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MD suit

State court allows couple to seek damages

United Press International

AUSTIN — A Dallas couple whose son was born with muscular dystrophy may proceed with a "wrongful birth" suit, the Texas Supreme Court ruled Wednesday in an opinion that could reshape medical malpractice complaints.

The order struck down as unconstitutional — in some cases — a two-year statute of limitations on the filing of medical malpractice suits.

The tribunal's split decision reversed a ruling it made 11 months ago in a suit in which the parents of a MD victim were seeking damages from a doctor and a Dallas hospital.

In a Nov. 16, 1983 ruling, the high court said the statute of limitations barred the suit against Dr. Edward M. Krusen and the Baylor University Medical Center. It also ruled the parents, Tom and Gloria Nelson, could not sustain a "wrongful life" suit.

But in its revised opinion Wednesday, the Supreme Court said the Nelsons could sue for "wrongful birth" and seek damages for themselves for the care of their 8-year-old son, Mark.

In a dissenting opinion, Justice Raul A. Gonzalez complained the court's ruling was tantamount to giv-

ing parents "a legal entitlement to a perfect child."

The court reinstated the suit by declaring unconstitutional — on a limited basis — a state law that imposed an absolute two-year statute of limitations, regardless of when the injury was discovered.

The justices agreed with the Nelsons' contention that the nature of their son's affliction made it impossible to file suit within two years. The child's ailment was not diagnosed until he was 3.

"The limitation period, applied as written, would require the Nelsons to do the impossible — to sue before they had any reason to know they should sue," wrote Justice Franklin Spears.

In refusing to allow the Nelsons to seek damages for their son under a "wrongful life" action, the court said there is no precedent for awarding damages to a child for having been born at all and to pay expenses related to a birth defect.

But the court said the parents were entitled to seek damages under a "wrongful birth" suit.

In a dissenting opinion, Justice William W. Kilgarlin scored the court's majority for refusing to fully address the delicate issue of whether

a child born with a disabling birth defect can collect damages.

"The court's inaction today merely postpones the necessity of acting in a medical area that will increasingly dominate our society," he said. "Moreover, the court entirely overlooks the real victim of the malpractice, Mark Nelson."

Two other justices, James P. Wallace and Gonzalez, dissented on grounds that the parents should not be entitled to collect damages for the care of their disabled child.

According to the Nelsons' original complaint, Krusen was consulted in 1976 when Mrs. Nelson first learned she was pregnant.

Already the parents of an MD victim, the Nelsons asked Krusen to determine whether Mrs. Nelson was a genetic carrier of the disease so they could decide whether she should terminate the pregnancy.

According to the testimony, Krusen determined Mrs. Nelson had a normal pregnancy and had no unusual risk of bearing a second child with MD.

The suit against the medical center claimed the hospital conducted faulty tests and furnished incorrect information to the physician.

Conference to evaluate Alzheimer's

United Press International

LUBBOCK — Theories about the cause of Alzheimer's disease among topics scheduled for discussion during a three-day conference starting today, the Tech Health Sciences Center officials said.

"With the increasing number of people living to age 80 and beyond, Alzheimer's disease represents a very important problem to our society," said Dr. James Mortimer of the University of Minnesota Medical School.

He said the risk of getting the disease increased with age through, but then apparently decreased as people reached 90. Its victims have trouble remembering things and come disoriented.

Mortimer also was expected to discuss the possibility that people experiencing a severe head injury have a higher risk of getting the disease, said Tech Dr. J. Thomas Hunter.

The conference will include discussions about a blood test that might help doctors diagnose the disease in their patients, as so the tests are the only positive of telling if a person had the disease.

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