

**Alabama Supreme Court
In Special Session at Auburn University
Thursday, March 14, 2024**

**SC-2023-0601 Ex parte Jackson Hospital & Clinic, Inc.
(In re: Theresa Johnson, individually and as executor of the
Estate of Nathaniel Johnson, deceased v. Jackson Hospital &
Clinic, Inc.)**

Attorneys: J. Thomas Richie for Jackson Hospital & Clinic, Inc.; Robert E. LaMoine and William Lattimore for Theresa Johnson; and William G. Parker, Jr., for Governor Kay Ivey, as amicus curiae.

Summary¹

On November 26, 2020, Nathaniel Johnson was admitted to Jackson Hospital in Montgomery with COVID-19. On December 6, 2020, the hospital decided to transfer Johnson to another floor. Johnson had been receiving oxygen through a BiPap machine, but because the BiPap machine lacked filters necessary to filter Johnson's exhaled air, the hospital did not believe it would be safe for the other patients to transfer him between floors while he was on the BiPap machine. Therefore, the hospital decided to take Johnson off the BiPap machine.

What happened next is disputed. On the one hand, Jackson Hospital claims that Johnson's respiratory therapists immediately replaced the BiPap machine with an OxyMask, which continued to provide Johnson with oxygen. On the other hand, Johnson's wife Theresa, who at the time was a patient-care technician at Jackson Hospital, claims that she was in the room with him when they took him off the BiPap machine and that they never gave him an OxyMask or another source of oxygen. After the respiratory therapists left the room with his equipment,

¹This summary is provided as a courtesy to members of the public who are attending this oral argument. It is in no way intended to reflect the thoughts or opinions of the members of the Court on the present case.

Johnson went into distress. Medical personnel tried to save him but were unsuccessful.

On September 10, 2021, Theresa sued Jackson Hospital in the Montgomery Circuit Court, on her own behalf and as the representative of her husband's estate, claiming medical malpractice, negligent/wanton training and supervision, loss of consortium, and wrongful death. Jackson Hospital moved for a summary judgment, arguing that it was immune from suit under Governor Ivey's emergency proclamations and under the Alabama Covid Immunity Act ("the ACIA"), which was enacted on February 12, 2021. Theresa responded that Governor Ivey's proclamations and the ACIA were unconstitutional and that, in the alternative, she had produced sufficient evidence of wantonness to invoke the ACIA's exceptions.

The circuit court denied Jackson Hospital's motion, reasoning that Theresa had invoked one of the ACIA's exceptions. Jackson Hospital now petitions this Court for a writ of mandamus, requesting that this Court direct the circuit court to enter a summary judgment for the hospital on the ground of immunity under the ACIA.