

SUPREME COURT OF THE STATE OF IDAHO

David Fisk and Margaret Fisk v. Jeffery D. McDonald, M.D., North Idaho Day Surgery, LLC, and John L. Pennings, M.D.

Fisk v. McDonald · No. 46639 · Decided October 23, 2020

SUMMARY

The Idaho Supreme Court reviewed summary judgments dismissing David and Margaret Fisk’s medical malpractice claims against a physician and a hospital arising from complications following spinal fusion surgery. The court addressed whether the plaintiffs’ out-of-area experts established actual knowledge of Idaho’s applicable community standard of care, as well as issues concerning reconsideration and agency-based liability. The district court’s decisions were affirmed in part, vacated in part, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of the State of Idaho
WRITING FOR THE COURT	Burdick, Chief Justice; Brody, Justice; Bevan, Justice; Stegner, Justice; Moeller, Justice
JURISDICTION	Idaho
DECIDED	October 23, 2020
DOCKET	46639
DISPOSITION	vacated
PROCEDURAL POSTURE	Plaintiffs appealed from summary judgments dismissing their medical malpractice claims against McDonald and the Hospital with prejudice, and from orders denying reconsideration and denying leave to amend the complaint.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the district court. The evidence is liberally construed and reasonable inferences are drawn in favor of the nonmoving party when determining whether a genuine issue of material fact exists, but that standard does not apply to the threshold admissibility of expert testimony. Expert-admissibility and other discretionary rulings are reviewed for clear abuse of discretion. A motion for reconsideration of summary judgment is reviewed under the summary-judgment standard.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	David Fisk, Margaret Fisk v. Jeffery D. McDonald, M.D., North Idaho Day Surgery, LLC, d/b/a Northwest Specialty Hospital

TOPICS

medical malpractice expert testimony summary judgment pleadings

PRACTICE AREAS

medical malpractice health law civil procedure evidence appellate procedure

QUESTIONS PRESENTED

1. Whether summary judgment was proper because the Fisks failed to provide admissible expert testimony establishing the applicable community standard of care.
2. Whether the defendants were required to submit expert evidence negating the standard-of-care element before the summary-judgment burden shifted to the Fisks.
3. Whether the district court erred in denying reconsideration after the Fisks submitted supplemental expert declarations.
4. Whether the Fisks were required to plead a specific agency theory—express, implied, or apparent authority—to hold McDonald liable for Sholtz's acts or omissions.

HOLDINGS

1. An out-of-area expert in an Idaho medical malpractice action must provide facts showing actual knowledge of the applicable community standard of care at the time and place of the alleged negligence. The Fisks' initial expert declarations did not establish that requirement.
2. A defendant may shift the summary-judgment burden by showing that the plaintiff lacks evidence of an essential element, including the standard-of-care element; the defendant need not always submit expert testimony establishing the standard of care.
3. The district court abused its discretion by denying reconsideration because Kubiak's supplemental declaration, considered together with his first declaration, supplied facts showing actual knowledge of the community standard of care for nurses.
4. A plaintiff need not specifically plead express, implied, or apparent authority to preserve a vicarious-liability theory when the complaint alleges the underlying negligence claim and facts placing the defendant on notice that liability is sought for the agent's conduct.

KEY QUOTATIONS

“Rather than getting hung up on whether an expert has mechanically stated that he relied upon a source, the key question is the quality of the sources reviewed by the expert, and whether they contain sufficient facts

which, if taken as true, can support the expert’s claim that he has familiarized himself with the community standard of care.” (10)

“In sum, none of the Joint Commission Standards relied upon by Hawkins in his declaration provide “actual concrete guidance” concerning “the physical administration of health care to patients” sufficient to replace the community standard of care.” (15)

“Under notice pleading, a party is no longer slavishly bound to stating particular theories in its pleadings.” (29)

FACTUAL BACKGROUND

Margaret Fisk underwent outpatient cervical spinal-fusion surgery at North Idaho Day Surgery in March 2015. Before discharge, she developed worsening abdominal pain, nausea, vomiting, coffee-ground emesis, and severe abdominal distension; after a delay in transfer and consultation, surgery revealed mesenteric artery ischemia requiring removal of substantial portions of her intestines and colon. She eventually recovered but suffered serious ongoing consequences. The Fisks alleged that McDonald, the Hospital, and their personnel negligently failed to meet applicable standards of care.

