SUPREME COURT OF COLORADO

Pediatric Neurosurgery, P.C. v. Russell

44 P.3d 1063 (Colo. 2002) · No. No. 00SC228 · Decided April 15, 2002

SUMMARY

The Colorado Supreme Court held that Colorado Revised Statutes section 12-36-134 creates an exception to the corporate practice of medicine doctrine for professional medical corporations. It ruled that such a corporation may be vicariously liable for the negligence of physician employees under respondeat superior, and that control is relevant only to determining whether an employment relationship exists. The court also held that the statute's insurance provisions limit shareholder liability but do not preclude liability of the corporate entity.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Bender
JURISDICTION	Colorado
DECIDED	April 15, 2002
DOCKET	No. 00SC228
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of the court of appeals' decision reversing dismissal of a medical-negligence complaint against a professional medical corporation.
STANDARD OF REVIEW	The court reviewed the C.R.C.P. 12(b)(5) dismissal de novo, applying the same standard as the trial court and accepting pleaded facts as true in the light most favorable to the plaintiffs.
PRECEDENTIAL VALUE	Published en banc opinion of the Supreme Court of Colorado; precedential.
PARTIES	Pediatric Neurosurgery, P.C. v. Christine Russell, Uri Neil, as next friend of Michael Russell Neil, a minor

TOPICS

medical malpractice · vicarious liability · statutory interpretation · motions to dismiss · civil procedure

PRACTICE AREAS

health law · medical malpractice · corporate law · torts · civil procedure

QUESTIONS PRESENTED

1. Whether section 12-36-134, 4 C.R.S. (2001), creates an exception to Colorado's common-law corporate practice of medicine doctrine for professional medical corporations.
2. Whether a professional medical corporation may be held vicariously liable under respondeat superior for the negligence of physician employees.
3. Whether a court must determine the corporation's right to control the physicians when the corporation's C.R.C.P. 12(b)(5) motion concedes that the physicians were employees.
4. Whether section 12-36-134(1)(g) precludes vicarious liability of the corporate entity when the statutory minimum insurance requirements are satisfied.

HOLDINGS

1. Section 12-36-134 creates an exception to Colorado's common-law corporate practice of medicine doctrine by permitting professional medical corporations to practice medicine.
2. A professional medical corporation may be held vicariously liable under respondeat superior for negligence committed by its physician employees within the course and scope of employment.
3. When an employer's C.R.C.P. 12(b)(5) motion concedes that the alleged tortfeasor was its employee, the trial court need not inquire into the employer's right to control the employee.
4. Section 12-36-134(1)(g) addresses the circumstances under which shareholders may limit their personal joint and several liability; it does not preclude vicarious liability of the professional corporation itself.

KEY QUOTATIONS

> *"We hold that section 12-36-134 provides an exception to the corporate practice of medicine doctrine by permitting professional corporations to practice medicine and be liable for the negligence of physician employees."* (44 P.3d at 1065-1066)

> *"When, as here, the corporation's C.R.C.P. 12(b)(5) motion to dismiss concedes that the alleged tortfeasor was its employee, the trial court need not inquire into whether the employer had a right to exercise control over the employee."* (44 P.3d at 1066)

> *"Thus, we construe subsection (1)(g) to address only the manner by which shareholders may limit their personal liability for the torts of corporate employees."* (44 P.3d at 1071)

FACTUAL BACKGROUND

Michael Russell Neil was born with spina bifida and was treated from 1981 through 1989 by Drs. Robert Hendee and Edward McLeary. The plaintiffs alleged that negligent treatment caused Michael to progress from incomplete paraplegia to quadriplegia with some upper-extremity use. Hendee incorporated Pediatric

Neurosurgery, P.C., in 1983; McLeary later joined the corporation as a shareholder and employee. The plaintiffs alleged that the corporation was vicariously liable for the physicians' negligence.

PROCEDURAL HISTORY

The plaintiffs initially sued the treating physicians individually and later amended their complaint to add Pediatric Neurosurgery, P.C., alleging vicarious liability under respondeat superior. The trial court dismissed the claims against the corporation under C.R.C.P. 12(b)(5), relying on the corporate practice of medicine doctrine and its interpretation of the professional-corporation insurance statute. The court of appeals reversed and remanded for reinstatement of the complaint and a factual determination concerning corporate control. The Colorado Supreme Court affirmed in part, reversed in part, and remanded for reinstatement of the complaint without requiring an additional control inquiry.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court remanded to the court of appeals with instructions to return the case to the trial court to reinstate the plaintiffs' complaint against Pediatric Neurosurgery, P.C. The trial court need not determine whether the corporation had a right to control the physicians for purposes of the conceded employer-employee relationship.

CASES CITED

- Russell v. Pediatric Neurosurgery, P.C., 15 P.3d 288 (Colo. App. 2000)
- Rosane v. Senger, 112 Colo. 363, 149 P.2d 372 (1944)
- Moon v. Mercy Hospital, 150 Colo. 430, 373 P.2d 944 (1962)
- Schoen v. Morris, 15 P.3d 1094, 1096 (Colo. 2001)
- Colo. Office of Consumer Counsel v. PUC, 42 P.3d 23, 26 (Colo. 2002)
- Grease Monkey Int'l, Inc. v. Montoya, 904 P.2d 468, 473 (Colo. 1995)
- Moses v. Diocese of Colo., 863 P.2d 310, 329-330 (Colo. 1993)
- Norton v. Gilman, 949 P.2d 565, 567 (Colo. 1997)
- Dumont v. Teets, 128 Colo. 395, 397, 262 P.2d 734, 735 (1953)
- Valley Dev. Co. v. Weeks, 147 Colo. 591, 600, 364 P.2d 730, 734 (1961)