

SUPREME COURT OF NEW JERSEY

Matynska v. Fried, 175 N.J. 51

811 A.2d 456 (2002) · Decided December 18, 2002

SUMMARY

The New Jersey Supreme Court affirmed the denial of Helena Matynska's motion to amend her medical malpractice complaint to substitute Dr. Mark Feierstein for a fictitious defendant. The court held that Matynska failed to exercise due diligence because Feierstein's involvement appeared in her hospital records and could have been discovered before the statute of limitations expired. Although the court criticized defense counsel's allegedly misleading discovery responses, it concluded that those tactics did not alter the result because Matynska had failed to meet her primary investigative obligation.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Chief Justice Poritz; Justice Coleman; Justice Long; Justice Verniero; Justice LaVecchia; Justice Zazzali; Justice Albin
JURISDICTION	New Jersey
DECIDED	December 18, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff sought certification after the trial court denied her motion to amend the complaint to substitute Dr. Mark Feierstein for a fictitious John Doe defendant under New Jersey Court Rule 4:26-4. The Appellate Division affirmed, and the Supreme Court of New Jersey affirmed.
STANDARD OF REVIEW	Whether the lower courts properly denied leave to amend the complaint under New Jersey Court Rule 4:26-4 based on the plaintiff's lack of timely due diligence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Helena Matynska v. Steven H. Fried, M.D., Michael Azzoni, M.D., David Adams, M.D., Erwin Mermelstein, M.D.

TOPICS

- motion to amend
- statute of limitations
- medical malpractice
- civil procedure
- appellate procedure

PRACTICE AREAS

civil procedure

medical malpractice

appellate procedure

QUESTIONS PRESENTED

1. Whether Matynska exercised sufficient due diligence to substitute Dr. Feierstein for a fictitious defendant under New Jersey Court Rule 4:26-4 after the limitations period had expired or nearly expired.
2. Whether the defendants' allegedly misleading interrogatory and deposition responses required permitting the amendment despite Matynska's failure to investigate Dr. Feierstein's involvement timely.

HOLDINGS

1. A plaintiff may not use the fictitious-party procedure to add a defendant when the plaintiff failed to investigate the potentially responsible party with reasonable diligence before the expiration of the limitations period or within a reasonable time thereafter.
2. Later allegedly obfuscatory or misleading discovery responses do not alter the disposition where the plaintiff independently failed to satisfy her primary obligation to investigate the defendant's involvement diligently and timely.

KEY QUOTATIONS

“She had an obligation to investigate all potentially responsible parties in a timely manner but did not do so.”
(811 A.2d 457)

“In short, Matynska failed to cross the due diligence threshold, and thus the lower courts properly denied her the right to amend the complaint.” (811 A.2d 457)

“We nevertheless caution attorneys to avoid such conduct or risk the potential consequences.” (811 A.2d 458)

FACTUAL BACKGROUND

Helena Matynska suffered complications after hip-replacement surgery and attributed them to negligent postoperative medical treatment. Dr. Mark Feierstein covered hospital rounds for his partner, Dr. Steven Fried, for nearly three days after the surgery, and his name appeared twice in Matynska's hospital chart. Matynska claimed she did not timely learn of his role because she had not met him, was not told he would cover for Fried, and the chart references were brief and vague.

PROCEDURAL HISTORY

Matynska filed a medical-negligence action against a hospital, multiple physicians and nurses, and fictitious defendants. Approximately two years after filing suit and four years after the alleged negligence, she moved to substitute Dr. Feierstein for a fictitious physician defendant. The trial court denied the motion, the Appellate Division affirmed, and the Supreme Court granted certification and affirmed.

DISPOSITION

affirmed

CASES CITED

- Matynska v. Fried, 171 N.J. 442, 794 A.2d 181 (2002)

OPINION

PER CURIAM.

811 A.2d 456 (2002) 175 N.J. 51 Helena MATYNSKA, Plaintiff-Appellant, v. Steven H. FRIED, M.D., Michael Azzoni, M.D., David Adams, M.D. and Erwin Mermelstein, M.D., Defendants-Respondents, and Marc Cardlia, M.D., Gerald Weisfogel, M.D., Kathleen Reed, R.N., Kailas Tanna, L.P.N., Lynann Wallace, R.N., Celeste Ardon, L.P.N., Robert Wood Johnson University Hospital, John Does, M.D.

