

NEW YORK COURT OF APPEALS

Bazakos v. Lewis

12 N.Y.3d 631 (2009) · Decided June 24, 2009

SUMMARY

The New York Court of Appeals held that a claim alleging negligent physical handling by a physician during an independent medical examination is a medical malpractice claim. Accordingly, the claim is governed by CPLR 214-a’s two-year-and-six-month statute of limitations rather than the three-year period for ordinary personal injury actions. The court reversed the Appellate Division and reinstated the dismissal as untimely, over a dissent.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Judge Smith; Chief Judge Lippman; Judge Ciparick; Judge Graffeo; Judge Read; Judge Pigott; Judge Jones
JURISDICTION	New York
DECIDED	June 24, 2009
DISPOSITION	reversed
PROCEDURAL POSTURE	Lewis appealed from an Appellate Division order reversing Supreme Court’s dismissal of Bazakos’s action as untimely. The Appellate Division granted leave to appeal and certified whether its order was properly made.
STANDARD OF REVIEW	De novo review of the statute-of-limitations classification and dismissal order
PRECEDENTIAL VALUE	Published precedential opinion of the New York Court of Appeals
PARTIES	Philip Lewis v. Lewis Bazakos

TOPICS

- medical malpractice
- statute of limitations
- personal injury
- statutory interpretation
- civil procedure

PRACTICE AREAS

- medical malpractice
- statute of limitations
- personal injury
- civil procedure

QUESTIONS PRESENTED

1. Whether a claim alleging that a physician negligently injured an examinee while performing an independent medical examination is an action for medical malpractice under CPLR 214-a.
2. Whether the action was timely commenced under the three-year limitations period for ordinary personal injury actions or was barred by CPLR 214-a's two-year-and-six-month limitations period.

HOLDINGS

1. A claim against a doctor for alleged negligence in performing an independent medical examination is a claim for medical malpractice, even though the examination is conducted for an adversary and does not involve a traditional treatment relationship.
2. Bazakos's action was untimely because it was commenced approximately two years and eleven months after the examination, beyond CPLR 214-a's two-year-and-six-month limitations period.

KEY QUOTATIONS

"We hold that a claim against a doctor for his alleged negligence in performing an independent medical examination (IME) is a claim for malpractice, governed by CPLR 214-a's two-year-and-six-month statute of limitations." (633)

"That is a claim for medical malpractice, and it is governed by the two-year-and-six-month statute of limitations." (635)

"The limited relationship that we recognize imposes a duty on the IME physician to perform the examination in a manner not to cause physical harm to the examinee." (635)

FACTUAL BACKGROUND

Bazakos was required in separate automobile-accident litigation to undergo an independent medical examination under CPLR 3121. Dr. Philip Lewis performed the examination on November 27, 2001, and Bazakos alleged that Lewis injured him by forcefully rotating and pulling his head. Bazakos commenced this action on October 15, 2004, approximately two years and eleven months after the examination.

PROCEDURAL HISTORY

Bazakos sued Dr. Lewis for allegedly injuring him during a court-ordered independent medical examination. Supreme Court dismissed the action as barred by the two-year-and-six-month medical-malpractice limitations period. The Appellate Division reversed, holding that the three-year limitations period for ordinary personal injury actions applied because no physician-patient relationship existed. The Court of Appeals reversed the Appellate Division, reinstated Supreme Court's order, and answered the certified question in the negative.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order of Supreme Court was reinstated; no further remand instructions were stated.

CASES CITED

- Evangelista v. Zolan, 247 A.D.2d 508 (2d Dep't 1998)
- Twitchell v. MacKay, 78 A.D.2d 125 (4th Dep't 1980)
- Payette v. Rockefeller Univ., 220 A.D.2d 69 (1st Dep't 1996)
- Weiner v. Lenox Hill Hosp., 88 N.Y.2d 784 (1996)
- Bleiler v. Bodnar, 65 N.Y.2d 65 (1985)
- Dyer v. Trachtman, 470 Mich. 45, 679 N.W.2d 311 (2004)
- Scott v. Uljanov, 74 N.Y.2d 673 (1989)

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