

SUPREME COURT OF WASHINGTON

Berger v. Sonneland

144 Wn. 2d 91 (2001) · Decided July 5, 2001

SUMMARY

The Washington Supreme Court considers whether a patient may pursue a claim under chapter 7.70 RCW for a physician’s unauthorized disclosure of confidential health information, rather than being limited to the remedies in the Uniform Health Care Information Act. The court holds that such a cause of action may arise when the disclosure occurs as part of health care, but concludes that expert medical testimony was required to establish causation of the plaintiff’s emotional distress given her preexisting medical conditions. The court also holds that objectively verifiable symptoms are not required for this claim because it is not an action for negligent infliction of emotional distress.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Smith, J.; Alexander, C.J.; Johnson, J.; Bridge, J.; Chambers, J.; Owens, J.
JURISDICTION	Washington
DECIDED	July 5, 2001
DISPOSITION	reversed
PROCEDURAL POSTURE	The Washington Supreme Court granted discretionary review of a Court of Appeals decision reversing summary judgment for the physician in a medical-malpractice action based on unauthorized disclosure of confidential patient information.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under the same inquiry applied by the trial court. The facts and reasonable inferences are viewed in the light most favorable to the nonmoving party, and statutory-interpretation questions are reviewed de novo.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	John Sonneland, M.D. v. Suzan Berger

TOPICS

- medical malpractice
- medical records privacy
- health law
- statutory interpretation
- standard of review

PRACTICE AREAS

medical malpractice

health law

torts

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether the Uniform Health Care Information Act, chapter 70.02 RCW, provides the exclusive remedy for a physician's unauthorized disclosure of confidential patient information.
2. Whether chapter 7.70 RCW provides a cause of action for unauthorized disclosure of confidential information obtained by a physician in the physician-patient relationship.
3. Whether expert medical evidence was required to establish causation of Berger's alleged emotional distress under chapter 7.70 RCW.
4. Whether objectively verifiable symptoms were required to support Berger's emotional-distress claim under chapter 7.70 RCW.

HOLDINGS

1. The Uniform Health Care Information Act is not the sole or exclusive remedy for unauthorized disclosure of a patient's confidential information.
2. Chapter 7.70 RCW supports a cause of action for a physician's unauthorized disclosure of confidential information when the injury results from health care and the disclosure occurs while the physician is using professional skills to examine, diagnose, treat, or care for the patient.
3. Under the particular facts of this case, expert medical evidence was essential to establish causation of Berger's emotional distress because the cause of her symptoms was not readily observable by laypersons.
4. Berger was not required to establish objectively verifiable symptoms to prove emotional-distress damages under chapter 7.70 RCW because she did not assert negligent infliction of emotional distress.

KEY QUOTATIONS

"The Uniform Health Care Information Act, chapter 70.02 RCW, is not the sole or exclusive remedy for unauthorized disclosure of a patient's confidential information." (106)

"Expert medical evidence is required under the particular facts of this case to establish a claim under chapter 7.70 RCW because causation is not observable by laypersons." (114)

"We reverse the Court of Appeals and affirm the decision of the Spokane County Superior Court granting summary judgment in favor of Petitioner John Sonneland, M.D." (115)

FACTUAL BACKGROUND

Berger consulted physician John Sonneland about substantial gastrointestinal and other health problems, including abdominal pain, chronic diarrhea, vomiting, weight loss, and prior surgeries. Without Berger's authorization, Sonneland contacted Berger's former husband, a physician, and discussed her request for narcotic medication and past prescription-drug use. The former husband used that information in a Montana custody

proceeding. Berger alleged that the disclosure caused insomnia, anxiety, stress, worsening gastrointestinal symptoms, weight loss, and attorney fees, but she presented no expert medical evidence on causation.

