

SUPREME COURT OF TEXAS

Felton v. Lovett

388 S.W.3d 656 (Tex. 2012) · Decided November 30, 2012

SUMMARY

The Texas Supreme Court held that a chiropractor has a common-law duty to disclose risks inherent in chiropractic treatment, even when the statutory informed-consent provision of the Texas Medical Liability Act does not apply. The court concluded that vertebral artery dissection and stroke were inherent risks of chiropractic neck manipulation because they were directly related to the treatment and could occur without negligence. The court reversed the court of appeals and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Hecht
JURISDICTION	Texas
DECIDED	November 30, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Felton obtained a jury verdict and trial-court judgment on his failure-to-disclose informed-consent claim. The court of appeals reversed and rendered judgment for Lovett. The Supreme Court of Texas granted review and reversed the court of appeals' judgment.
STANDARD OF REVIEW	The Supreme Court reviewed the legal characterization of the informed-consent claim and the legal effect of the jury's answers. It also applied the rule that allegedly conflicting jury answers must be reconciled if reasonably possible in light of the pleadings, evidence, charge, and findings considered as a whole.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Texas; precedential.
PARTIES	Aaron Felton v. Brock Lovett, D.C.

TOPICS

informed consent medical malpractice professional negligence statutory interpretation
appellate procedure

PRACTICE AREAS

health law

medical malpractice

professional negligence

appellate procedure

QUESTIONS PRESENTED

1. Whether vertebral artery dissection and stroke resulting from chiropractic neck manipulation are risks inherent in the treatment and therefore subject to disclosure under the common-law informed-consent duty.
2. Whether Texas Medical Liability Act section 74.101 governed Felton's claim even though a chiropractor is a health care provider but not a physician and the treatment was not medical care or surgery.
3. Whether the jury's failure to find negligent treatment that proximately caused Felton's injury precluded liability for negligent nondisclosure or conflicted with the jury's nondisclosure findings.

HOLDINGS

1. Section 74.101 of the Medical Liability Act does not govern a failure-to-disclose claim involving chiropractic treatment because a chiropractor is a health care provider but not a physician, and chiropractic manipulation is not medical care or a surgical procedure as those terms are used in the statute. When section 74.101 does not apply, the common law governs.
2. A reasonable chiropractor must disclose treatment risks that would influence a reasonable patient in deciding whether to undergo treatment, while not being required to disclose risks that would be unduly disturbing to an unreasonable patient.
3. The possibility that a patient will suffer vertebral artery dissection and stroke from chiropractic neck manipulation, even because of an undetectable physical condition, is an inherent risk of the treatment and must be disclosed.
4. The jury's failure to find that negligent treatment proximately caused Felton's injury did not preclude liability for negligent nondisclosure and did not create an irreconcilable conflict with the jury's nondisclosure findings.

KEY QUOTATIONS

“Health care must be based on a patient’s informed consent. A health care provider may be liable for failing to disclose to a patient the risks inherent in proposed treatment.” (656)

“Inherent risks of treatment are those which are directly related to the treatment and occur without negligence.” (662)

“The risk that a patient will not respond well to treatment is clearly one that inheres in the treatment.” (663)

FACTUAL BACKGROUND

Aaron Felton sought treatment for neck pain from chiropractor Brock Lovett. After two less-forceful manipulations failed to relieve the pain, Lovett performed a more forceful neck manipulation, after which Felton experienced blurred vision, nausea, and dizziness and was diagnosed with a stroke resulting from vertebral

artery dissection. Lovett knew that chiropractic neck manipulation carried a risk of stroke, but the jury found that he did not disclose that risk, that a reasonable person would have refused the treatment if informed, and that Felton was injured by the undisclosed risk.

PROCEDURAL HISTORY

Felton sued chiropractor Brock Lovett for failure to disclose the risks of chiropractic neck manipulation and for negligent treatment after suffering a stroke caused by vertebral artery dissection. The jury found that Lovett failed to disclose risks and that Felton was injured by the undisclosed risk, but did not find that Lovett's treatment negligence proximately caused the injury. The trial court awarded Felton \$742,701.90. The court of appeals reversed and rendered judgment for Lovett, concluding that vertebral artery dissection was not an inherent risk of the procedure. The Supreme Court of Texas reversed and remanded to the court of appeals for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court of appeals was directed to address the remaining issues after reversal of its judgment for Lovett. The Supreme Court did not itself reinstate the trial-court judgment.

CASES CITED

- Waffle House, Inc. v. Williams, 313 S.W.3d 796, 802 (Tex. 2010)
- Hoffmann-La Roche Inc. v. Zeltwanger, 144 S.W.3d 438, 450 (Tex. 2004)
- Holland v. Wal-Mart Stores, Inc., 1 S.W.3d 91, 94 (Tex. 1999)
- Wilson v. Scott, 412 S.W.2d 299, 301 (Tex. 1967)
- Nicodeme v. Bailey, 243 S.W.2d 397, 401 (Tex. Civ. App.—El Paso 1951, writ ref'd n.r.e.)
- Hartfiel v. Owen, 618 S.W.2d 902, 905 (Tex. Civ. App.—El Paso 1981, writ ref'd n.r.e.)
- Peterson v. Shields, 652 S.W.2d 929, 930-931 (Tex. 1983)
- Spencer v. Eagle Star Insurance Co. of America, 876 S.W.2d 154, 157 (Tex. 1994)
- Barclay v. Campbell, 704 S.W.2d 8, 9-10 (Tex. 1986)
- Binur v. Jacobo, 135 S.W.3d 646, 654-655 (Tex. 2004)
- Tajchman v. Giller, 938 S.W.2d 95, 99-100 (Tex. App.—Dallas 1996, writ denied)
- Jones v. Papp, 782 S.W.2d 236, 240 (Tex. App.—Houston [14th Dist.] 1989, writ denied)
- Scientific Image Center Management, Inc. v. Brewer, 282 S.W.3d 233, 239 (Tex. App.—Dallas 2009, no pet.)
- Knoll v. Neblett, 966 S.W.2d 622, 628-629 (Tex. App.—Houston [14th Dist.] 1998, pet. denied)
- Beal v. Hamilton, 712 S.W.2d 873, 877 (Tex. App.—Houston [1st Dist.] 1986, no writ)
- Bender v. Southern Pacific Transportation Co., 600 S.W.2d 257, 260 (Tex. 1980)
- 333 S.W.3d 389 (Tex. App.—Amarillo 2011)

