

SUPREME COURT OF TENNESSEE

Dewald v. HCA Health Services of Tennessee

251 S.W.3d 423 (Tenn. 2008) · No. No. M2006-02369-SC-R11-CV · Decided May 6, 2008

SUMMARY

The Tennessee Supreme Court considered whether a hospital could be held vicariously liable for the alleged negligence of an independent-contractor radiologist under an apparent-agency theory. Applying the standard adopted in the companion case *Boren v. Weeks*, the court reversed summary judgment for the hospital and remanded for further proceedings concerning notice and the elements of apparent agency.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	William M. Barker, C.J.; Janice M. Holder, J.; Cornelia A. Clark, J.; Gary R. Wade, J.
JURISDICTION	Tennessee
DECIDED	May 6, 2008
DOCKET	No. M2006-02369-SC-R11-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiffs sought review of the Court of Appeals' interlocutory reversal of the trial court's partial denial of StoneCrest's motion for summary judgment. The Tennessee Supreme Court granted permission to appeal and reviewed whether summary judgment was proper on the plaintiffs' apparent-agency theory of vicarious liability.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, with no presumption of correctness, viewing the evidence in the light most favorable to the nonmoving party. Summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Tennessee; precedential.
PARTIES	Amanda Lynn Dewald, Thomas B. Dewald v. HCA Health Services of Tennessee, Inc., d/b/a StoneCrest Medical Center

TOPICS

medical malpractice

vicarious liability

summary judgment

standard of review

appellate procedure

PRACTICE AREAS

medical malpractice

health law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in holding that no genuine issues of material fact existed concerning StoneCrest's potential apparent-agency relationship with Dr. Lamballe.
2. Whether StoneCrest was entitled to summary judgment on the plaintiffs' claim that it was vicariously liable for the alleged negligence of an independent-contractor radiologist.

HOLDINGS

1. The Court of Appeals erred in granting StoneCrest summary judgment because the apparent-agency claim had to be evaluated under the Restatement (Second) of Torts § 429 analysis adopted in *Boren v. Weeks*, and the record required reconsideration under that standard.
2. Summary judgment is appropriate only when the moving party demonstrates that no genuine issues of material fact exist and that the party is entitled to judgment as a matter of law; appellate review is de novo without a presumption of correctness.

KEY QUOTATIONS

“To hold a hospital vicariously liable for the negligent or wrongful acts of an independent contractor physician, a plaintiff must show that (1) the hospital held itself out to the public as providing medical services; (2) the plaintiff looked to the hospital rather than to the individual physician to perform those services; and (3) the patient accepted those services in the reasonable belief that the services were provided by the hospital or a hospital employee.” (426)

“In light of our decision in Boren, including the adoption of the Restatement (Second) of Torts § 429, we now reverse the Court of Appeals' decision granting summary judgment to StoneCrest.” (426)

FACTUAL BACKGROUND

Amanda Dewald went to StoneCrest's emergency room with lower abdominal pain and nausea. An ultrasound suggested decreased arterial flow to her left ovary, but a radiologist, Dr. Adrian Lamballe, mistakenly dictated and electronically signed a report concerning another patient's chest x-rays and lung cancer. Dewald's primary physician relied on the erroneous report, and Dewald was hospitalized for two days believing she had lung cancer. Lamballe was an independent practitioner with staff privileges, and the hospital's admission form stated that radiologists were not hospital agents or employees, although Dewald testified that she believed the physicians were hospital employees and did not read the form.

PROCEDURAL HISTORY

The Dewalds sued StoneCrest and Dr. Adrian Lamballe in Rutherford County Circuit Court, alleging medical negligence. The trial court granted StoneCrest summary judgment on the primary-negligence claims but denied

summary judgment on the apparent-agency vicarious-liability claims. The Court of Appeals vacated that ruling and directed entry of summary judgment for StoneCrest on all claims. The Tennessee Supreme Court reversed and remanded for reconsideration under the standard adopted in the companion case *Boren v. Weeks*.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the trial court for further proceedings and reconsideration of StoneCrest's motion for summary judgment consistent with the apparent-agency analysis and standard adopted in *Boren v. Weeks*.

CASES CITED

- *Boren v. Weeks*, 251 S.W.3d 426 (Tenn. 2008)
- *Sword v. NKC Hosps., Inc.*, 714 N.E.2d 142, 152 (Ind. 1999)
- *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993)
- *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002)
- *Eyring v. Fort Sanders Parkwest Med. Ctr., Inc.*, 991 S.W.2d 230, 236 (Tenn. 1999)
- *Blair v. W. Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004)