

SUPREME COURT OF RHODE ISLAND

Martin Malinou, Individually and as Executor of the Estate of Etta E. Malinou and as Executor of the Estate of Sheldon Malinou v. The Miriam Hospital et al.

Malinou v. The Miriam Hospital, 24 A.3d 497 (R.I. 2011) · No. No. 2009-87-Appeal · Decided June 24, 2011

SUMMARY

The Rhode Island Supreme Court affirmed summary judgment for the defendants in a wrongful-death and medical-negligence action arising from the death of the plaintiff's mother. The court upheld the exclusion of two proposed expert witnesses for failure to comply with discovery deadlines and concluded that the remaining evidence was insufficient to establish the applicable standard of care, breach, or causation. The court also rejected the plaintiff's loss-of-chance, spoliation, false-death-certificate, and related claims.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Chief Justice Suttell; Suttell, C.J.; Goldberg, J.; Flaherty, J.; Robinson, J.; Indeglia, J.
JURISDICTION	Rhode Island
DECIDED	June 24, 2011
DOCKET	No. 2009-87-Appeal
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from the Superior Court's entry of summary judgment for all defendants in a wrongful-death and medical-negligence action. He also challenged orders precluding two expert witnesses from testifying.
STANDARD OF REVIEW	Discovery sanctions are reviewed for abuse of discretion. Summary judgment is reviewed de novo, viewing admissible evidence in the light most favorable to the nonmoving party and affirming when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published opinion; precedential Rhode Island Supreme Court decision.

PARTIES

Martin Malinou, individually and as executor of the estates of Etta E. Malinou and Sheldon Malinou v. The Miriam Hospital, Steven M. Kempner, M.D., Jean Mary Siddall-Bensson, M.D., Lifespan Corporation, Coastal Medical, Inc., Johanna LaManna, R.N., Randall S. Pellish, M.D., Rhode Island Hospital, Evelyn Asante, R.N., Patricia Brown, R.N., Michael Capicotto, M.D.

TOPICS

medical malpractice

wrongful death

summary judgment

discovery dispute

standard of review

PRACTICE AREAS

medical malpractice

wrongful death

civil procedure

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the Superior Court abused its discretion by precluding two of plaintiff's expert witnesses from testifying because their depositions were not completed by court-ordered deadlines.
2. Whether summary judgment was proper on the medical-negligence and wrongful-death claims because plaintiff lacked competent expert testimony establishing the applicable standard of care, breach, and causation.
3. Whether Rhode Island should adopt a judicially determined medical standard of care that would eliminate the need for expert testimony in this case.
4. Whether the loss-of-chance doctrine required denial of summary judgment.
5. Whether alleged destruction of hospital telephone records supported an independent spoliation claim or barred summary judgment.
6. Whether plaintiff could maintain derivative loss-of-society-and-companionship and negligent-infliction-of-emotional-distress claims despite failure of the underlying negligence claims.
7. Whether the evidence created a genuine issue of material fact that a physician filed a false death certificate in violation of Rhode Island law.

HOLDINGS

1. The Superior Court did not abuse its discretion by precluding Dr. Polsby and Dr. Andrew from testifying after plaintiff repeatedly failed to comply with scheduling and deposition orders despite multiple extensions and express warnings.
2. Summary judgment for defendants was proper because plaintiff failed to present competent expert testimony establishing a deviation from the applicable medical standard of care and that any deviation proximately caused Mrs. Malinou's death.
3. The court declined to replace the established requirement for expert testimony with a judicially determined standard of care because the medical issues in this case were technical and not obvious to a

layperson.

4. Even assuming Rhode Island would adopt the loss-of-chance doctrine, the doctrine would not prevent summary judgment because plaintiff failed to present competent evidence that defendants' alleged negligence proximately caused a lost chance for a better outcome.
5. Alleged destruction of telephone records did not bar summary judgment or create an independent cause of action, and plaintiff's loss-of-society-and-companionship and negligent-infliction-of-emotional-distress claims failed because they depended on the unsuccessful underlying negligence claims.
6. Summary judgment for Dr. Siddall-Bensson was proper because plaintiff presented no competent evidence that the death certificate contained false information or that the death was required to be reported as an accident or an unusual, unnatural, or negligence-related death.

