

SUPREME COURT OF FLORIDA

Florida Birth-Related Neurological Injury Compensation Ass'n v.
Department of Administrative Hearings

29 So. 3d 992 (Fla. 2010) · No. Nos. SC08-1317, SC08-1318, SC08-1319 · Decided January 14, 2010

SUMMARY

The Supreme Court of Florida held that both participating physicians and hospitals with participating physicians on staff must provide obstetrical patients with notice of participation in the Florida Birth-Related Neurological Injury Compensation Plan under section 766.316, Florida Statutes (1997). The court further held that the notice requirement is severable as to defendant liability: a claimant may pursue civil remedies only against a person or entity required to provide notice that failed to do so, while proper notice shields the notifying party from civil liability under the plan. The court quashed the relevant Second District decisions and remanded for further proceedings concerning potential liability and immunity.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Polston, J.; Quince, C.J.; Pariente, J.; Lewis, J.; Labarga, J.; Perry, J.
JURISDICTION	Florida
DECIDED	January 14, 2010
DOCKET	Nos. SC08-1317, SC08-1318, SC08-1319
DISPOSITION	quashed
PROCEDURAL POSTURE	Consolidated review of two Florida Second District Court of Appeal decisions that certified a question of great public importance concerning whether a participating physician's predelivery notice satisfies section 766.316 when the hospital provides no notice.
STANDARD OF REVIEW	De novo review of the district courts' interpretation of section 766.316.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; binding precedent in Florida.
PARTIES	Florida Birth-Related Neurological Injury Compensation Association, Mike Kocher, et al. v. Department of Administrative Hearings, Bayfront Medical Center, Inc.

TOPICS

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administrative law

statutory interpretation

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether a participating physician's predelivery notice satisfies section 766.316 when a hospital with a participating physician on its staff provides no notice.
2. Whether section 766.316 requires both participating physicians and hospitals with participating physicians on staff to provide notice.
3. Whether the notice obligation is severable as to the liability of the physician and hospital, such that a claimant may pursue civil remedies against only the person or entity that failed to provide notice.
4. Whether a hospital's staff includes participating physicians with staff privileges rather than only physician employees.
5. Whether All Children's Hospital could invoke NICA immunity based on the unresolved effect of Bayfront's failure to provide notice.

HOLDINGS

1. No. A participating physician's predelivery notice does not satisfy the statutory notice requirement when the hospital independently required to provide notice fails to do so.
2. Yes. If either the participating physician or the hospital with participating physicians on its staff fails to provide notice, the claimant may either accept NICA remedies and forgo civil suits against persons or entities involved in the labor or delivery, or pursue a civil suit only against the person or entity that failed to provide notice and forgo NICA remedies.
3. No. A hospital is not excluded from the notice requirement merely because the participating physician is not its employee; the relevant inquiry is whether the hospital has participating physicians with staff privileges.
4. The issue was remanded to the Second District because the parties' additional arguments concerning All Children's immunity had not been addressed there.

KEY QUOTATIONS

"We answer the certified question in the negative and quash the Second District's decisions in both All Children's and Bayfront. We hold that in order to satisfy the notice requirement of section 766.316, Florida Statutes (1997), both participating physicians and hospitals with participating physicians on staff must provide obstetrical patients with notice of their participation in the plan." (29 So. 3d at 994-995)

"Affording the statute its plain and ordinary meaning, we find that both participating physicians and hospitals with a participating physician on staff are required to provide notice to obstetrical patients of their rights and

limitations under the plan.” (29 So. 3d at 998)

“Consequently, under our holding today, if either the participating physician or the hospital with participating physicians on its staff fails to give notice, then the claimant can either (1) accept NICA remedies and forgo any civil suit against any other person or entity involved in the labor or delivery, or (2) pursue a civil suit only against the person or entity who failed to give notice and forgo any remedies under NICA.” (29 So. 3d at 998-999)

FACTUAL BACKGROUND

Two infants, Christopher Kocher and Courtney Lynn Glenn, suffered birth-related neurological injuries at Bayfront Medical Center in unrelated incidents. In each matter, the participating delivering physician provided timely predelivery notice of participation in the Florida Birth-Related Neurological Injury Compensation Plan, but Bayfront did not provide the required notice. The resulting proceedings concerned whether NICA's exclusive-remedy and immunity provisions applied despite the hospital's failure to give notice.

PROCEDURAL HISTORY

In the Kocher matter, an administrative law judge found that the infant's injury was compensable under NICA, that the physician had provided notice but Bayfront had not, and that the failure of hospital notice permitted civil remedies. The Second District reversed, holding that the physician's notice was sufficient. In the Glenn matter, an ALJ similarly found that Bayfront's failure to provide notice precluded NICA exclusivity and immunity; the Second District reversed based on its Bayfront decision. The Supreme Court consolidated the cases, answered the certified question in the negative, quashed both Second District decisions, and remanded for further proceedings.

DISPOSITION

quashed

REMAND INSTRUCTIONS

Remand for further proceedings, including consideration by the Second District of the unresolved arguments concerning whether Bayfront's failure to provide notice was imputed to All Children's and whether the injuries claimed against All Children's occurred outside labor, delivery, or immediate postresuscitative efforts.

CASES CITED

- All Children's Hosp., Inc. v. Dep't of Admin. Hearings, 989 So. 2d 2 (Fla. 2d DCA 2008)
- Bayfront Med. Ctr., Inc. v. Fla. Birth-Related Neurological Injury Comp. Ass'n, 982 So. 2d 704 (Fla. 2d DCA 2008)
- Galen of Fla., Inc. v. Braniff, 696 So. 2d 308 (Fla. 1997)
- Brass & Singer, P.A. v. United Auto. Ins. Co., 944 So. 2d 252 (Fla. 2006)
- GTC, Inc. v. Edgar, 967 So. 2d 781 (Fla. 2007)
- Holly v. Auld, 450 So. 2d 217 (Fla. 1984)

- Kephart v. Hadi, 932 So. 2d 1086 (Fla. 2006)
- Zuckerman v. Alter, 615 So. 2d 661 (Fla. 1993)
- St. Petersburg Bank & Trust Co. v. Hamm, 414 So. 2d 1071 (Fla. 1982)
- A.R. Douglass, Inc. v. McRaney, 137 So. 157 (Fla. 1931)
- Bd. of Regents v. Athey, 694 So. 2d 46 (Fla. 1st DCA 1997)
- Bayfront Med. Ctr., Inc. v. Div. of Admin. Hearings, 841 So. 2d 626 (Fla. 2d DCA 2003)
- Fla. Birth-Related Neurological Injury Comp. Ass'n v. Fla. Div. of Admin. Hearings, 948 So. 2d 705 (Fla. 2007)
- All Children's Hosp., Inc. v. Dep't of Admin. Hearings, 863 So. 2d 452 (Fla. 2d DCA 2003)

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