PROCEDURAL HISTORY

The Fisks sued Pennings, McDonald, and the Hospital for alleged negligent medical treatment. Pennings was dismissed by stipulation. The district court granted summary judgment to McDonald and the Hospital, concluding that the Fisks lacked admissible expert testimony establishing the applicable community standard of care and had not adequately pleaded vicarious liability against McDonald. The court denied reconsideration and leave to amend. The Idaho Supreme Court affirmed the initial summary-judgment reasoning, but vacated the judgments because the district court erred in denying reconsideration and in requiring the agency theory to be specifically pleaded.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The judgments dismissing the medical malpractice claims against McDonald and the Hospital are vacated. The case is remanded for further proceedings consistent with the opinion, including consideration of the supplemental evidence on reconsideration and the agency theory against McDonald. No attorney fees or costs are awarded on appeal.

CASES CITED

- Mattox v. Life Care Centers of America, Inc., 157 Idaho 468, 337 P.3d 627 (2014)
- Arregui v. Gallegos-Main, 153 Idaho 801, 291 P.3d 1000 (2012)
- Dulaney v. St. Alphonsus Regional Medical Center, 137 Idaho 160, 45 P.3d 816 (2002)
- Navo v. Bingham Memorial Hospital, 160 Idaho 363, 373 P.3d 681 (2016)

- Frank v. Eastern Shoshone Hospital, 114 Idaho 480, 757 P.2d 1199 (1988)
- Suhadolnik v. Pressman, 151 Idaho 110, 254 P.3d 11 (2011)
- Samples v. Hansen, 161 Idaho 179, 384 P.3d 943 (2016)
- Phillips v. Eastern Idaho Health Services, Inc., 166 Idaho 731, 463 P.3d 365 (2020)
- Kozlowski v. Rush, 121 Idaho 825, 828 P.2d 854 (1991)
- McDaniel v. Inland Northwest Renal Care Group-Idaho, LLC, 144 Idaho 219, 159 P.3d 856 (2007)
- Eldridge v. West, 166 Idaho 303, 458 P.3d 172 (2020)
- Bromley v. Garey, 132 Idaho 807, 979 P.2d 1165 (1999)
- Tingley v. Harrison, 125 Idaho 86, 867 P.2d 960 (1994)
- Chandler v. Hayden, 147 Idaho 765, 215 P.3d 485 (2009)
- Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
- Fragnella v. Petrovich, 153 Idaho 266, 281 P.3d 103 (2012)
- Jackson v. Crow, 164 Idaho 806, 436 P.3d 627 (2019)
- Idaho First Bank v. Bridges, 164 Idaho 178, 426 P.3d 1278 (2018)
- Maroun v. Wyreless Systems, Inc., 141 Idaho 604, 114 P.3d 974 (2005)
- Brown v. Pocatello, 148 Idaho 802, 229 P.3d 1164 (2010)
- Seiniger Law Office, P.A. v. North Pacific Insurance Co., 145 Idaho 241, 178 P.3d 606 (2008)
- Bailey v. Ness, 109 Idaho 495, 708 P.2d 900 (1985)
- Lunneborg v. My Fun Life, 163 Idaho 856, 421 P.3d 187 (2018)
- Navo v. Bingham Memorial Hospital, 160 Idaho 363, 373 P.3d 681 (2016)
- Elec. Wholesale Supply Co. v. Nielson, 136 Idaho 814, 41 P.3d 242 (2001)