

SUPREME COURT OF INDIANA

Spar v. Cha

907 N.E.2d 974 (Ind. 2009) · No. No. 45S05-0906-CV-273 · Decided June 16, 2009

SUMMARY

The Indiana Supreme Court held that incurred risk generally is not a defense to medical malpractice claims based on negligence or lack of informed consent, subject to possible exceptions not relevant to the case. It further held that evidence of the plaintiff's consent to prior abdominal surgeries was admissible to address her knowledge of typical surgical risks in connection with her informed-consent claim. The court reversed the judgment and remanded for a new trial.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Boehm, Justice; Boehm; Shepard, C.J.; Dickson; Sullivan; Rucker
JURISDICTION	Indiana
DECIDED	June 16, 2009
DOCKET	No. 45S05-0906-CV-273
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	On petition to transfer from the Indiana Court of Appeals in a medical malpractice action. The trial court entered a general jury verdict for Dr. Cha after instructing the jury on incurred risk and admitting evidence of Spar's consent to prior surgeries. The Court of Appeals reversed and remanded, and the Indiana Supreme Court granted transfer.
STANDARD OF REVIEW	The Supreme Court reviewed the legal propriety of submitting incurred risk to the jury, the denial of judgment on the evidence, and the admissibility of prior-consent evidence de novo or under the applicable legal standards. Relevant evidence is admissible under Indiana Evidence Rule 402 unless excluded by law, and otherwise relevant evidence may be excluded under Rule 403 when its probative value is substantially outweighed by specified dangers.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Brenda Spar v. Jin S. Cha, M.D.

TOPICS

medical malpractice

informed consent

assumption of risk

evidence

appellate procedure

PRACTICE AREAS

medical malpractice

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QUESTIONS PRESENTED

1. Whether incurred risk or assumption of risk could be submitted as a defense to Spar's medical-malpractice claims based on negligent medical advice and lack of informed consent.
2. Whether Spar's consent to prior abdominal surgeries was relevant and admissible to rebut her lack-of-informed-consent claim.
3. Whether the trial court's errors required reversal of the general verdict and a new trial.

HOLDINGS

1. With possible exceptions not relevant to the case, incurred risk or assumption of risk is not a defense to medical malpractice based on negligence or lack of informed consent because a patient does not consent to relieve a healthcare provider of the professional standard of care merely by accepting a risky medical procedure.
2. The evidence did not support submitting incurred risk to the jury on Spar's claim that Dr. Cha negligently recommended a risky surgical procedure instead of a more comprehensive fertility workup.
3. A patient may waive the right to receive some or all informed-consent information, but a waiver assumes only risks associated with nondisclosure and does not assume risks of negligent performance. The record contained no evidence that Spar waived informed consent or assumed the risks related to negligent nondisclosure.
4. Spar's prior consents to abdominal surgeries were relevant and admissible to the extent her lack-of-informed-consent claim alleged nondisclosure of typical risks associated with abdominal laparoscopic surgery.

KEY QUOTATIONS

"We hold that, with possible exceptions not relevant here, incurred risk is not a defense to medical malpractice based on negligence or lack of informed consent." (974)

"The patient is entitled to expect that the services will be rendered in accordance with the standard of care, however risky the procedure may be." (982)

"But a patient who waives informed consent assumes only those risks associated with nondisclosure." (983)

"For these reasons, Spar's prior consents were relevant and admissible, and the trial court did not err by permitting Dr. Cha to introduce them." (985)

FACTUAL BACKGROUND

Brenda Spar had extensive abdominal scarring from prior surgeries, including an unsuccessful attempt to complete a laparoscopic gallbladder removal. Dr. Cha nevertheless performed a diagnostic laparoscopy after explaining some surgical risks; the procedure resulted in a bowel perforation, serious infection and other complications requiring additional surgeries and extended hospitalization. Spar claimed that Dr. Cha negligently recommended surgery instead of less risky fertility testing and failed to disclose material risks and alternatives. At trial, evidence was admitted concerning Spar's prior informed consents to abdominal surgeries.

PROCEDURAL HISTORY

Spar sued Dr. Cha under theories of negligent medical advice and lack of informed consent arising from a laparoscopic procedure that perforated her bowel. The trial court denied Spar's motion for judgment on the evidence regarding incurred risk, instructed the jury on that defense, admitted evidence of Spar's consent to prior abdominal surgeries, and entered judgment on a general verdict for Dr. Cha. The Court of Appeals reversed, holding that incurred risk generally was unavailable and that the prior-consent evidence was inadmissible; the Supreme Court affirmed the reversal in result, but held that the prior-consent evidence was admissible for the informed-consent theory and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the trial court for a new trial and further proceedings not inconsistent with the opinion.

CASES CITED

- Bader v. Johnson, 732 N.E.2d 1212 (Ind. 2000)
- Heck v. Robey, 659 N.E.2d 498 (Ind. 1995)
- Cavens v. Zaberdac, 849 N.E.2d 526 (Ind. 2006)
- Morrison v. MacNamara, 407 A.2d 555 (D.C. 1979)
- Storm v. NSL Rockland Place, LLC, 898 A.2d 874 (Del. Super. Ct. 2005)
- Faulk v. Nw. Radiologists, P.C., 751 N.E.2d 233 (Ind. Ct. App. 2001)
- King v. Clark, 709 N.E.2d 1043 (Ind. Ct. App. 1999)
- Arato v. Avedon, 858 P.2d 598 (Cal. 1993)
- Weinberg v. Bess, 717 N.E.2d 584 (Ind. 1999)
- Hill v. Medlantic Health Care Group, 933 A.2d 314 (D.C. 2007)
- Logan v. Greenwich Hosp. Ass'n, 465 A.2d 294 (Conn. 1983)
- Bowman v. Beghin, 713 N.E.2d 913 (Ind. Ct. App. 1999)
- Kranda v. Houser-Norborg Med. Corp., 419 N.E.2d 1024 (Ind. Ct. App. 1981)
- Shorter v. Drury, 695 P.2d 116 (Wash. 1985)

- Boyle v. Revici, 961 F.2d 1060 (2d Cir. 1992)

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