

SUPREME COURT OF ALASKA

Hertz v. Beach

211 P.3d 668 (Alaska 2009) · No. S-12884 · Decided July 10, 2009

SUMMARY

The Alaska Supreme Court reviewed an inmate's claims against correctional nurses and a contract dentist concerning delayed or inadequate dental treatment. The court affirmed summary judgment on the inmate's constitutional and most malpractice claims, but reversed as to one malpractice claim against the dentist, vacated the attorney's-fee award, and remanded for further proceedings. The court also affirmed the denial of discovery sanctions.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Winfree, Justice; Fabe, Chief Justice; Matthews, Justice; Eastaugh, Justice; Carpeneti, Justice
JURISDICTION	Alaska
DECIDED	July 10, 2009
DOCKET	S-12884
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Hertz appealed superior-court orders denying discovery sanctions, granting the defendants' motion for summary judgment on his constitutional and medical-malpractice claims, and awarding attorney's fees.
STANDARD OF REVIEW	Discovery sanctions and prevailing-party and attorney-fee determinations are reviewed for abuse of discretion; summary judgment is reviewed de novo; whether expert testimony is required in a medical-malpractice action is reviewed independently. Summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law, with reasonable factual inferences drawn for the nonmoving party.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential.
PARTIES	Sidney R. Hertz v. Iris Beach, Shirley Hawkins, Lonnie Anderson

TOPICS

medical malpractice

prisoners rights

section 1983

summary judgment

attorney fees

PRACTICE AREAS

medical malpractice

prisoner civil rights

constitutional law

civil procedure

attorney fees

QUESTIONS PRESENTED

1. Whether the superior court abused its discretion by denying Hertz's motion for discovery sanctions.
2. Whether Hertz presented sufficient evidence to create a genuine issue of material fact on his Eighth Amendment deliberate-indifference claims.
3. Whether Hertz's Alaska constitutional cruel-and-unusual-punishment claim could proceed as a damages action.
4. Whether expert testimony was required to support Hertz's medical-malpractice claims against the nurses and dentist.
5. Whether the record created a triable issue on the malpractice claim concerning the year-long delay in replacing Hertz's upper partial denture.
6. Whether the superior court properly awarded attorney's fees and treated the defendants as prevailing parties.

HOLDINGS

1. The superior court did not abuse its discretion by denying sanctions against defense counsel because the interrogatory responses were timely served by mail, no production deadline had been set for the dentist's contract, and the challenged discovery response did not withhold or misrepresent discoverable evidence.
2. Hertz failed to establish an Eighth Amendment violation because he did not show that his loose-fitting partial denture caused the kind of serious injury, substantial pain, or functional impairment necessary to constitute a serious medical need.
3. Summary judgment was proper on the deliberate-indifference claim concerning Hertz's decayed tooth because the evidence did not show that any defendant knew of and disregarded a serious medical risk.
4. Hertz could not maintain a damages claim under the Alaska Constitution for the alleged inadequate dental treatment because medical-malpractice and federal constitutional remedies were available.
5. Expert testimony is ordinarily required when a medical-malpractice claim involves specialized medical care, skill, judgment, treatment decisions, or professional standards; expert testimony is unnecessary only for nontechnical negligence evident to laypersons.
6. Summary judgment was proper for the nurses because Hertz supplied no expert evidence that they negligently failed to treat him, delayed treatment, or improperly prioritized his dental needs.
7. The superior court erred by granting summary judgment for lack of expert evidence on the malpractice claim concerning the delay in replacing Hertz's upper partial denture because the record left unresolved whether the delay resulted from professional judgment or from facility or staffing problems.

8. The attorney's-fee judgment against Hertz had to be vacated and reconsidered because Anderson was not a prevailing party after reversal on one claim, and Beach and Hawkins could recover only fees attributable to their defense unless the court found Hertz's other claims frivolous, unreasonable, or without foundation.

KEY QUOTATIONS

"To prove an Eighth Amendment violation stemming from prison medical or dental care, an inmate must prove "deliberate indifference to serious medical needs."" (at 678)

"In medical malpractice actions . . . the jury ordinarily may find a breach of a professional duty only on the basis of expert testimony."" (at 680)

"More than one approach may meet the applicable standard of care; without testimony describing that standard, the ordinary layperson would not know whether Dr. Anderson's approach fell below it." (at 682)

"But Beach and Hawkins may not be awarded attorney's fees incurred in Dr. Anderson's defense or in defending against Hertz's deliberate indifference claims unless the court finds that his action was "frivolous, unreasonable, or without foundation."" (at 683)

FACTUAL BACKGROUND

Hertz, an Alaska inmate with advanced periodontal disease, requested a replacement upper partial denture after two teeth were extracted in April 2005. He repeatedly sought dental treatment and complained that his existing denture bruised his mouth, but he did not receive the replacement denture until April 2006. He later developed pain from a decayed tooth, received pain medication and a referral, and the tooth was extracted; subsequent dentists concluded that the denture fit properly and recommended extraction of his remaining upper teeth and a full denture.

