

COURT OF APPEALS OF GEORGIA

Cagle v. Ehirim

304 Ga. App. 451 (2010) (Ga. Ct. App. 2010) · No. No. A10A0425 · Decided June 17, 2010

SUMMARY

The Georgia Court of Appeals affirmed dismissal of the Cagles' medical malpractice action because the supporting professional malpractice affidavit was supplied by an expert licensed to practice only in foreign countries. The court held that OCGA § 24-9-67.1(c)(1) requires the expert to have been licensed and practicing or teaching in one of the states of the United States when the alleged negligence occurred.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Doyle, Judge; Andrews, Presiding Judge; Ellington, Judge
JURISDICTION	Georgia
DECIDED	June 17, 2010
DOCKET	No. A10A0425
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed the dismissal of their medical malpractice action under OCGA § 9-11-9.1(e) for failure to attach a sufficient professional malpractice affidavit.
STANDARD OF REVIEW	The Court of Appeals reviewed whether the trial court correctly construed the statutory expert-licensing requirement and correctly dismissed the complaint for an insufficient malpractice affidavit.
PRECEDENTIAL VALUE	Published Georgia Court of Appeals opinion
PARTIES	Tony Cagle, Melanie Cagle v. Princewill Ehirim, M.D., North Georgia Neurosurgical Associates, P.C.

TOPICS

medical malpractice professional negligence motions to dismiss statutory interpretation
appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an expert supporting a professional malpractice affidavit under OCGA § 9-11-9.1(a) must be licensed to practice in one of the states of the United States under OCGA § 24-9-67.1(c)(1).
2. Whether the trial court properly dismissed the medical malpractice complaint because the foreign-licensed affiant was not competent to provide the required expert affidavit.

HOLDINGS

1. To satisfy OCGA § 24-9-67.1(c)(1), an expert in a professional malpractice action must have been licensed and practicing or teaching in one of the states of the United States when the alleged negligent act occurred; licensure solely in foreign countries is insufficient.
2. Because the affiant did not meet the expert requirements of OCGA § 24-9-67.1, the professional malpractice affidavit was insufficient under OCGA § 9-11-9.1(a), and dismissal under OCGA § 9-11-9.1(e) was proper.

KEY QUOTATIONS

“in order to comply with the licensing requirement of OCGA § 24-9-67.1(c)(1), an expert in a professional malpractice action must be licensed and practicing (or teaching) in one of the states of the United States at the time the alleged negligent act occurred.” (696 S.E.2d at 439)

FACTUAL BACKGROUND

The Cagles brought a medical malpractice action against Dr. Princewill Ehirim and North Georgia Neurosurgical Associates, P.C. They attached an affidavit from Dr. Ludwig Auer, a neurosurgeon licensed in several foreign countries but not licensed to practice medicine in the United States. The defendants challenged the affidavit as insufficient because Auer did not satisfy the expert-witness licensing requirements of OCGA § 24-9-67.1(c).

PROCEDURAL HISTORY

The Cagles filed a medical malpractice complaint supported by an affidavit from Dr. Ludwig Auer, who was licensed to practice neurosurgery in Great Britain, Austria, Germany, and India, but not in the United States. The trial court dismissed the action after concluding that OCGA § 24-9-67.1(c)(1) required the affiant to be licensed in a state of the United States. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- *Craig v. Azizi*, 301 Ga. App. 181, 182(1), 186-187(3), 687 S.E.2d 198 (2009)

OPINION

DOYLE, J.

696 S.E.2d 438 (2010) CAGLE et al v. EHIRIM et al. No. A10A0425. Court of Appeals of Georgia. June 17, 2010. Robert C. Koski, for Appellants. Anderson, Tate & Carr, Thomas T. Tate, Duluth, Paul E. Weathington, Charles M. Smith, Wayne D. Toth, Atlanta, for Appellees. DOYLE, Judge. Tony and Melanie Cagle appeal from the trial court's order dismissing their medical malpractice action pursuant to OCGA § 9-11-9.1(e) on the basis that their affiant was not competent to testify as an expert, rendering insufficient the statutorily required professional malpractice affidavit.

The Cagles argue that the trial court erred by finding that an expert must be licensed to practice in the United States in order to satisfy the requirements of OCGA § 24-9-67.1(c)(1) and, thereby, the affidavit requirements of OCGA § 9-11-9.1(a). Finding no error, we affirm.

The Cagles filed a medical malpractice action against Dr. Princewill Ehirim and North Georgia Neurosurgical Associates, P.C. ("Ehirim"), attaching the affidavit of Dr. Ludwig Auer, a neurosurgeon licensed to practice in that field in Great Britain, Austria, Germany, and India. Ehirim filed a motion to dismiss the complaint, claiming, among other things, that Dr. Auer's professional malpractice affidavit was insufficient to comply with OCGA § 9-11-9.1(a) because he was not licensed to practice medicine in the United States and, thus, was incompetent to offer his expert opinion as to any professional malpractice under OCGA § 24-9-67.1(c).

The trial court concluded that the applicable statutory language of OCGA § 24-9-67.1(c)(1)"an expert [opinion] shall be admissible only if, at the time the act or omission is alleged to have occurred, such expert... [w]as licensed by an appropriate regulatory agency to practice his or her profession in the state in which such expert was practicing or teaching in the profession at such time..."[1]" required licensure in a state of the United States and did not include experts licensed by foreign bodies.

In their single enumeration of error on appeal, the Cagles contend that the trial court erred in finding that Dr. Auer's affidavit was insufficient to meet the requirements of OCGA § 9-11-9.1(a) because he was not licensed to practice medicine in the United States.

We disagree. Under OCGA § 9-11-9.1(a), the plaintiff in a professional malpractice action is required to attach to the complaint the affidavit of an expert setting out the act of negligence underlying the claim. The expert providing the affidavit must meet the requirements for an expert witness set forth in OCGA § 24-9-67.1.[2] [If] the affiant fails to meet those requirements, the *439 affidavit is insufficient; and the complaint is subject to dismissal.[3] Subsequent to the trial court's entry of its order, this Court addressed the construction of "state" in the statute, holding that "in order to comply with the licensing requirement of OCGA § 24-9-67.1(c)(1), an expert in a

professional malpractice action must be licensed and practicing (or teaching) in one of the states of the United States at the time the alleged negligent act occurred." [4] Accordingly, the Cagles have not shown that the trial court erred by concluding that their expert affidavit was insufficient or by dismissing their medical malpractice action on that basis.

Judgment affirmed. ANDREWS, P.J., and ELLINGTON, J., concur. NOTES [1] (Emphasis supplied.) [2] See OCGA § 24-9-67.1(e). [3] (Punctuation and footnotes omitted.) *Craig v. Azizi*, 301 Ga.App. 181, 182(1), 687 S.E.2d 198 (2009).

[4] *Id.* at 186-187(3), 687 S.E.2d 198.