SUPREME COURT OF VIRGINIA

Alcoy v. Valley Nursing Homes, Inc., 272 Va. 37

630 S.E.2d 301 (2006) · No. Record No. 051701 · Decided June 8, 2006

SUMMARY

The Supreme Court of Virginia considered whether negligence and sexual assault and battery claims arising from a nursing home's alleged failure to provide adequate staffing, visitor screening, and security were subject to Virginia's Medical Malpractice Act. The court held that the alleged administrative, personnel, and security omissions did not constitute health care or professional services under the Act. It reversed the circuit court's judgment and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice Barbara Milano Keenan
JURISDICTION	Virginia
DECIDED	June 8, 2006
DOCKET	Record No. 051701
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The administrator appealed from a circuit court order granting Valley's motion in limine and subsequently granting summary judgment to Valley in a negligence, sexual assault, and battery action arising from an assault at a nursing home.
STANDARD OF REVIEW	De novo review of the circuit court's interpretation of the Medical Malpractice Act, which presented a question of law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Virginia
PARTIES	Bennie G. Alcoy, Jr., Administrator of the Estate of Delfina G. Alcoy, Deceased v. Valley Nursing Homes, Inc.

TOPICS

nursing home liability · medical malpractice · statutory interpretation · standard of review · appellate procedure

PRACTICE AREAS

health law · torts · appellate procedure

QUESTIONS PRESENTED

1. Whether negligence and sexual assault and battery claims based on a nursing home's alleged failure to ensure a resident's safety are subject to Virginia's Medical Malpractice Act.
2. Whether the circuit court properly granted summary judgment because the administrator's witnesses were not qualified to provide expert medical testimony under the Medical Malpractice Act.

HOLDINGS

1. Claims alleging that a nursing home failed to protect a resident from sexual assault through inadequate personnel, visitor screening, and facility security are not subject to Virginia's Medical Malpractice Act when the alleged omissions concern administrative, personnel, and security decisions rather than health care or professional services rendered or that should have been rendered to the individual patient.
2. Summary judgment based on the Medical Malpractice Act's expert-testimony requirements was improper because the administrator's claims were not governed by the Act.

KEY QUOTATIONS

> *"We conclude that these alleged omissions do not involve the provision of health care or professional services as contemplated by the Act."* (272 Va. at 43)

> *"This statutory language illustrates the General Assembly's intent that the Act apply only to omissions and actions related to medical treatment and care of an individual patient, rather than to any tort committed against a patient on the premises of a medical care facility."* (272 Va. at 44)

FACTUAL BACKGROUND

In 2002, Delfina G. Alcoy, a 79-year-old woman who was physically helpless, unable to communicate verbally, and incapable of making decisions after suffering a stroke, was admitted to Woodbine Rehabilitation and Healthcare Center, a nursing home operated by Valley. Four days after admission, Alcoy was sexually assaulted, suffering vaginal bleeding and tearing; the assailant was never identified. Alcoy died approximately eight months later, and her estate alleged that Valley's inadequate staffing, visitor screening, and security systems caused the assault.

PROCEDURAL HISTORY

The administrator filed an amended motion for judgment against Valley in the circuit court, seeking compensatory and punitive damages. The circuit court ruled that the claims were governed by Virginia's Medical Malpractice Act, granted Valley's motion in limine, and entered summary judgment because the administrator's witnesses were not qualified to provide the expert medical testimony required by the Act. The Supreme Court of Virginia reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the circuit court for further proceedings consistent with the principles expressed in the opinion.

CASES CITED

- Wilby v. Gostel, 265 Va. 437, 578 S.E.2d 796 (2003)
- Transcontinental Ins. Co. v. RBMW, Inc., 262 Va. 502, 551 S.E.2d 313 (2001)
- Britt Constr., Inc. v. Magazzine Clean, LLC, 271 Va. 58, 623 S.E.2d 886 (2006)
- West Lewinsville Heights Citizens Ass'n v. Board of Supervisors, 270 Va. 259, 618 S.E.2d 311 (2005)
- Mozley v. Prestwould Bd. of Dirs., 264 Va. 549, 570 S.E.2d 817 (2002)
- Williams v. Commonwealth, 265 Va. 268, 576 S.E.2d 468 (2003)
- Woods v. Mendez, 265 Va. 68, 574 S.E.2d 263 (2003)
- Industrial Dev. Auth. v. Board of Supervisors, 263 Va. 349, 559 S.E.2d 621 (2002)
- Alliance to Save the Mattaponi v. Commonwealth, 270 Va. 423, 621 S.E.2d 78 (2005)
- Hagan v. Antonio, 240 Va. 347, 397 S.E.2d 810 (1990)
- Gonzalez v. Fairfax Hosp. Sys., 239 Va. 307, 389 S.E.2d 458 (1990)
- Glisson v. Loxley, 235 Va. 62, 366 S.E.2d 68 (1988)

