

SUPREME COURT OF KENTUCKY

Hoofnel v. Segal

199 S.W.3d 147 (Ky. 2006) · No. 2004-SC-0381-DG · Decided June 15, 2006

SUMMARY

The Supreme Court of Kentucky affirmed summary judgment for physicians in a medical battery action concerning the removal of the plaintiff's uterus and ovaries during colorectal cancer surgery. The majority held that the signed consent form, including authorization for medically necessary additional procedures, established consent and left no genuine issue of material fact. A dissent argued that conflicting evidence about the scope and circumstances of consent required resolution by a jury.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Graves, Justice; Lambert, C.J.; Graves, J.; Johnstone, J.; Roach, J.; Scott, J.; Cooper, J.; Wintersheimer, J.
JURISDICTION	Kentucky
DECIDED	June 15, 2006
DOCKET	2004-SC-0381-DG
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from summary judgment for defendants in a medical battery action arising from the removal of the plaintiff's uterus and ovaries during colorectal cancer surgery; the Court of Appeals affirmed, and the Kentucky Supreme Court granted review.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. It is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law, viewing the record in the light most favorable to the nonmoving party and resolving doubts in that party's favor.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; precedential.
PARTIES	Eva Hoofnel v. James Segal, M.D., Susan Galandiuk, M.D.

TOPICS

- battery
- medical malpractice
- summary judgment
- standard of review
- appellate procedure

PRACTICE AREAS

medical malpractice

torts

health law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the signed consent form and surrounding circumstances established consent to the oophorectomy and hysterectomy as a matter of law.
2. Whether a genuine issue of material fact remained regarding consent, precluding summary judgment on the medical battery claim.
3. Whether the medical battery claim was governed by informed-consent negligence principles requiring expert testimony.

HOLDINGS

1. Medical battery is an intentional tort containing the essential elements of common-law battery, and the plaintiff must prove lack of consent.
2. Consent to medical treatment may be express or implied from the circumstances; the relevant inquiry is whether the particular patient manifested consent, not whether a reasonable person would have consented.
3. A consent form is a component of the consent process and is not necessarily conclusive, but a clear and unambiguous signed consent form is significant evidence and may establish consent as a matter of law when the surrounding circumstances do not create a genuine factual dispute.
4. Summary judgment for the physicians was proper because the signed consent form established consent to the oophorectomy and hysterectomy and the surrounding circumstances did not create a genuine issue of material fact.

KEY QUOTATIONS

“A plaintiff must prove lack of consent as an essential element of battery.” (at 150)

“Consent may be either expressed or implied from the circumstances.” (at 150)

“In evaluating consent in light of the circumstances and discussions surrounding the consent process, we do not believe that these circumstances create a genuine issue of material fact.” (at 150-51)

FACTUAL BACKGROUND

Eva Hoofnel agreed to undergo a low anterior resection of a colon lesion and an appendectomy. Before surgery, she signed a consent form listing a possible bilateral oophorectomy and authorizing additional procedures deemed medically necessary in the physicians' professional judgment; the form did not specifically list a hysterectomy. During surgery, the physicians removed Hoofnel's ovaries and uterus after determining that the enlarged uterus impaired the colorectal procedure and might be abnormal or cancerous. Hoofnel claimed that she had not consented to removal of those organs and sued the physicians for medical battery.

PROCEDURAL HISTORY

The Jefferson Circuit Court granted the physicians' motion for summary judgment, concluding that the signed consent-to-operate form defeated the battery claim. After the plaintiff moved to vacate, the trial court alternatively concluded that lack of consent was intertwined with informed consent and that expert testimony was required. The Court of Appeals affirmed on the ground that consent was implied under the circumstances. The Kentucky Supreme Court affirmed, but on different reasoning.

DISPOSITION

affirmed

CASES CITED

- *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991)
- *Vitale v. Henchey*, 24 S.W.3d 651, 657-59 (Ky. 2000)
- *Kovacs v. Freeman*, 957 S.W.2d 251, 254-55 (Ky. 1997)
- *Lewis v. Kenady*, 894 S.W.2d 619, 620, 622 (Ky. 1994)
- *Parikh v. Cunningham*, 493 So. 2d 999, 1001 (Fla. 1986)
- *Cardio TVP Surgical Associates v. Gillis*, 272 Ga. 404, 528 S.E.2d 785, 787 (2000)
- *Snyder v. Ash*, 72 Ohio App. 3d 795, 596 N.E.2d 518 (1991)
- *Lugenbuhl v. Dowling*, 701 So. 2d 447, 450 (La. 1997)
- *Piedra v. J.M. Dugan*, 123 Cal. App. 4th 1483, 21 Cal. Rptr. 3d 36 (2004)
- *Hutcheson v. McGoogan*, 162 Ga. App. 657, 292 S.E.2d 527 (1982)
- *Watson v. Worthy*, 151 Ga. App. 131, 259 S.E.2d 138, 139 (1979)
- *Haywood v. Allen*, 406 S.W.2d 721 (Ky. 1966)
- *Tabor v. Scobee*, 254 S.W.2d 474, 475 (Ky. 1951)
- *Tillery v. Louisville & Nashville Railroad Co.*, 433 S.W.2d 623, 624 (Ky. 1968)
- *Estell v. Barrickman*, 571 S.W.2d 650, 653 (Ky. App. 1978)
- *James Graham Brown Foundation, Inc. v. St. Paul Fire & Marine Insurance Co.*, 814 S.W.2d 273, 276 (Ky. 1991)
- *Paintsville Hospital Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985)