No. 30092—*Becky L. Goundry v. Sara Wetzel-Saffle, D.O., individually, and Benwood Medical Clinic, Inc.*

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McGraw, Justice, dissenting:

The majority in this case has done nothing less than to effectively grant defendants the prerogative to redefine the plaintiff's complaint. An axiom of the civil law is that a plaintiff is, in nearly every respect, the master of his or her own complaint. As one court has recognized, "[i]t takes little imagination to see the mischief that might result from allowing a party to define the contours of his adversaries claim . . . ." *American Tobacco Co. v. Evans*, 508 So.2d 1057, 1060 (Miss. 1987). Such mischief is nowhere more readily apparent than in the present case.

As the Court's opinion freely recites, "this case presents two competing theories." Importantly, the gravamen of Ms. Goundry claim is not that Dr. Saffle was negligent in failing to order a pregnancy test; rather, the plaintiff has averred that such a test was performed, and that the results were erroneous. Thus, the focus of Ms. Goundry's cause of action is entirely upon whether, and in what manner, the purported pregnancy test was conducted. While Dr. Saffle disputes this claim by asserting that no pregnancy test was ever performed, purportedly because Ms. Goundry had indicated that pregnancy was impossible, the

question of whether such testing was required under the applicable standard of care is irrelevant outside of Dr. Saffle's rendition of events. The plaintiff's case will obviously rise or fall based upon the factual determination as to whether a pregnancy test was, in fact, performed. I therefore see no reason why the plaintiff should be required to muster an expert to address a standard of care that is extraneous to her case. To impose such a requirement impermissibly recasts the plaintiff's case based solely upon the defendant physician's rendition of events.

I therefore respectfully dissent.