Judicial Ethics (Mississippi)

On a rainy afternoon in 1996, Mr. Turner Frierson, Jr. exited a Wal-Mart store in Indianola, Mississippi after a shopping trip. Mr. Frierson slipped and fell in the vestibule, an accident he claimed resulted from a wet tile floor. Mr. Frierson and his wife Pinkie Mae filed suit against Wal-Mart claiming that dripping shopping carts in the vestibule, and an open doorway, created a dangerous condition that caused the fall. Following trial, a jury returned a verdict in favor of the Frierson's in the amount of $125,000.00.

Prior to trial, the parties disagreed as to the proof the Plaintiffs could offer regarding medical expenses. As the Friersons had no private health insurance, Mr. Frierson's medical expenses were partially covered by Medicaid and Medicare. The balance of the unpaid expenses were "eradicated" or "written-off" by the service providers, meaning that the Plaintiffs would never be required to pay the remaining amounts. Accordingly, Wal-Mart argued that the Plaintiffs should not be permitted to introduce evidence of these unpaid "expenses" to avoid awarding the Friersons a potential windfall. The Plaintiffs naturally disagreed, and the matter came before Judge Gray Evans. The question appeared novel: whether Medicare payments should be subject to the collateral source rule stating that a tortfeasor cannot mitigate damages by factoring compensation received from insurance.

Judge Evans began his colloquy on the matter by asking the parties to explain what the "Appellant Courts [sic] said about this?" The parties informed the court that no relevant authorities had been located. However, Judge Evans's research was more comprehensive. From the bench, he shared that "I think I can pull up one" case of import, a unpublished decision of the United States Court of Appeals for the Fifth Circuit captioned Evans v. H.C. Watkins Memorial Hospital, Inc., 778 F.2d 1021 (5th Cir. 1985), but warned the parties "You can't cite it though." Judge Evans revealed he was acquainted with the decision because "It involves my mother." Judge Evans explained that in the Evans case, the trial court ruled that unpaid medical expenses were inadmissible, and noted that the "judgment we got was extremely low." After the verdict, "[w]e appealed it to the Fifth Circuit, and they said he was in error." Triumphantly, Judge Evans added "By the way, we settled our case for a considerable amount," informing the attorneys that "I thought ya'll ought to know that."

Seizing on the Judge's comment, the Friersons' attorney argued that if he was unable to introduce Mr. Frierson's unpaid expenses "then it's maybe exactly like in your mama's case," with a strong likelihood that the jury would undervalue the injury, and thus decide "we're not going to return much of a verdict." Judge Evans concurred: "That's where the argument comes to me. I agree with you a hundred percent . . . ."

Wal-Mart appealed the case, arguing that Judge Evans had violated the provision of the Mississippi Code of Judicial Conduct prohibiting judges from allowing their "family, social, or other relationships to influence" their judgment. The Mississippi Supreme Court concluded that while Judge Evans's comments about the size of his mother's settlement may have been improper, the totality of the record did not reveal sufficient prejudice to rebut the presumption of impartiality afforded to judges under Mississippi law. In dissent, two Justices found sufficient evidence of personal bias to demonstrate that Judge Evans allowed his interest in his mother's case to control his decision. These dissenters chastised the majority for sanctioning this conduct, fearing the decision would undermine the integrity and impartiality of the state judiciary. In a separate opinion, two other Justices found Judge Evans's remarks improper, but concluded the error was harmless as the full amount of medical expenses was properly admitted under Mississippi law.

The opinion of the Mississippi Supreme Court is reported at Wal-Mart Stores, Inc. v. Frierson, 818 So.2d 1135 (Miss. 2002).