OPINION

Alcoy v. Valley Nursing Homes, Inc. 630 S.E.2d 301
BARBARAMILANO KEENAN, J.
630 S.E.2d 301 (2006)
272 Va. 37
Bennie G. ALCOY, Jr., Administrator of the Estate of Delfina G. Alcoy, Deceased v. VALLEY NURSING HOMES, INC. Record No. 051701. Supreme Court of Virginia. June 8, 2006.
*302 L. Steven Emmert (Paul A. Samakow; Sykes, Bourdon, Ahern & Levy, Virginia Beach, on briefs), for appellant.
Juliane C. Miller (Douglas M. Coleman; Carter & Coleman, Alexandria on brief), for appellee. Amici Curiae: The Virginia Health Care Association (Gerald C. Canaan, II, Glen Allen; Hillary T. Taylor, Fairfax, on brief), in support of appellee. Present: All the Justices. OPINION BY Justice BARBARA MILANO KEENAN. In this appeal, we consider whether causes of action for negligence and sexual assault and battery, based on the failure of nursing home personnel to ensure the safety of one of their residents, are subject to the provisions of the Medical Malpractice Act, Code §§ 8.01-581.1 through -581.20:1 (the Act). In 2002, Delfina G. Alcoy was 79 years old when she suffered a stroke that rendered her physically helpless, unable to communicate verbally, and incapable of making decisions. After treatment at a local hospital, Alcoy was admitted to Woodbine Rehabilitation and Healthcare Center (Woodbine), a nursing home facility operated by Valley Nursing Homes, Inc. (Valley) in Alexandria. Four days after being admitted to Woodbine, Alcoy was sexually assaulted. Among other injuries, she suffered vaginal bleeding and tearing.

Her assailant was never identified. Alcoy died about eight months after the assault. In 2004, Bennie G. Alcoy, Jr., who served as administrator of Alcoy's estate (the administrator), filed an amended motion for judgment in the circuit court against Valley alleging, among other things, negligence, sexual assault, and battery. In his pleadings, the administrator sought both compensatory and punitive damages. Valley filed a motion in limine, contending that the administrator's claims were governed by the Act. Valley argued that any torts that may have been committed against Alcoy during her confinement at Woodbine constituted "malpractice," as defined in Code § 8.01-581.1. On this basis, Valley asked that the evidence in the case be limited to the issue whether Valley "committed malpractice defined as a breach of the standard of care, which proximately caused damages to Mrs. Alcoy." The administrator responded that the Act's provisions did not apply because Valley's duty to Alcoy arose from her status as a resident at the Woodbine facility, not from any medical treatment or care she received or should have received at Woodbine. The administrator contended that Valley's failure to protect Alcoy from sexual assault was not a medical omission within the Act but was the result of simple negligence. The circuit court granted Valley's motion in limine, holding that the administrator's claims were within the scope of the Act. Because the administrator's witnesses were not qualified to give expert medical testimony on the standard of care as required by Code § 8.01-581.20 in the Act, Valley moved for summary judgment. The circuit court granted the motion for summary judgment, and this appeal followed. The administrator argues that his claims arose from Valley's failure to protect Alcoy from physical harm and were unrelated to her medical care. He contends that the circuit court's interpretations of the Act's terms "health care" and "malpractice" are overbroad and would encompass numerous torts not involving medical care, leading to absurd results. Noting that Code § 8.01-581.20 addresses the "clinical practice" of witnesses providing expert testimony in cases subject to the Act, the administrator asserts that the General Assembly intended that the Act cover only medical acts and omissions, not torts involving building security or hiring practices. In response, Valley argues that any duty it had to protect Alcoy arose from the patient-health care provider relationship and therefore is subject to the provisions of the Act. Valley asserts that all torts committed by *303 health care providers on their premises are covered by the Act because Code § 8.01-581.1 addresses "professional services" as well as "health care." Valley also contends that the General Assembly has endorsed an expansive definition of medical malpractice, as shown by a recent statutory amendment to Code § 8.01-581.1 that added breach of contract claims for personal injury and wrongful death to the statutory definition of "malpractice." We disagree with Valley's arguments. The issue before us involves a question of law. Therefore, we review the record de novo on appeal. Wilby v. Gostel, 265 Va. 437, 440, 578 S.E.2d 796, 798 (2003); Transcontinental Ins. Co. v. RBMW, Inc., 262 Va. 502, 514, 551 S.E.2d 313, 319 (2001). Under basic rules of statutory construction, we consider the language of a statute to determine the General Assembly's intent from the plain and natural meaning of the words used. Britt Constr., Inc. v. Magazzine Clean, LLC, 271 Va. 58, 62, 623 S.E.2d 886, 888 (2006); West Lewinsville Heights

