

SUPREME COURT OF VERMONT

Provost v. Fletcher Allen Health Care, Inc.

179 Vt. 545 (2005) · Decided October 6, 2005

SUMMARY

The Vermont Supreme Court reversed and remanded summary judgment for the defendant in a medical malpractice action arising from an allegedly negligent injection that injured the plaintiff’s radial nerve. The court held that the plaintiff’s expert affidavit, although sparse, articulated a sufficient theory of breach and causation to create a genuine issue of material fact, and that competing causation theories should not be weighed on summary judgment.

CASE DETAILS

COURT	Supreme Court of Vermont
JURISDICTION	Vermont
DECIDED	October 6, 2005
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed the Chittenden Superior Court's grant of summary judgment to Fletcher Allen Health Care, Inc. in a medical malpractice action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under the same standard applied by the trial court. The moving party must show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The nonmoving party receives the benefit of all reasonable doubts and inferences, and the court may not weigh competing factual theories or determine credibility at the summary-judgment stage.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Dale Provost, Brenda Provost v. Fletcher Allen Health Care, Inc.

TOPICS

- medical malpractice
- summary judgment
- standard of review
- standard of care
- proximate cause

PRACTICE AREAS

- medical malpractice
- health law
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether plaintiffs' expert affidavit sufficiently established a medical-malpractice theory to create a genuine issue of material fact under Vermont's summary-judgment standard.
2. Whether the trial court improperly weighed the plaintiffs' causation theory against competing possible explanations for the injury.
3. Whether review should proceed under the abuse-of-discretion standard applicable to evidentiary foundation rulings or under the de novo standard applicable to summary judgment.

HOLDINGS

1. The affidavit was sufficient to create a genuine issue of material fact because, although sparse, it articulated that Dr. Esparza breached the standard of care by inserting the needle too deeply and that the breach proximately caused Provost's radial-nerve injury.
2. The trial court could not weigh the plaintiffs' expert theory against other possible causes of the injury or assess the comparative plausibility of competing factual explanations on summary judgment.
3. The appeal was governed by de novo review of summary judgment rather than abuse-of-discretion review of an evidentiary ruling.

KEY QUOTATIONS

“On summary judgment, however, the question is not how plaintiffs’ theory measures up against any other — that weighing is left to the trier of fact.” (179 Vt. at 547)

“Summary judgment is improper where the evidence is subject to conflicting interpretations, regardless of a judge’s perceptions of the comparative plausibility of facts offered by either party or the likelihood that a party might prevail at trial.” (179 Vt. at 548)

“Here, plaintiffs did enough to raise a disputed factual issue. Therefore, the trial court should not have granted summary judgment.” (179 Vt. at 549)

FACTUAL BACKGROUND

Dale Provost received an intramuscular Benadryl injection from Dr. Vivian Esparza at a clinic owned and operated by Fletcher Allen Health Care, Inc. During the injection, Dr. Esparza acknowledged that the needle may have contacted bone. Provost soon developed pain and numbness in his arm, and a later examination determined that he had permanent, significant impairment to the radial nerve. Plaintiffs' expert, Dr. John Johansson, opined that the injection breached the applicable standard of care and proximately caused the injury.

PROCEDURAL HISTORY

Dale Provost sued Fletcher Allen Health Care, Inc., alleging that its employee negligently administered a Benadryl injection, causing permanent radial-nerve injury, and that the health-care provider was vicariously liable. The superior court granted defendant's summary-judgment motion, concluding that plaintiffs' expert affidavit did not adequately state the standard of care, breach, or causation. The Vermont Supreme Court

reversed and remanded, holding that the affidavit articulated a sufficient theory of medical malpractice to create a genuine issue of material fact.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the trial court for further proceedings consistent with the opinion.

CASES CITED

- Hardwick Recycling & Salvage, Inc. v. Acadia Ins. Co., 2004 VT 124, ¶ 14, 177 Vt. 421, 869 A.2d 82
- Human Rights Comm’n v. Benevolent & Protective Order of Elks, 2003 VT 104, ¶ 11, 176 Vt. 125, 839 A.2d 576
- General Electric Co. v. Joiner, 522 U.S. 136, 141-43 (1997)
- Sharp v. Transp. Bd., 141 Vt. 480, 486, 451 A.2d 1074, 1076 (1982)
- Smith v. Parrott, 2003 VT 64, ¶ 11, 175 Vt. 375, 833 A.2d 843
- Larson v. Candlish, 144 Vt. 499, 502, 480 A.2d 417, 418 (1984)
- Braun v. Humiston, 140 Vt. 302, 308, 437 A.2d 1388, 1390 (1981)
- Soucy v. Soucy Motors, Inc., 143 Vt. 615, 471 A.2d 224 (1983)
- Pierce v. Riggs, 149 Vt. 136, 139-40, 540 A.2d 655, 657 (1987)
- Morais v. Yee, 162 Vt. 366, 372, 648 A.2d 405, 409 (1994)
- Peterson v. Post, 119 Vt. 445, 451, 128 A.2d 668, 671 (1957)
- Margison v. Spriggs, 146 Vt. 116, 118, 499 A.2d 756, 758 (1985)

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