(1 thru 15) and Jane Does, R.N. (1 thru 15), (said names being fictitious for other medical personnel who treated plaintiff as true identities are unknown), Defendants. Supreme Court of New Jersey. Argued September 23, 2002. Decided December 18, 2002. Richard Galex, East Brunswick, argued the cause for appellant (Galex, Tortoreti & Tones, attorneys; Mr. Galex and Frances A. Tones, on the briefs). *457 Gary L. Riveles, argued the cause for respondent Steven H. Fried, M.D.

(Dughi, Hewit & Palatucci, attorneys). Kenneth M. Brown, Murray Hill, argued the cause for respondents Michael Azzoni, M.D. and David Adams, M.D. (Reiseman Sharp Brown & Rosenberg, attorneys, Parsippany). Paul F. Schaaff, Jr. argued the cause for respondent Erwin Mermelstein, M.D. (Orlovsky, Moody & Schaaff, attorneys, West Long Branch; Jill R. O'Keeffe, on the brief).

PER CURIAM. Plaintiff, Helena Matynska suffered complications following hip replacement surgery, which she attributed to negligent post-operative medical treatment. She filed a complaint against Robert Wood Johnson University Hospital, eleven doctors and nurses, and "John Doe, M.D. and Jane Doe, R.N." Not named as a defendant was Dr. Mark Feierstein, who for nearly three days after her surgery, "covered" hospital rounds for his partner, Matynska's orthopedic surgeon, Dr. Steven H. Fried.

Although Dr. Feierstein's name appeared twice in Matynska's hospital chart, she claims that she did not timely know that he was in any way responsible for her treatment because she never met him, was not advised that he would be "covering" for Dr. Fried, and because the brief and vague hospital chart references to Dr. Feierstein did not disclose his role in her care and treatment.

Two years after the institution of this action, and four years after the alleged negligence, Matynska filed a motion to amend that complaint to name Dr. Feierstein in place of John Doe, M.D. pursuant

to R. 4:26-4. The trial court denied the motion and the Appellate Division affirmed, essentially concluding that if Matynska had undertaken adequate investigation and preparation, she would have discovered Dr. Feierstein's involvement prior to the expiration of the statute of limitations or within a reasonable time thereof.

We granted certification, 171 N.J. 442, 794 A.2d 181 (2002), and now affirm. The Appellate Division was correct in concluding that Matynska's efforts to discover the role of all parties complicit in her injury were wholly inadequate at least insofar as Dr. Feierstein was involved.

As the Appellate Division noted, the doctor's name appeared twice in Matynska's hospital records as a physician having participated in her care. Even a cursory look at the telephone book or a call to Dr. Fried or the hospital would have uncovered Dr. Feierstein's status as a partner of Dr. Fried, thus alerting Matynska to his role. She had an obligation to investigate all potentially responsible parties in a timely manner but did not do so.

In short, Matynska failed to cross the due diligence threshold, and thus the lower courts properly denied her the right to amend the complaint. That is not to suggest that we approve of the tactics of Dr. Fried and his counsel. Sharp practice came into play in the answers to interrogatories and in Dr. Fried's dissembling responses to the questions propounded during depositions.

Those answers, although late in the game, were given prior to Matynska's motion to add Dr. Feierstein as a defendant. They were obfuscatory, and arguably calculated to mislead Matynska regarding Dr. Feierstein's connection to the case, thus paving the way for the so-called "empty chair" defense. Emblematic was Dr. Fried's refusal in interrogatory answers to even identify the members of his group or to *458 acknowledge that Dr. Feierstein was covering for him on the dates in question.

We abhor such tactics, which, in an appropriate case, could well be considered lulling, if not deliberate concealment. In this case, because Matynska failed in her primary obligation to investigate Dr. Feierstein's involvement in a diligent and timely fashion, the defense's later tactics are not material to our disposition.

We nevertheless caution attorneys to avoid such conduct or risk the potential consequences. The judgment of the Appellate Division is affirmed. For affirming Chief Justice PORITZ and Justices COLEMAN, LONG, VERNIERO, LaVECCHIA, ZAZZALI, and ALBIN.⁷ Opposed None.