SUPREME COURT OF NEBRASKA

R.W. v. Schrein, 264 Neb. 818

652 N.W.2d 574 (2002) · No. Nos. S-00-808 to S-00-812 · Decided November 1, 2002

SUMMARY

The Supreme Court of Nebraska, on rehearing, affirmed summary judgment for a medical professional liability insurer in garnishment proceedings arising from sexual abuse claims against a pediatrician. The court held that the alleged abuse did not constitute or arise from covered "professional services" under the insurance policy, adhering to Nebraska's majority-rule approach requiring a causal relationship between the alleged harm and legitimate medical treatment. The court also held that it could not rely on an affidavit whose admission and related objections were unclear from the record.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Hendry, C.J.; Connolly, J.; Gerrard, J.; Stephan, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	November 1, 2002
DOCKET	Nos. S-00-808 to S-00-812
DISPOSITION	affirmed
PROCEDURAL POSTURE	On rehearing after the Nebraska Supreme Court affirmed summary judgment for a medical professional liability insurer in garnishment proceedings arising from default judgments against a physician for alleged sexual abuse.
STANDARD OF REVIEW	Summary judgment is proper 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. The appellate court views the evidence favorably to the nonmoving party and gives that party the benefit of reasonable inferences. Interpretation of an insurance policy is a question of law reviewed independently.
PRECEDENTIAL VALUE	Published opinion; binding Nebraska Supreme Court precedent
PARTIES	R.W. et al. v. Daniel B. Schrein, M.D., The Medical Protective Company of Fort Wayne, Indiana, garnishee-appellee

TOPICS

insurance coverage · summary judgment · appellate procedure · preservation of error · insurance

PRACTICE AREAS

insurance coverage · professional liability insurance · appellate procedure · civil procedure

QUESTIONS PRESENTED

1. Whether the trial court's failure to rule expressly on objections to the Schriner affidavits prevented the appellate court from considering those affidavits.
2. Whether the appellants waived their objections by failing to insist on rulings before submission of the summary-judgment motions.
3. Whether the appellants waived their alternative requests for a continuance under Neb. Rev. Stat. § 25-1335.
4. Whether alleged sexual abuse and molestation by a physician constituted professional services covered by the physician's medical professional liability insurance policy.
5. Whether the policy's professional-services coverage depended on a causal relationship between the alleged harm and a legitimate medical act or service.

HOLDINGS

1. When a party fails to insist on a ruling on an objection to evidence, the objection is waived. Because the record did not show that the district court ruled on the objections or received the affidavits into evidence, the appellate court could not rely on the affidavits.
2. Sexual abuse and molestation by a physician are not professional services covered by a medical professional liability policy when the conduct is not legitimate medical treatment and the damages are not caused by a medical act or service.
3. The policy's professional-services provision must be interpreted according to the parties' intent and does not extend to conduct merely because it occurred in a medical office or was committed by a medical professional.

KEY QUOTATIONS

> *"A medical professional such as Schriner can opine regarding a breach of the applicable standard of medical care, but cannot advise this court on a question of law, i.e., the meaning of a term in a contract."* (at 579)

> *"We conclude, based on the foregoing rationale, that there must be a causal relationship between the alleged harm and the complained-of professional act or service."* (at 581)

> *"Consequently, the "act" that caused each of appellants' damages was not medical treatment and not a "professional service" within the meaning of the policy."* (at 584)

FACTUAL BACKGROUND

The appellants were former child patients of pediatrician Daniel B. Schrein and alleged that he sexually abused them during medical treatment. They obtained default judgments against Schrein and sought to garnish his professional liability insurance policy. Their alleged injuries resulted from affirmative acts of sexual abuse and molestation rather than from a failure to diagnose or properly treat a medical condition.

PROCEDURAL HISTORY

As adults, appellants obtained default judgments against Daniel B. Schrein, M.D., and commenced garnishment proceedings against his professional liability insurer. The district court concluded that the claims were not covered by the insurance policy and entered summary judgment for Medical Protective. The Nebraska Supreme Court affirmed in R.W. v. Schrein, 263 Neb. 708, 642 N.W.2d 505 (2002), then granted rehearing to address whether an expert affidavit had been properly received and whether objections and continuance requests had been preserved. On rehearing, the court withdrew and replaced part of its earlier opinion but affirmed the district court judgment in all respects.

DISPOSITION

affirmed

CASES CITED

- R.W. v. Schrein, 263 Neb. 708, 642 N.W.2d 505 (2002)
- Pinkard v. Confederation Life Insurance Co., 264 Neb. 312, 647 N.W.2d 85 (2002)
- American Family Mutual Insurance Co. v. Hadley, 264 Neb. 435, 648 N.W.2d 769 (2002)
- State v. Harris, 263 Neb. 331, 640 N.W.2d 24 (2002)
- Jameson v. Liquid Controls Corp., 260 Neb. 489, 618 N.W.2d 637 (2000)
- State v. Nowicki, 239 Neb. 130, 474 N.W.2d 478 (1991)
- In re Estate of Kaiser, 150 Neb. 295, 34 N.W.2d 366 (1948)
- State v. Fellman, 236 Neb. 850, 464 N.W.2d 181 (1991)
- Cluett v. Medical Protective Co., 829 S.W.2d 822 (Tex. App. 1992)
- Hirst v. St. Paul Fire & Marine Insurance Co., 106 Idaho 792, 683 P.2d 440 (Idaho App. 1984)
- Marx v. Hartford Accident & Indemnity Co., 183 Neb. 12, 157 N.W.2d 870 (1968)
- Iwanski v. Gomes, 259 Neb. 632, 611 N.W.2d 607 (2000)
- St. Paul Insurance Co. of Illinois v. Cromeans, 771 F. Supp. 349 (N.D. Ala. 1991)
- Lindheimer v. St. Paul Fire & Marine Insurance, 643 So. 2d 636 (Fla. App. 1994)
- Roe v. Federal Insurance Co., 412 Mass. 43, 587 N.E.2d 214 (1992)
- Volquardson v. Hartford Insurance Co., 264 Neb. 337, 647 N.W.2d 599 (2002)
- St. Paul Fire & Marine Insurance Co. v. Asbury, 149 Ariz. 565, 720 P.2d 540 (Ariz. App. 1986)
- St. Paul Fire & Marine Insurance Co. v. Torpoco, 879 S.W.2d 831 (Tenn. 1994)
- St. Paul Fire & Marine Insurance Co. v. Shernow, 222 Conn. 823, 610 A.2d 1281 (1992)
- Princeton Insurance Co. v. Chunmuang, 151 N.J. 80, 698 A.2d 9 (1997)

- Snyder v. Major, 789 F. Supp. 646 (S.D.N.Y. 1992), modified, 818 F. Supp. 68 (S.D.N.Y. 1993)
- Niedzielski v. St. Paul Fire & Marine Insurance Co., 134 N.H. 141, 589 A.2d 130 (1991)
- Physicians Insurance Co. v. Pistone, 555 Pa. 616, 726 A.2d 339 (1999)
- N.M. Physicians Mutual Liability Co. v. LaMure, 116 N.M. 92, 860 P.2d 734 (1993)

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