

IN THE STATE COURT OF CLATHAM COUNTY
STATE OF GEORGIA

MYRTLE SPARKS, as Administrator of the
Estate of ARTHUR SPARKS, Deceased,

Plaintiff,

v.

MEMORIAL HEALTH UNIVERSITY
MEDICAL CENTER, INC., LOUIS VON-
BRUENING, STACIE LINN WONG, M.D.,
ANESTHESIOLOGY CONSULTANTS and
ANTHONY AVINO, M.D.

Defendants.

Civil Action No. STCV02-01170-CO

Robert W. Kennedy, Jr.

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STATE COURT OF
CLATHAM COUNTY

**ORDER ON DEFENDANTS' MOTION TO EXCLUDE EXPERT TESTIMONY AND/OR
DISMISS ACTION**

Before the Court are Defendants' Motions Objecting to the Plaintiff's Expert's Testimony. Having read and considered said motions, the responses thereto, the oral arguments of the parties, and the applicable law, the Court hereby finds as follows:

This case comes before the Court on several Motions to Dismiss and/or Motions to Exclude the Expert Testimony of the Plaintiff's Expert Witnesses, Stephen Kennedy, M.D. and Brenda Townsend, R.N. The Defendants preface their motions on the passage O.C.G.A. §24-9-67.1, commonly known as the Tort Reform bill which was signed into law on February 16, 2005.

This action was originally filed April 3, 2002. After discovery was completed, the parties prepared for trial and in preparation for said trial, a Consolidated Pretrial Order was prepared and filed by the Court on February 19, 2004. The case was scheduled for trial, but several days before the trial commenced, the Plaintiff died. The case was continued and then transferred to a new judge. The case again was scheduled for trial after a status conference with the parties. Just prior

to the scheduling order prepared by the Court, the new statute was signed into law.

O.C.G.A. §24-9-67.1 purports to change the expert witness qualifications from those previously prescribed in §24-9-67. The new law provides requirements for experts that are more stringent than those previously applied. Further, the new law is to be applied to those cases pending on February 19, 2005. In the instant case, such application may prevent the Plaintiff from offering his experts' testimony on the eve of trial.

Plaintiff provides to this Court arguments similar to those presented to Judge Melodic H. Clayton, in the case of Alvin Ritchey Mason and Claudia Mason v. Home Depot U.S.A., Inc., and Flecto Company Inc., Civil Action Number 97-A-5105-1, Cobb County. The Mason Court evaluated the Plaintiffs' argument that if the new standard was applied, it would violate their right to due process and deny them meaningful access to the courts.

In the Mason case, the action had been pending since 1997. There had been significant discovery completed all over the county, that all of the discovery had been completed under the standards required by the old statute, and the request for the exclusion occurred on the eve of trial. Based on all of the information presented, Judge Clayton concluded that the application of the new law in her case would be unconstitutional.

In the instant case, this Court agrees with the opinion as presented by Judge Clayton, and applies the same standard. Wherefore, O.G.G.A. §24-9-67 will govern the admissibility of testimony of all Plaintiff's and Defendants' experts. After review of the motions, the responses thereto and oral arguments of the issues, this Court finds that the identified expert witnesses may testify. The Defendants' Motions to Exclude the Expert Testimony and the Motions to Dismiss

on the same grounds are DENIED.

SO ORDERED this 15 day of April 2005.


Judge Hermann Coolidge
Chatham County State Court

cc: Daniel B. Snipes, Esq.
James B. Franklin, Esq.
William Franklin, Esq.
Leslie Pickett Sheehan, Esq.
Christopher Phillips, Esq