KEY QUOTATIONS

"The decision to impose a particular sanction is within the sound discretion of the trial court." (506)

"The imposition of sanctions under Rule 37 will be overturned only upon a showing of an abuse of discretion by the trial justice." (508)

"In an action for wrongful death, as in any negligence action, a plaintiff must 'establish a standard of care as well as a deviation from that standard.'" (509)

"The negligence alleged by plaintiff was not so evident as to be obvious to a lay person; thus, plaintiff's claim can be established only by expert testimony." (511)

"Loss of chance occurs when 'the defendant's negligent conduct caused the plaintiff to lose a chance to avoid the ultimate harm.'" (512)

FACTUAL BACKGROUND

Etta E. Malinou was ninety-four years old, suffered from dementia and documented dysphagia, and required assistance with feeding. She was hospitalized from January 10 through January 13, 2003, experienced respiratory failure shortly after being fed lunch, and died that evening after life support was withdrawn. Her son alleged that defendants' medical negligence, including feeding and failures to evaluate or examine her, caused aspiration and death, but the available expert testimony did not establish breach or proximate causation.

PROCEDURAL HISTORY

Malinou filed suit on January 13, 2006, alleging negligent medical care caused his mother's death. The Superior Court denied further extensions, precluded two expert witnesses under discovery sanctions, and granted defendants summary judgment because plaintiff lacked competent expert evidence establishing breach and causation. The Supreme Court of Rhode Island denied an earlier petition for certiorari concerning the preclusion orders and affirmed the final judgment.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The record may be returned to the Superior Court.

CASES CITED

- Flanagan v. Blair, 882 A.2d 569, 572-73 (R.I. 2005)
- International Depository, Inc. v. State, 603 A.2d 1119, 1124 (R.I. 1992)
- Margadonna v. Otis Elevator Co., 542 A.2d 232, 233 (R.I. 1988)
- Goulet v. Office-Max, Inc., 843 A.2d 494, 496 (R.I. 2004) (mem.)
- Allen v. South County Hospital, 945 A.2d 289, 290-97 (R.I. 2008)
- Rhode Island Insurers' Insolvency Fund v. Leviton Manufacturing Co., 763 A.2d 590, 594 (R.I. 2000)
- Poulin v. Custom Craft, Inc., 996 A.2d 654, 658 (R.I. 2010)
- Lucier v. Impact Recreation, Ltd., 864 A.2d 635, 638 (R.I. 2005)
- D'Allesandro v. Tarro, 842 A.2d 1063, 1065 (R.I. 2004)
- Boccasile v. Cajun Music Limited, 694 A.2d 686, 689-90 (R.I. 1997)
- Sousa v. Chaset, 519 A.2d 1132, 1135 (R.I. 1987)
- Foley v. St. Joseph Health Services of Rhode Island, 899 A.2d 1271, 1277, 1281 (R.I. 2006)
- Richardson v. Fuchs, 523 A.2d 445, 448 (R.I. 1987)
- Ramage v. Central Ohio Emergency Services, Inc., 64 Ohio St. 3d 97, 592 N.E.2d 828, 834 (1992)
- Tancrelle v. Friendly Ice Cream Corp., 756 A.2d 744, 748-49 (R.I. 2000)
- Mead v. Papa Razzi Restaurant, 840 A.2d 1103, 1108-09 (R.I. 2004)
- Desjarlais v. USAA Insurance Co., 824 A.2d 1272, 1277 (R.I. 2003)
- Normandin v. Levine, 621 A.2d 713, 716 (R.I. 1993)
- Sama v. Cardi Corp., 569 A.2d 432, 433 (R.I. 1990)
- Fiorenzano v. Lima, 982 A.2d 585, 591 (R.I. 2009)
- Swerdlick v. Koch, 721 A.2d 849, 864 (R.I. 1998)
- Contois v. Town of West Warwick, 865 A.2d 1019, 1023-25 (R.I. 2004)
- Mandros v. Prescod, 948 A.2d 304, 310-11 (R.I. 2008)

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