

SUPREME COURT OF PENNSYLVANIA

Mitchell v. Shikora

209 A.3d 307 (Pa. 2019) · No. 55 WAP 2017 · Decided June 18, 2019

SUMMARY

Justice Donohue's concurring and dissenting opinion addresses the admissibility of evidence concerning the known risks and complications of medical procedures in a medical negligence action. The opinion agrees that such evidence may be admissible in limited circumstances when it assists in establishing the standard of care, but concludes that the bowel-injury risk evidence was irrelevant and inadmissible in this routine laparoscopic hysterectomy malpractice case.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Pennsylvania                                                                                                                                                                                                                                                                           |
| WRITING FOR THE COURT | Justice Donohue; Justice Todd; Justice Dougherty                                                                                                                                                                                                                                                        |
| JURISDICTION          | Pennsylvania                                                                                                                                                                                                                                                                                            |
| DECIDED               | June 18, 2019                                                                                                                                                                                                                                                                                           |
| DOCKET                | 55 WAP 2017                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Defendants appealed a Superior Court order that reversed the judgment of the Allegheny County Court of Common Pleas and remanded the matter. The Supreme Court considered the admissibility of evidence concerning known risks and complications of a medical procedure in a medical negligence action. |
| STANDARD OF REVIEW    | Relevance and admissibility of evidence under Pennsylvania Rules of Evidence 401 and 402.                                                                                                                                                                                                               |
| PRECEDENTIAL VALUE    | Published dissenting opinion; the dissent's reasoning is nonbinding.                                                                                                                                                                                                                                    |
| PARTIES               | Evan Shikora, D.O., University of Pittsburgh Physicians d/b/a Womancare Associates, Magee Womens Hospital of UPMC v. Lanette Mitchell                                                                                                                                                                   |

TOPICS

- medical malpractice
- evidence
- relevance
- appellate procedure

## PRACTICE AREAS

medical malpractice

evidence

appellate procedure

## QUESTIONS PRESENTED

1. Whether evidence that a patient's injury was a known risk or complication of a medical procedure was relevant and admissible in this medical negligence action.
2. Whether evidence of known risks and complications is admissible only when it assists in establishing or explaining the applicable standard of care.

## HOLDINGS

1. Known-risk and complication evidence may be admissible in a medical negligence action in limited and discrete circumstances when it establishes or explains the applicable standard of care.
2. The known-risk evidence was irrelevant and inadmissible because it did not assist in determining whether the surgeons complied with the applicable standard of care.

## KEY QUOTATIONS

*“As is evident from this passage and example, the Brady Court clearly recognized that evidence of the risks and complications of a medical procedure is not always relevant to the standard of care but, potentially, it may be germane to the issue.”* (at 2)

*“Informing the jury that a particular injury is one that can occur during the procedure does not make it more or less likely that the injury occurred as a result of the doctor’s negligence, rendering it entirely irrelevant.”* (at 7)

*“When a jury concludes that a physician met the applicable standard of care and an injury nonetheless occurred, the court’s instructions will have made clear that the physician is not liable to the plaintiff.”* (at 10)

## FACTUAL BACKGROUND

Mitchell suffered a severed colon during a laparoscopic hysterectomy performed by the defendants. Her expert testified that the applicable standard of care required transvisualization of the peritoneum before incision and that failure to do so breached the standard of care. The defense expert disputed that transvisualization was required and testified that bowel injury was a known risk or complication of the procedure, but also acknowledged that the injury did not indicate whether the surgeons were negligent.

## PROCEDURAL HISTORY

The trial court denied Mitchell's motion in limine seeking to exclude evidence concerning the risks and complications of laparoscopic hysterectomy. After trial, the Superior Court reversed the judgment of the Court of Common Pleas and remanded. In this concurring and dissenting opinion, Justice Donohue would affirm the Superior Court because the risk evidence was irrelevant to the standard of care in this case.

## DISPOSITION

affirmed

#### CASES CITED

- Brady v. Urbas, 111 A.3d 1155 (Pa. 2015)
- Hayes v. Camel, 283 Conn. 475, 927 A.2d 880 (2007)
- Macy v. Blatchford, 330 Or. 444, 8 P.3d 204 (2000)
- Thierfelder v. Wolfert, 52 A.3d 1251, 1265 (Pa. 2012)
- Passarello v. Grumbine, 87 A.3d 285, 297, 299, 305 (Pa. 2014)
- Pringle v. Rapaport, 980 A.2d 159, 166-67 (Pa. Super. 2009) (en banc)
- Quinby v. Plumsteadvill Family Practice, Inc., 907 A.2d 1061, 1071 (Pa. 2006)
- Mitchell v. Shikora, 161 A.3d 970, 975 (Pa. Super. 2017)
- Commonwealth v. Aikens, 168 A.3d 137, 143 (Pa. 2017)
- Toogood v. Owen J. Rogal, D.D.S., P.C., 824 A.2d 1140, 1145 (Pa. 2003) (plurality)