 2009 Ark. 455, at 6, 344 S.W.3d 80, 84.)

19. *Bedell*, 2012 Ark. 75, at 6, 386 S.W.3d at 499.

20. *Id.*

21. FTC Requirements for States and Long Term Care Facilities Rule, 42 C.F.R. § 483.75(d) (2011).

regarding the management and operation of the facility; and
(2)The governing body appoints the administrator who is—
(ii) Responsible for management of the facility.²²

The court, however, was not persuaded by Williams’s argument, holding that the regulation was only intended to establish the requisite criteria to qualify for participation in Medicare and Medicaid, and was not intended to create a basis for liability in tort.²³ The basis of the court’s ruling focused on the provision of § 483.1(b) in which the regulations explicitly limit themselves to “serve as the basis for activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid.”²⁴

Although the Arkansas Supreme Court recognized that this particular issue was a matter of first impression for the court, it found that its holding comported nicely with the Court of Appeal of Louisiana in *Satterwhite v. Reilly*.²⁵ In *Satterwhite*, the court considered whether a similar federal regulations provision which states that a facility’s medical director is required to implement resident-care policies and coordinate medical care in the facilities created a legal duty.²⁶ Affirming the trial courts dismissal of the plaintiff’s claims, the Court of Appeals held that no authority supports interpreting federal regulation as granting “a private cause of action against a medical director of a nursing home or [establishing] the standard of care or duty that a nursing home medical director owes to the patients of the nursing home.”²⁷

Furthermore, the court held that nothing in the internal policy of LRHC warranted imposing a duty of care on Bedell since the language of the policy did nothing more than summarize the provisions of § 483.75(d) and therefore failed to establish liability for the same reasons.²⁸ The court defended its general reluctance to read broad internal policies such as LHRC’s as creating liability in tort because to do so would open the floodgates to lawsuits attempting to pierce the corporate veil and would thereby greatly burden the judiciary.²⁹

22. *Id.*

23. *Bedell*, 2012 Ark. 75, at 7, 386 S.W.3d at 499.

24. *Id.* (quoting § 483.1).

25. 817 So.2d 407 (La.Ct.App.2002).

26. *Bedell*, 2012 Ark. 75, at 7, 386 S.W.3d at 499.

27. *Id.*, 386 S.W.3d at 499–50 (quoting *Satterwhite*, So.2d at 412).

28. *Bedell*, 2012 Ark. 75, at 8, 386 S.W.3d at 500.

29. *Id.*

The Arkansas Supreme Court concluded that because Bedell owed no legal duty to Valentine, the court's denial of Bedell's motions for a directed verdict and a judgment notwithstanding the verdict were clearly erroneous, and therefore reversed and dismissed Bedell from the case.³⁰

* Jack Burns

30. *Id.* at 9, 386 S.W.3d at 507.