

SUPREME COURT OF CONNECTICUT

Dugan v. Mobile Medical Testing Services, Inc., 265 Conn. 791

830 A.2d 752 (2003) · Decided September 23, 2003

SUMMARY

The Connecticut Supreme Court considered whether a medical services provider hired by an employer to conduct a fitness-for-duty examination owed a duty of care to the examined employee. Applying New York law under Connecticut's most-significant-relationship conflicts analysis, the court held that the claim sounded in medical malpractice and that the provider generally had no duty to disclose the abnormal EKG. The court nevertheless reversed summary judgment because the examining physician's statement could fall within an exception for affirmative treatment or advice, creating a fact issue.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Zarella, J.
JURISDICTION	Connecticut
DECIDED	September 23, 2003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiffs appealed from the trial court's grant of summary judgment for the defendants in a negligence and medical-malpractice action arising from an employer-sponsored fitness-for-duty examination. The appeal was transferred from the Appellate Court to the Supreme Court of Connecticut.
STANDARD OF REVIEW	The existence of a duty is a question of law reviewed de novo or plenary. Summary judgment is proper only when, viewing the evidence in the light most favorable to the nonmoving party, there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Connecticut
PARTIES	Joseph Dugan, Patricia Dugan v. Mobile Medical Testing Services, Inc., Richard B. Weltman

TOPICS

medical malpractice

duty of care

professional negligence

personal injury

loss of consortium

PRACTICE AREAS

medical malpractice

professional negligence

conflict of laws

summary judgment

personal injury

QUESTIONS PRESENTED

1. Which state's substantive law governs whether an employer-retained medical services provider owed Dugan a duty of care?
2. Whether Dugan's claim sounded in medical malpractice rather than ordinary negligence under New York law.
3. Whether, under New York law, an employer-retained provider conducting a fitness-for-duty examination can owe a duty to the employee when its personnel affirmatively treat or advise the employee.
4. Whether the physician's statement concerning Dugan's EKG created a genuine issue of material fact regarding affirmative treatment or advice sufficient to preclude summary judgment.

HOLDINGS

1. New York substantive law governs the duty issue because New York has the most significant relationship to the fitness-for-duty examination and the parties' relationship.
2. Dugan's claim that Mobile Medical failed to notify him of an abnormal EKG sounds solely in medical malpractice rather than ordinary negligence.
3. Under New York law, a physician or medical services provider retained by an employer to conduct a fitness-for-duty examination ordinarily owes no duty of care to the employee based solely on the examination; a duty may arise if the provider affirmatively treats or advises the employee as to treatment.
4. Summary judgment was improper because a genuine issue of material fact existed as to whether Keefe's statement about Dugan's EKG constituted affirmative treatment or advice and whether Dugan reasonably relied on it.

KEY QUOTATIONS

"[T]he determination of whether a duty exists between individuals is a question of law. . . . Only if a duty is found to exist does the trier of fact go on to determine whether the defendant has violated that duty. . . . When the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (807)

"There must be some showing that the physician affirmatively treated the patient or affirmatively advised him to be treated." (813)

"[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way." (815)

"The movant must show that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact." (815)

FACTUAL BACKGROUND

Mobile Medical contracted with the City of Yonkers to conduct physical examinations of firefighters and determine their fitness for duty. During Joseph Dugan's September 11, 1995 examination, an EKG was administered under the supervision of physician Gretchen Keefe, and Dugan asked Keefe about the results. Keefe allegedly told him, "Everything looks fine. We only found one irregular heartbeat." Dugan later received a report stating that his EKG was abnormal and recommending follow-up, but before then he suffered a heart attack and alleged that he had relied on Keefe's statement in foregoing further medical treatment.

PROCEDURAL HISTORY

Mobile Medical performed a fitness-for-duty examination of Joseph Dugan, including an EKG, pursuant to a contract with the City of Yonkers. After Dugan suffered a heart attack, he sued Mobile Medical and Weltman, alleging that they negligently failed to notify him of an abnormal EKG. The trial court granted the defendants' motion for summary judgment, concluding that no physician-patient relationship and therefore no duty of care existed. The Supreme Court reversed and remanded because New York law applied and a genuine issue existed as to whether the examining physician's statement constituted affirmative treatment or advice that could give rise to a duty.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings according to law, including resolution of the factual issue whether Keefe's statement constituted affirmative treatment or advice and, if so, whether the defendants owed and breached a duty of care.

CASES CITED

- Lee v. New York, 162 App. Div. 2d 34, 560 N.Y.S.2d 700 (1990)
- Murphy v. Blum, 160 App. Div. 2d 914, 554 N.Y.S.2d 640 (1990)
- O'Connor v. O'Connor, 201 Conn. 632, 519 A.2d 13 (1986)
- Williams v. State Farm Mutual Automobile Ins. Co., 229 Conn. 359, 641 A.2d 783 (1994)
- Schroeder v. Triangulum Associates, 259 Conn. 325, 789 A.2d 459 (2002)
- Interface Flooring Systems, Inc. v. Aetna Casualty & Surety Co., 261 Conn. 601, 804 A.2d 201 (2002)
- Lodge v. Arett Sales Corp., 246 Conn. 563, 717 A.2d 215 (1998)
- Weiner v. Lenox Hill Hospital, 88 N.Y.2d 784, 673 N.E.2d 914, 650 N.Y.S.2d 629 (1996)
- Scott v. Uljanov, 74 N.Y.2d 673, 541 N.E.2d 398, 543 N.Y.S.2d 369 (1989)
- Twitchell v. MacKay, 78 App. Div. 2d 125, 434 N.Y.S.2d 516 (1980)

- Bleiler v. Bodnar, 65 N.Y.2d 65, 479 N.E.2d 230, 489 N.Y.S.2d 885 (1985)
- Miller v. United Technologies Corp., 233 Conn. 732, 660 A.2d 810 (1995)
- Haesche v. Kissner, 229 Conn. 213, 640 A.2d 89 (1994)
- