

SUPREME COURT OF LOUISIANA

No. 96-C-1968

DEBORAH FLEMING

Versus

HCA HEALTH SERVICES OF LOUISIANA, INC.,  
D/B/A CYPRESS HOSPITAL

c/w

SUANDRA FLEMING AND SHARON FLEMING

Versus

HCA HEALTH SERVICES OF LOUISIANA, INC.  
D/B/A CYPRESS HOSPITAL

JOHNSON, J, Dissenting

I disagree with the majority opinion that plaintiffs have not met their threshold burden regarding the necessity of emergency care. The testimony in this case shows that the decedent, King Fleming, was agitated, paranoid and exhibited irrational behavior. It was obvious to everyone including the nurse on duty at Cypress Hospital that some medical attention was needed.

The record shows that Cypress Hospital advertised free assessments. In light of this, a duty was imposed upon the facility to render an assessment to the decedent. They did not. Although the Court of Appeal found the Emergency Medical Treatment and Active Labor Act, (EMTALA) , inapplicable to this case, I disagree.

**42 U. S. C. 1395dd provides in part:**

" (a) Medical screening requirement

In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this subchapter) 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 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  
(within the meaning of subsection (e) (1) of this section) exists.

Nurse Braman, Cypress Hospital, testified as follows regarding her conversation with the decedent's wife, Deborah Fleming:

- " A. When I asked what his problem was, she talked about the drinking and that irrational behavior and that they thought he might be suicidal.
- Q. Did you inquire any further at that point when she told you that?
- A. No. I didn't because I was trying to refer her to a source where she could get some assistance.
- Q. You were not one of those sources presumably? You were not a source that could help him?
- A. I was a source but it's generally the policy to try to refer them to where they can get assistance somewhere."

It is clear from the record that the decedent was in a state whereby he could do harm to himself. In fact, he took his glasses off, then jumped onto the interstate where he was hit by an eighteen wheeler. The decedent should have been evaluated by a doctor pursuant to EMTALA. Cypress Hospital was negligent under EMTALA when they referred the decedent to another hospital rather than render an appropriate medical screening examination.

The Court of Appeal ruled that the state statute should apply. I would argue that the broader federal statute would supersede the state statute in this instance. I respectfully disagree with the holding of the majority in this case.