

SUPREME COURT OF CONNECTICUT

Wilcox v. Schwartz

303 Conn. 630 (2012) · Decided February 7, 2012

SUMMARY

The Connecticut Supreme Court considers whether a medical malpractice plaintiff's written opinion from a similar health care provider satisfied the detailed-basis requirement of Connecticut General Statutes § 52-190a(a). The court holds that the opinion was sufficient because it identified the applicable standard of care, stated that the standard was breached, and provided the factual basis that the defendant failed to prevent injury to the plaintiff's biliary structures during laparoscopic surgery. The court affirms the Appellate Court's reversal of the trial court's dismissal.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Palmer, J.; McLachlan, J.; Eveleigh, J.; Vertefeuille, J.
JURISDICTION	Connecticut
DECIDED	February 7, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Certified appeal from the Appellate Court's reversal of the trial court's dismissal of a medical malpractice complaint for failure of the attached health-care-provider opinion to satisfy the detailed-basis requirement of General Statutes § 52-190a (a).
STANDARD OF REVIEW	The sufficiency of the written opinion under General Statutes § 52-190a (a) presents a question of statutory construction reviewed de novo or plenary.
PRECEDENTIAL VALUE	Published Connecticut Supreme Court decision; precedential authority.
PARTIES	Daniel S. Schwartz, CBS Surgical Group, P.C. v. Kristy Wilcox, Timothy Wilcox

TOPICS

- medical malpractice
- statutory interpretation
- motions to dismiss
- pleadings
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the written opinion of a similar health-care provider satisfied the detailed-basis requirement of General Statutes § 52-190a (a).
2. Whether § 52-190a (a) requires the opinion to identify the precise negligent act or omission that caused the injury.
3. Whether the opinion was legally inadequate because it did not expressly state the standard of care in separate or more particularized terms.

HOLDINGS

1. A written opinion satisfies the detailed-basis requirement when it states the similar health-care provider's opinion regarding the applicable standard of care, that the standard was breached, and the factual basis known to the provider for concluding that medical negligence occurred. The opinion in this case met that requirement.
2. Section 52-190a (a) does not always require a similar health-care provider to identify the precise act or omission that caused the injury. An opinion that the injury would not have occurred absent a breach of the standard of care can be sufficient, particularly when inadequate documentation makes the precise cause difficult to determine before discovery.
3. The court did not reach the defendants' separate claim that § 52-190a (c) requires dismissal when an attached opinion is insufficiently detailed because the opinion in this case was sufficient.

KEY QUOTATIONS

“In other words, the written opinion must state the similar health care provider’s opinion as to the applicable standard of care, the fact that the standard of care was breached, and the factual basis of the similar health care provider’s conclusion concerning the breach.” (643-44)

“For the foregoing reasons, we conclude that the written opinion in the present case satisfies the “detailed basis” requirement of § 52-190a (a).” (654)

FACTUAL BACKGROUND

Kristy Wilcox underwent laparoscopic cholecystectomy performed by general surgeon Daniel S. Schwartz on March 12, 2006. The plaintiffs alleged that Schwartz negligently failed to ensure accurate identification of the internal anatomy, failed to prevent injury to Wilcox's biliary structures, and failed to document the surgery accurately, causing severe, painful, and permanent injuries. The signed opinion attached to the complaint stated that Schwartz deviated from the applicable standard of care by failing to prevent injury to Wilcox's biliary structures and failing to accurately document the procedure.

PROCEDURAL HISTORY

The plaintiffs filed a medical malpractice action and loss-of-consortium claim accompanied by a certificate of reasonable inquiry and a signed opinion from a similar health-care provider. The trial court dismissed the action under General Statutes § 52-190a because it found the opinion insufficiently detailed. The Appellate Court reversed, and the Connecticut Supreme Court granted certification limited to whether the opinion satisfied the statutory detailed-basis requirement. The Supreme Court affirmed the Appellate Court.

DISPOSITION

affirmed

CASES CITED

- Wilcox v. Schwartz, 119 Conn. App. 808, 817, 990 A.2d 366 (2010)
- Dias v. Grady, 292 Conn. 350, 355-60, 972 A.2d 715 (2009)
- Connecticut Ins. Guaranty Assn. v. State, 278 Conn. 77, 82, 896 A.2d 747 (2006)
- Bruttomesso v. Northeastern Connecticut Sexual Assault Crisis Services, Inc., 242 Conn. 1, 15, 698 A.2d 795 (1997)
- Bennett v. New Milford Hospital, Inc., 300 Conn. 1, 18, 12 A.3d 865 (2011)
- Commission on Human Rights & Opportunities ex rel. Arnold v. Forvil, 302 Conn. 263, 273, 25 A.3d 632 (2011)
- Godwin v. Danbury Eye Physicians & Surgeons, P.C., 254 Conn. 131, 140, 757 A.2d 516 (2000)
- Anderson v. Ludgin, 175 Conn. 545, 555, 400 A.2d 712 (1978)
- State v. McVeigh, 224 Conn. 593, 619-22, 620 A.2d 133 (1993)
- State v. Miranda, 245 Conn. 209, 230-31 n.24, 715 A.2d 680 (1998)
- State v. Miranda, 274 Conn. 727, 878 A.2d 1118 (2005)