

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nardone v. Reynolds

538 F.2d 1131 (5th Cir. 1976) · Decided September 17, 1976

SUMMARY

The United States Court of Appeals for the Fifth Circuit reviews a summary judgment holding a Florida medical malpractice action barred by the statute of limitations. Accepting the Florida Supreme Court’s certified answers concerning the discovery rule and fraudulent concealment, the court holds that the limitations period may be tolled when a physician fails to disclose a known or reasonably knowable condition or cause, including after termination of the doctor-patient relationship. The court vacates and remands for a defendant-by-defendant factual determination concerning the duty to disclose and tolling.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	John R. Brown, Chief Judge; John R. Brown; Ainsworth; Wisdom
JURISDICTION	Federal
DECIDED	September 17, 1976
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from summary judgment for defendants in a Florida medical-malpractice action. The Fifth Circuit previously certified questions concerning Florida's discovery rule and limitations period to the Florida Supreme Court, received its answers, and then addressed the remaining limitations issue.
STANDARD OF REVIEW	Summary judgment is proper only where the record, viewed under federal standards, shows no genuine factual issue on the material limitations question. The court also accepted the Florida Supreme Court's answers to the certified questions as authoritative determinations of Florida law.
PRECEDENTIAL VALUE	Published federal appellate opinion applying authoritative Florida law
PARTIES	The Nardones v. David H. Reynolds, Theodore Sarafoglu, Freddie P. Gargano, Donald Sheffel, Metropolitan Dade County, Hartford Insurance Company, Insurance Company of North America, American Home Assurance Company, Metropolitan Dade County's insurers

TOPICS

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summary judgment

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Florida Supreme Court's answers concerning the discovery rule and the commencement of the medical-malpractice limitations period required affirmance of the entire summary judgment.
2. Whether a physician's fiduciary duty to disclose a known or reasonably discoverable cause of a patient's adverse condition tolls the Florida statute of limitations when the physician fails to disclose that cause.
3. Whether the duty to disclose and resulting tolling end automatically when the doctor-patient relationship terminates.
4. Whether the fiduciary duty applies to physicians involved in a patient's treatment even when the patient did not know the physician personally or have direct contact with that physician.
5. Whether the record presented a triable issue concerning each defendant's knowledge of the condition or cause and failure to disclose it.

HOLDINGS

1. The certified answers foreclosed the previously decided limitations issues but did not require affirmance of the entire summary judgment because the record left unresolved whether any defendant knew or reasonably could have discovered the cause of Nicholas's condition and failed to disclose it.
2. The consequences of a physician's breach of the duty to disclose a condition or cause known during the doctor-patient relationship do not expire merely because the doctor-patient relationship terminates.
3. The fiduciary relationship and accompanying duty to disclose may exist for physicians involved in treating the patient regardless of whether the patient knew the physician or had direct contact with that physician.
4. Summary judgment as a conclusive judgment that all claims were barred by limitations was improper because the record did not establish, as to every defendant, whether the defendant knew or had reasonable grounds to know the relevant condition or cause and failed to disclose it.

KEY QUOTATIONS

"We therefore, as a matter of Florida law, construe the Court's opinion as holding that with respect to limitations and tolling questions the consequences of the breach of the duty to disclose a condition/cause known by him during the continuance of doctor-patient relationship do not expire simply by reason of the termination of that consensual-contractual relationship." (1136)

"Whenever a patient is treated by a series of surgeons and doctors the fiduciary relationship exists regardless of whether the patient is aware who is treating him." (1136-1137)

“But since the Supreme Court of Florida has expressed in binding terms the rule of law of Florida that this duty to inform does exist, we cannot say on the present record reviewing summary judgment that the facts were such that a trier could not arrive at any other conclusion.” (1137)

“VACATED and REMANDED.” (1138)

FACTUAL BACKGROUND

Nicholas Nardone underwent treatment at and was discharged from Jackson Memorial Hospital in Dade County, Florida. By March 1965, his deteriorated physical condition, including coma, blindness, and irreversible brain damage, was apparent, but the record was unclear regarding the medical cause of that condition and whether any defendant physician knew or reasonably could have discovered it. The physicians had no further contact with Nicholas after July 1965, and the Nardones filed suit in May 1971.

PROCEDURAL HISTORY

The Nardones filed suit in May 1971, more than five years after Nicholas Nardone's treatment and discharge from Jackson Memorial Hospital. The federal district court granted defendants summary judgment on the ground that Florida's four-year medical-malpractice statute of limitations barred the action. The Fifth Circuit certified questions to the Florida Supreme Court, which issued an opinion answering the certified legal questions but left open whether a physician's failure to disclose a known or reasonably discoverable cause tolled the statute. The Fifth Circuit vacated the summary judgment and remanded for a limited factual and legal determination concerning that issue as to each defendant.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remand for a limited factual and legal determination, separately as to each defendant, whether the defendant knew or had reasonable grounds to know of the relevant condition or cause and failed to disclose it. The district court may decide the issue by summary judgment if appropriate or conduct a limited hearing or trial on the limitations issue. If no breach is found, dismissal may be entered for the applicable defendant; if a breach is found, the case may proceed to the merits.

CASES CITED

- Nardone v. Reynolds, 333 So. 2d 25 (Fla. 1976)
- Nardone v. Reynolds, 508 F.2d 660 (5th Cir. 1975)
- Sheets v. Burman, 322 F.2d 277 (5th Cir. 1963)
- Crummer Co. v. DuPont, 223 F.2d 238 (5th Cir. 1955)
- Crummer Co. v. DuPont, 255 F.2d 425 (5th Cir. 1958)
- Hooper v. Mountain States Securities Corp., 282 F.2d 195 (5th Cir. 1960)
- Boeing Co. v. Shipman, 411 F.2d 365, 374 (5th Cir. 1970)

- *Bourgeois v. Dade County*, 99 So. 2d 575, 577 (Fla. 1956)
- *Wilson v. Lee Memorial Hospital*, 65 So. 2d 40, 41 (Fla. 1953)
- *Tyler v. Insurance Co. of North America*, 520 F.2d 341 (5th Cir. 1975)
- *Barnes v. Atlantic & Pacific Life Insurance Co.*, 514 F.2d 704 (5th Cir. 1975)
- *Bobby Jones Garden Apartments, Inc. v. Suleski*, 391 F.2d 172 (5th Cir. 1968)
- *Martinez v. Rodriguez*, 394 F.2d 156, 159 n.6 (5th Cir. 1968)
- *Delduca v. United States Fidelity & Guaranty Co.*, 357 F.2d 204, 206-07 (5th Cir. 1966)
- *Kay v. Home Indemnity Co.*, 337 F.2d 898, 900 (5th Cir. 1964)
- *West v. American Telephone & Telegraph Co.*, 311 U.S. 223, 237 (1940)
- *Davis v. Liberty Mutual Insurance Co.*, 525 F.2d 1204, 1208 (5th Cir. 1976)
- *Ingalls Iron Works Co. v. Fruehauf Corp.*, 518 F.2d 966, 969 & n.11 (5th Cir. 1975)
- *Industries, Investments & Agencies (Bahamas) Ltd. v. Panelfab International Corp.*, 529 F.2d 1203, 1207 & n.4 (5th Cir. 1976)
- *Wolfe v. Virusky*, 470 F.2d 831, 837 (5th Cir. 1972)
- *Hatfield v. Seaboard Air Line Railroad Co.*, 396 F.2d 721, 724 n.10 (5th Cir. 1968)

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