

SUPREME COURT OF NEBRASKA

Wehrer v. Dynamic Life Therapy and Wellness, P.C.

Wehrer v. Dynamic Life Therapy & Wellness, 302 Neb. 1025 (2019) · No. No. S-18-648 · Decided April 25, 2019

SUMMARY

The Nebraska Supreme Court held that a massage therapist is not a "professional" for purposes of the professional negligence statute of limitations under Neb. Rev. Stat. § 25-222. The court reversed summary judgment for Dynamic Life Therapy & Wellness and remanded because the general negligence limitations period applied instead.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	April 25, 2019
DOCKET	No. S-18-648
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiff appealed from a district court order granting the defendant summary judgment and dismissing her negligence action as barred by the professional-negligence statute of limitations.
STANDARD OF REVIEW	Summary judgment is proper only when the record discloses no genuine issue of material fact or ultimate inference and the moving party is entitled to judgment as a matter of law. On appeal, the evidence is viewed in the light most favorable to the party against whom judgment was granted, who receives the benefit of all reasonable inferences.
PRECEDENTIAL VALUE	published opinion; binding Nebraska Supreme Court precedent
PARTIES	Arlys Wehrer v. Dynamic Life Therapy and Wellness, P.C.

TOPICS

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QUESTIONS PRESENTED

1. Whether massage therapy is a profession, and whether a massage therapist provides professional services, for purposes of the professional-negligence statute of limitations in Neb. Rev. Stat. § 25-222.
2. Whether summary judgment was properly granted on the ground that Wehrer's negligence claim was time barred.
3. Whether the court needed to address Wehrer's constitutional challenge to § 25-222 after determining that the statute did not apply.

HOLDINGS

1. A massage therapist is not a professional for purposes of applying Neb. Rev. Stat. § 25-222.
2. Summary judgment was improperly granted because the professional-negligence limitations period in § 25-222 did not apply to the claim.
3. The court did not need to address the constitutional challenge because § 25-222 did not apply to the claim.

KEY QUOTATIONS

“The occupation is not a “profession” unless: (1) The profession requires specialized knowledge; (2) the profession requires long and intensive preparation; (3) preparation must include instruction in skills and methods of the profession; (4) preparation must include scientific, historical, or scholarly principles underlying the skills and methods of the profession; (5) membership in a professional organization is required; (6) a professional organization or concerted opinion within an organization regulates and enforces standards for membership; (7) the standards for membership include high standards of achievement; (8) the standards for membership include high standards of conduct; (9) its members are committed to continued study; (10) its members are committed to a specific kind of work; and (11) the specific kind of work has for its primary purpose the rendering of a public service.” (302 Neb. at 1034-1035)

“We therefore hold that a massage therapist is not a “professional” for the purposes of applying § 25-222.” (302 Neb. at 1036)

FACTUAL BACKGROUND

Wehrer received a neck massage from Nicole Jones, a licensed massage therapist employed by Dynamic Life, on September 2, 2014. She alleged that Jones improperly compressed a nerve in her neck, causing her to lose consciousness, fall from the massage chair, and sustain head and shoulder injuries. Wehrer filed a negligence

action on February 17, 2017, and Dynamic Life argued that the claim was barred by the two-year statute of limitations for professional negligence under Neb. Rev. Stat. § 25-222.

PROCEDURAL HISTORY

Wehrer sued Dynamic Life based on injuries allegedly caused by a licensed massage therapist employed by Dynamic Life. Dynamic Life asserted that the action was untimely under Neb. Rev. Stat. § 25-222 and moved for summary judgment. The Platte County District Court granted the motion, concluding that massage therapy was a professional service governed by § 25-222. The Nebraska Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the district court for further proceedings consistent with the opinion.

CASES CITED

- Reinke Mfg. Co. v. Hayes, 256 Neb. 442, 590 N.W.2d 380 (1999)
- Churchill v. Columbus Community Hospital, 285 Neb. 759, 830 N.W.2d 53 (2013)
- Parks v. Merrill, Lynch, 268 Neb. 499, 684 N.W.2d 543 (2004)
- Casey v. Levine, 261 Neb. 1, 621 N.W.2d 482 (2001)
- Egan v. Stoler, 265 Neb. 1, 653 N.W.2d 855 (2002)
- World Radio Laboratories v. Coopers & Lybrand, 251 Neb. 261, 557 N.W.2d 1 (1996)
- Gering-Ft. Laramie Irrigation District v. Baker, 259 Neb. 840, 612 N.W.2d 897 (2000)
- Board of Regents v. Wilsam Mullins Birge, 230 Neb. 675, 433 N.W.2d 478 (1988)
- Bixenmann v. Dickinson Land Surveyors, 294 Neb. 407, 882 N.W.2d 910 (2016)
- Tylle v. Zoucha, 226 Neb. 476, 412 N.W.2d 438 (1987)
- Jorgensen v. State National Bank & Trust, 255 Neb. 241, 583 N.W.2d 331 (1998)
- Georgetowne Ltd. Partnership v. Geotechnical Services, 230 Neb. 22, 430 N.W.2d 34 (1988)
- Cooper v. Paap, 10 Neb. Ct. App. 243, 634 N.W.2d 266 (2001)
- Chase Scientific Research v. NIA Group, 96 N.Y.2d 20, 749 N.E.2d 161, 725 N.Y.S.2d 592 (2001)
- New York & Presbyterian Hospital v. Tishman, 180 Misc. 2d 193, 688 N.Y.S.2d 424 (1999)
- Kuntz v. Muehler, 603 N.W.2d 43 (N.D. 1999)
- Garden v. Frier, 602 So. 2d 1273 (Fla. 1992)
- Pierce v. AALL Insurance, Inc., 531 So. 2d 84 (Fla. 1988)
- Heckman v. Marchio, 296 Neb. 458, 894 N.W.2d 296 (2017)
- Merie B. on behalf of Brayden O. v. State, 290 Neb. 919, 863 N.W.2d 171 (2015)
- JCB Enterprises v. Nebraska Liquor Control Commission, 275 Neb. 797, 749 N.W.2d 873 (2008)

- City of Lincoln v. Central Platte Natural Resources District, 263 Neb. 141, 638 N.W.2d 839 (2002)

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