

SUPREME COURT OF OHIO

Comer v. Risko

106 Ohio St. 3d 185 (Ohio 2005) · Decided September 14, 2005

SUMMARY

The Ohio Supreme Court held that agency by estoppel is a derivative theory of vicarious liability, not a direct claim against a hospital. Because the statute of limitations had expired against the independent-contractor physicians who allegedly misinterpreted the plaintiff’s x-rays, no liability could flow through to the hospital. The court reversed the appellate judgment and reinstated summary judgment for Knox Community Hospital.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Lundberg Stratton, J.; Moyer, C.J.; O'Connor, J.; O'Donnell, J.; Lanzinger, J.; Resnick, J.; Pfeifer, J.
JURISDICTION	Ohio
DECIDED	September 14, 2005
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Discretionary appeal from an appellate decision reversing summary judgment for Knox Community Hospital in a medical-negligence action alleging agency by estoppel.
STANDARD OF REVIEW	De novo review of summary judgment under Ohio Civ.R. 56.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential.
PARTIES	Knox Community Hospital v. Carmen Comer, administrator of the estate of Patricia L. Clark

TOPICS

- medical malpractice
- vicarious liability
- professional negligence
- statute of limitations
- summary judgment

PRACTICE AREAS

- medical malpractice
- professional negligence
- torts
- civil procedure

QUESTIONS PRESENTED

1. Whether a hospital may be held directly liable under agency by estoppel for the negligence of an independent-contractor physician when the physician cannot be held liable because the statute of limitations has expired.
2. Whether the hospital was entitled to summary judgment because the independent-contractor physicians' extinguished liability could not flow through to the hospital.

HOLDINGS

1. Agency by estoppel is a derivative claim for vicarious liability, not a direct claim against the hospital. The hospital's liability must flow through the independent-contractor physician.
2. There can be no viable agency-by-estoppel claim against the hospital when the statute of limitations against the independent-contractor physician has expired and the physician's liability is extinguished.
3. Knox was entitled to summary judgment because there was no genuine issue of material fact and no viable agency-by-estoppel liability remained after the physicians' liability was extinguished.

KEY QUOTATIONS

“Therefore, we hold that agency by estoppel is a derivative claim of vicarious liability whereby the liability of the hospital must flow through the independent-contractor physician. Consequently, there can be no viable claim for agency by estoppel if the statute of limitations against the independent-contractor physician has expired.” (¶ 28)

“Agency by estoppel is not a direct claim against a hospital, but an indirect claim for the vicarious liability of an independent contractor with whom the hospital contracted for professional services.” (¶ 27)

FACTUAL BACKGROUND

Patricia L. Clark underwent chest x-rays at Knox Community Hospital on July 1 and September 2, 1998. Independent-contractor radiologists Mary J. Wall, M.D., and Alan P. Schlesinger, M.D., interpreted the films but did not report an enlarged mass. A third x-ray on January 27, 1999, revealed a mass later diagnosed as carcinoma. Clark sued the hospital under agency by estoppel but did not name the radiologists as defendants before the statute of limitations expired against them.

PROCEDURAL HISTORY

Patricia L. Clark sued James H. Risko, M.D., and others for medical negligence and sued Knox Community Hospital under an agency-by-estoppel theory based on allegedly negligent interpretation of chest x-rays by independent-contractor physicians. The physicians were not named as defendants, and the statute of limitations against them expired. The trial court granted Knox summary judgment and dismissed it, but the court of appeals reversed and remanded. The Supreme Court of Ohio accepted Knox's discretionary appeal, reversed the court of appeals, and reinstated the trial court's judgment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court reversed the court of appeals and reinstated the trial court's judgment granting summary judgment to Knox Community Hospital. The cause was remanded consistent with that disposition.

CASES CITED

- Clark v. Southview Hosp. & Family Health Ctr., 68 Ohio St. 3d 435, 628 N.E.2d 46 (1994)
- Albain v. Flower Hosp., 50 Ohio St. 3d 251, 553 N.E.2d 1038 (1990)
- Taylor v. Protestant Hosp. Assn., 85 Ohio St. 90, 96 N.E. 1089 (1911)
- Avellone v. St. John's Hosp., 165 Ohio St. 467, 135 N.E.2d 410 (1956)
- Klema v. St. Elizabeth's Hosp. of Youngstown, 170 Ohio St. 519, 166 N.E.2d 765 (1960)
- Johnson v. Wagner Provision Co., 141 Ohio St. 584, 49 N.E.2d 925 (1943)
- Councell v. Douglas, 163 Ohio St. 292, 126 N.E.2d 597 (1955)
- Cooper v. Sisters of Charity of Cincinnati, Inc., 27 Ohio St. 2d 242, 272 N.E.2d 97 (1971)
- Rubbo v. Hughes Provision Co., 138 Ohio St. 178, 34 N.E.2d 202 (1941)
- Losito v. Kruse, 136 Ohio St. 183, 24 N.E.2d 705 (1940)
- Herron v. Youngstown, 136 Ohio St. 190, 24 N.E.2d 708 (1940)
- Radcliffe v. Mercy Hosp. Anderson, Hamilton App. Nos. C-960424 and C-960425, 1997 WL 249436 (Ohio Ct. App. May 14, 1997)
- Wells v. Spirit Fabricating, Ltd., 113 Ohio App. 3d 282, 680 N.E.2d 1046 (1996)
- Dickerson v. Yetsko, Cuyahoga App. No. 77636, 2000 WL 1739298 (Ohio Ct. App. Nov. 22, 2000)
- Krasny-Kaplan Corp. v. Flo-Tork, Inc., 66 Ohio St. 3d 75, 609 N.E.2d 152 (1993)
- Whitney v. Horrigan, 112 Ohio App. 3d 511, 679 N.E.2d 315 (1996)
- Travelers Indemn. Co. v. Trowbridge, 41 Ohio St. 2d 11, 321 N.E.2d 787 (1975)