Citizens Ass'n v. Board of Supervisors, 270 Va. 259, 265, 618 S.E.2d 311, 314 (2005); Mozley v. Prestwould Bd. of Dirs., 264 Va. 549, 554, 570 S.E.2d 817, 820 (2002). When the language of a statute is unambiguous, we are bound by the plain meaning of that language. Williams v. Commonwealth, 265 Va. 268, 271, 576 S.E.2d 468, 470 (2003); Woods v. Mendez, 265 Va. 68, 74-75, 574 S.E.2d 263, 266 (2003); Industrial Dev. Auth. v. Board of Supervisors, 263 Va. 349, 353, 559 S.E.2d 621, 623 (2002). Thus, when the General Assembly has used words of a plain and definite import, courts cannot assign them a construction that would amount to holding that the General Assembly meant something other than that which it actually expressed. Britt Constr., Inc., 271 Va. at 62-63, 623 S.E.2d at 888; Alliance to Save the Mattaponi v. Commonwealth, 270 Va. 423, 439, 621 S.E.2d 78, 87 (2005); Williams, 265 Va. at 271, 576 S.E.2d at 470. The statutory language at issue is clear and unambiguous. Therefore, as in previous decisions involving the scope of the Act, we will apply the plain meaning of the Act's language to the facts presented. See Hagan v. Antonio, 240 Va. 347, 350, 397 S.E.2d 810, 811 (1990); Gonzalez v. Fairfax Hosp. Sys., 239 Va. 307, 310, 389 S.E.2d 458, 459 (1990); Glisson v. Loxley, 235 Va. 62, 67, 366 S.E.2d 68, 71 (1988). The portions of the Act defining the terms "malpractice" and "health care" are central to the issue before us. The term "malpractice" is defined in Code § 8.01-581.1 as "any tort action or breach of contract action for personal injuries or wrongful death, based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient." The term "health care," also defined in Code § 8.01-581.1, "means any act, or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical diagnosis, care, treatment or confinement." The Act does not define the term "professional services." Initially, we observe that the allegations in the present case do not involve a tort committed during the course of a medical procedure or treatment administered on a patient's behalf during the course of patient care. Therefore, the facts here are different from several prior decisions in which we held that the torts alleged were subject to the provisions of the Act. See e.g., Hagan, 240 Va. at 351, 397 S.E.2d at 812 (alleged battery involving improper touching of breast occurring during physical examination is within definition of "malpractice" under Act); Gonzalez, 239 Va. at 309-10, 389 S.E.2d at 459-60 (laceration of patient's toe in hospital during physical therapy session prescribed for patient's vascular condition is "malpractice" under Act); Glisson, 235 Va. at 69, 366 S.E.2d at 72 (performing arthroscopic surgery without consent is "malpractice" under Act). We also recognize that the factual context of a tort alleged to have occurred in a nursing home facility presents certain unique circumstances for our consideration. In agreeing to care for its residents, a nursing facility such as Woodbine engages in many professional services related to patient care that do not occur during the course of a medical *304 procedure or treatment designed to address a particular medical condition. Thus, the provision of health care and professional services at facilities of this nature may, depending on the particular facts of a case, include additional services beyond those traditionally rendered in a medical office or hospital setting. With these considerations in mind, the

issue we must resolve is whether the administrator's allegations, as a matter of law, describe tortious conduct on Valley's part "based on health care or professional services rendered, or which should have been rendered," within the meaning of the Act. The essence of the administrator's claims is that Alcoy was sexually assaulted because of Valley's failure to ensure her safety by providing adequate and proper personnel, visitor screening, and security systems for the Woodbine facility. We conclude that these alleged omissions do not involve the provision of health care or professional services as contemplated by the Act. Instead, the alleged omissions involve administrative, personnel, and security decisions related to the operation of the Woodbine facility, rather than to the care of any particular patient. The plain language of the definitions of "malpractice" and "health care" in the Act underscores this distinction. By their terms, the definitions of "malpractice" and "health care" apply to patients on an individual basis, rather than to the staffing and security of any medical facility in which the patients are located. As defined in Code § 8.01-581.1, "health care" relates to acts or omissions "on behalf of a patient." Likewise, under the same definitional statute, "malpractice" involves health care or professional services that are rendered or should have been rendered "to a patient." The factual allegations of the administrator's pleadings address conduct unrelated to any health care or professional service that Valley should have rendered to Alcoy individually. Instead, as stated above, the administrator's allegations involve failures relating to proper staffing and security measures for the facility. The contrary conclusion advanced by Valley is also untenable because it cannot be harmonized with the provisions of Code § 8.01-581.20(A), which specify the requirements for expert testimony on the standard of care in cases subject to the Act. This section provides: A witness shall be qualified to testify as an expert on the standard of care if he demonstrates expert knowledge of the standards of the defendant's specialty and of what conduct conforms or fails to conform to those standards and if he has had active clinical practice in either the defendant's specialty or a related field of medicine within one year of the date of the alleged act or omission forming the basis of the action. (Emphasis added.) This statutory language illustrates the General Assembly's intent that the Act apply only to omissions and actions related to medical treatment and care of an individual patient, rather than to any tort committed against a patient on the premises of a medical care facility. The specific statutory requirement that an expert have had an active clinical practice plainly indicates a legislative intent that expert testimony in cases subject to the Act address medical standards of care, rather than standards concerning building security or employment protocols. Therefore, we conclude that the circuit court erred in holding that the administrator's claims were subject to the provisions of the Act. For these reasons, we will reverse the circuit court's judgment and remand the case for further proceedings consistent with the principles expressed in this opinion. Reversed and remanded.

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