PROCEDURAL HISTORY

Hertz, an incarcerated Alaska inmate, sued two correctional-facility nurses and a private dentist for alleged deliberate indifference and medical malpractice arising from delays and alleged deficiencies in his dental care. The superior court required expert evidence for the malpractice claims, found that Hertz had not created a genuine issue of material fact, granted summary judgment for all defendants, and awarded unallocated attorney's fees. The Alaska Supreme Court affirmed most rulings, reversed summary judgment on one malpractice claim against Anderson, vacated the attorney's-fee judgment, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings on Hertz's medical-malpractice claim against Anderson arising from the delay in replacing the upper partial denture. Vacate the attorney's-fee judgment and remand for a new fee award: Beach and Hawkins may receive fees incurred in defending claims against them, but not fees incurred for Anderson's

defense or the deliberate-indifference claims unless the superior court finds those claims frivolous, unreasonable, or without foundation.

CASES CITED

- In re Schmidt, 114 P.3d 816, 819 (Alaska 2005)
- Keen v. Ruddy, 784 P.2d 653, 658 (Alaska 1989)
- Wooten v. Hinton, 202 P.3d 1148, 1151 (Alaska 2009)
- Hopper v. Hopper, 171 P.3d 124, 128 (Alaska 2007)
- Gwich'in Steering Committee v. State, Office of the Governor, 10 P.3d 572, 584-85 (Alaska 2000)
- Interior Cabaret, Hotel, Restaurant & Retailers Ass'n v. Fairbanks North Star Borough, 135 P.3d 1000, 1002 (Alaska 2006)
- Jerue v. Millett, 66 P.3d 736, 740 (Alaska 2003)
- Wilson v. MacDonald, 168 P.3d 887, 888-89 (Alaska 2007)
- DeNardo v. Bax, 147 P.3d 672, 676-77 (Alaska 2006)
- D.P. v. Wrangell General Hospital, 5 P.3d 225, 228 (Alaska 2000)
- Guin v. Ha, 591 P.2d 1281, 1284 n.6 (Alaska 1979)
- Lowell v. Hayes, 117 P.3d 745, 753 (Alaska 2005)
- Dick Fischer Development No. 2 v. State, Department of Administration, 838 P.2d 263, 268 (Alaska 1992)
- Estelle v. Gamble, 429 U.S. 97, 106 (1976)
- Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)
- McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1991)
- WMX Technologies, Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc)
- Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004)
- Gibson v. County of Washoe, Nevada, 290 F.3d 1175, 1187 (9th Cir. 2002)
- Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir. 1988)
- Hunt v. Dental Department, 865 F.2d 198, 200 (9th Cir. 1989)
- Farrow v. West, 320 F.3d 1235, 1244-45 (11th Cir. 2003)
- Lolli v. County of Orange, 351 F.3d 410, 421 (9th Cir. 2003)
- Hartsfield v. Colburn, 371 F.3d 454, 457 (8th Cir. 2004)
- Reeves v. Caldwell, No. CIV. 98-363-ST, 1999 WL 375580, at *5 (D. Or. Mar. 3, 1999)
- Hutchins v. Blood Services of Montana, 161 Mont. 359, 506 P.2d 449, 452 (1973)
- Lawless v. Calaway, 24 Cal. 2d 81, 147 P.2d 604, 607 (1944)
- Clary Insurance Agency v. Doyle, 620 P.2d 194, 200 (Alaska 1980)
- Kendall v. State, Division of Corrections, 692 P.2d 953, 955 (Alaska 1984)
- Hymes v. DeRamus, 119 P.3d 963, 968 n.23 (Alaska 2005)
- Hutchins v. Schwartz, 724 P.2d 1194, 1204 (Alaska 1986)
- Alaska Wildlife Alliance v. Rue, 948 P.2d 976, 981 (Alaska 1997)

- DeNardo v. Municipal of Anchorage, 775 P.2d 515, 518 (Alaska 1989)
- Hughes v. Rowe, 449 U.S. 5, 15 (1980)

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