PROCEDURAL HISTORY

Berger sued Sonneland in Spokane County Superior Court for breach of confidentiality, breach of fiduciary relationship, violation of the Uniform Health Care Information Act, and medical malpractice. The first three claims were dismissed with prejudice, and the superior court ultimately granted summary judgment for Sonneland on the remaining medical-malpractice claim because Berger lacked evidence establishing causation and objectively verifiable emotional-distress symptoms. The Court of Appeals reversed and remanded, holding that a tort action existed under RCW 7.70.030(1) and that objective symptomatology was not required. The Supreme Court granted review, reversed the Court of Appeals, and affirmed the superior court.

DISPOSITION

reversed

CASES CITED

- Caughell v. Group Health Co-op of Puget Sound, 124 Wn. 2d 217, 233, 876 P.2d 898 (1994)
- Folsom v. Burger King, 135 Wn. 2d 658, 663, 958 P.2d 301 (1998)
- Lamson v. McDonnell Douglas Corp., 91 Wn. 2d 345, 349, 588 P.2d 1346 (1979)
- Mt. Park Homeowners Ass'n v. Tydings, 125 Wn. 2d 337, 341, 883 P.2d 1383 (1994)
- Syrovoy v. Alpine Res., Inc., 122 Wn. 2d 544, 548 n.3, 859 P.2d 51 (1993)
- Taggart v. State, 118 Wn. 2d 195, 199, 822 P.2d 243 (1992)
- W. Telepage, Inc. v. City of Tacoma, 140 Wn. 2d 599, 607-609, 998 P.2d 884 (2000)
- Enter. Leasing, Inc. v. City of Tacoma, 139 Wn. 2d 546, 551, 988 P.2d 961 (1999)
- State v. McCraw, 127 Wn. 2d 281, 288, 898 P.2d 838 (1995)
- Sidis v. Brodie/Dohrmann, Inc., 117 Wn. 2d 325, 329, 815 P.2d 781 (1991)
- State v. Smith, 117 Wn. 2d 263, 271, 814 P.2d 652 (1991)
- Davis v. Dep't of Licensing, 137 Wn. 2d 957, 963, 977 P.2d 554 (1999)
- Whatcom County v. City of Bellingham, 128 Wn. 2d 537, 546, 909 P.2d 1303 (1996)
- State v. Tili, 139 Wn. 2d 107, 115, 985 P.2d 365 (1999)
- Loudon v. Mhyre, 110 Wn. 2d 675, 680, 756 P.2d 138 (1988)
- Smith v. Driscoll, 94 Wash. 441, 442, 162 P. 572 (1917)
- Estate of Sly v. Linville, 75 Wn. App. 431, 878 P.2d 1241 (1994)
- Branom v. State, 94 Wn. App. 964, 968-970, 974 P.2d 335, review denied, 138 Wn. 2d 1023, 989 P.2d 1136 (1999)
- State v. Pacheco, 125 Wn. 2d 150, 154, 882 P.2d 183 (1994)
- State v. Sanchez, 73 Wn. App. 486, 488, 869 P.2d 1133 (1994)
- Shoreline Cmty. Coll. Dist. No. 7 v. Employment Sec. Dep't, 120 Wn. 2d 394, 403, 842 P.2d 938 (1992)

- Harris v. Groth, 99 Wn. 2d 438, 449, 663 P.2d 113 (1983)
- Douglas v. Bussabarger, 73 Wn. 2d 476, 479, 438 P.2d 829 (1968)
- Bennett v. Dep't of Labor & Indus., 95 Wn. 2d 531, 533, 627 P.2d 104 (1981)
- Reese v. Stroh, 128 Wn. 2d 300, 308, 907 P.2d 282 (1995)
- Young v. Key Pharms., Inc., 112 Wn. 2d 216, 225-228, 770 P.2d 182 (1989)
- Hunsley v. Giard, 87 Wn. 2d 424, 436, 553 P.2d 1096 (1976)
- Nord v. Shoreline Sav. Ass'n, 116 Wn. 2d 477, 485, 805 P.2d 800 (1991)
- Hegel v. McMahon, 136 Wn. 2d 122, 126, 132, 135, 960 P.2d 424 (1998)