

SUPREME COURT OF WASHINGTON

Columbia Physical Therapy, Inc. v. Benton Franklin Orthopedic Associates, PLLC

168 Wash. 2d 421 (2010) · Decided March 18, 2010

SUMMARY

The Washington Supreme Court considered whether a physician-owned professional limited liability company violated the corporate practice of medicine doctrine, the Professional Service Corporation Act, the antirebate statute, and the Consumer Protection Act by employing physical therapists and referring patients to them. The court held that physical therapy falls within the statutory practice of medicine and that the company's employment of physical therapists did not violate the corporate practice doctrine or the PSCA. It also held that the physician-members and physical therapists did not violate the antirebate statute, but affirmed denial of summary judgment on the CPA claim because the alleged referral practices could constitute unfair or deceptive acts.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Owens, J.; Madsen, C.J.; C. Johnson, J.; Alexander, J.; Sanders, J.; Chambers, J.; Fairhurst, J.; J.M. Johnson, J.; Stephens, J.
JURISDICTION	Washington
DECIDED	March 18, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cross-motions for summary judgment in an action alleging violations of the corporate practice of medicine doctrine, the Professional Service Corporation Act, the antirebate statute, and the Consumer Protection Act; review was accepted after certification and denial of Court of Appeals review.
STANDARD OF REVIEW	Summary judgment orders and statutory interpretation are reviewed de novo. Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, with facts and reasonable inferences viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.

PARTIES

Columbia Physical Therapy, Inc. v. Benton Franklin Orthopedic Associates, PLLC, Physician-members of Benton Franklin Orthopedic Associates, PLLC, Physical therapists employed by Benton Franklin Orthopedic Associates, PLLC

TOPICS

health law

medical licensing

statutory interpretation

consumer protection

plain meaning rule

PRACTICE AREAS

health law

consumer protection

professional licensing

statutory interpretation

QUESTIONS PRESENTED

1. Whether BFOA's employment of physical therapists violated Washington's corporate practice of medicine doctrine.
2. Whether BFOA's employment of physical therapists violated the Professional Service Corporation Act.
3. Whether BFOA's physician-members and physical therapists violated Washington's antirebate statute by receiving or paying profits associated with patient referrals.
4. Whether the alleged statements and conduct directing patients to BFOA's physical therapists could constitute unfair or deceptive acts or practices under the Consumer Protection Act.

HOLDINGS

1. A business entity may not employ licensed health care professionals absent legislative authorization, but the Professional Service Corporation Act provides authorization for BFOA to employ physical therapists because physical therapy is included within the statutory practice of medicine.
2. BFOA's employment of physical therapists did not violate the PSCA because physical therapy falls within the practice of medicine, the professional service for which BFOA's physician-members were licensed.
3. The physician-members and physical therapists did not violate Washington's antirebate statute because profits from professional services rendered by employees of a lawful firm are not unearned as to owners who themselves practice as part of that firm.
4. BFOA was not entitled to summary judgment on Columbia's Consumer Protection Act claim because evidence that physicians told patients they had to use BFOA's physical therapists, or pointed to BFOA's facility in response to referral questions, could constitute unfair or deceptive acts or practices.

KEY QUOTATIONS

"We reject BFOA's argument and adhere to the traditional understanding that the corporate practice of medicine doctrine forbids employment of health care professionals by business entities or nonprofessionals absent legislative authorization." (at 432)

“Physical therapy is one aspect of the practice of medicine.” (at 435)

“The result is that profits from professional services rendered by employees of a firm are not “unearned” by the owners, as that term is used in RCW 19.68.010(1), so long as the owners practice as part of that firm.” (at 440)

“The act of informing patients that they could receive physical therapy only from BFOA physical therapists, if proved, would constitute an unfair or deceptive practice.” (at 443)

FACTUAL BACKGROUND

Benton Franklin Orthopedic Associates, PLLC, a professional limited liability company owned by five Washington-licensed physicians, absorbed Benton Franklin Physical Therapy, Inc., and continued operating its physical therapy business. BFOA employed three physical therapists and referred a substantial portion of its patients to them, while allegedly directing at least some patients seeking outside referrals to BFOA's physical therapy facility. Columbia Physical Therapy sued BFOA, its physician-members, and its physical therapists under the corporate practice of medicine doctrine, the Professional Service Corporation Act, the antirebate statute, and the Consumer Protection Act.

PROCEDURAL HISTORY

The trial court granted BFOA summary judgment on the Professional Service Corporation Act claim, denied summary judgment to BFOA on the antirebate and Consumer Protection Act claims, denied Columbia summary judgment on the Professional Service Corporation Act and antirebate claims, and neither granted nor denied summary judgment on the corporate practice of medicine claim. The parties stipulated to certification of issues to the Court of Appeals, which denied review. The Washington Supreme Court granted joint review as to four issues.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The trial court was directed to enter summary judgment for BFOA on Columbia's corporate practice of medicine and antirebate statute claims. On the Consumer Protection Act claim, Columbia must prove the alleged conduct and the remaining Hangman Ridge elements.

CASES CITED

- Columbia Physical Therapy, Inc. v. Benton Franklin Orthopedic Assocs., 164 Wn.2d 1008, 196 P.3d 130 (2008)
- Wright v. Jeckle, 158 Wn.2d 375, 144 P.3d 301 (2006)
- Hisle v. Todd Pacific Shipyards Corp., 151 Wn.2d 853, 93 P.3d 108 (2004)
- Morelli v. Ehsan, 110 Wn.2d 555, 756 P.2d 129 (1988)
- State ex rel. Standard Optical Co. v. Superior Court, 17 Wn.2d 323, 135 P.2d 839 (1943)

- Deaton v. Lawson, 40 Wash. 486, 82 P. 879 (1905)
- State ex rel. Lundin v. Merchants' Protective Corp., 105 Wash. 12, 177 P. 694 (1919)
- City of Olympia v. Drebeck, 156 Wn.2d 289, 126 P.3d 802 (2006)
- State v. J.P., 149 Wn.2d 444, 69 P.3d 318 (2003)
- Cosmopolitan Engineering Group, Inc. v. Ondeo Degremont, Inc., 159 Wn.2d 292, 149 P.3d 666 (2006)
- Estate of Haselwood v. Bremerton Ice Arena, Inc., 166 Wn.2d 489, 210 P.3d 308 (2009)
- Christensen v. Ellsworth, 162 Wn.2d 365, 173 P.3d 228 (2007)
- Livingston v. Cedeno, 164 Wn.2d 46, 186 P.3d 1055 (2008)
- Ezell v. Ritholz, 188 S.C. 39, 198 S.E. 419 (1938)
- State v. Neher, 112 Wn.2d 347, 771 P.2d 330 (1989)
- Day v. Inland Empire Optical, Inc., 76 Wn.2d 407, 456 P.2d 1011 (1969)
- Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 719 P.2d 531 (1986)
- Leingang v. Pierce County Medical Bureau, Inc., 131 Wn.2d 133, 930 P.2d 288 (1997)
- Panag v. Farmers Insurance Co. of Washington, 166 Wn.2d 27, 204 P.3d 885 (2009)
- Sw. Sunsites, Inc. v. Federal Trade Commission, 785 F.2d 1431 (9th Cir. 1986)

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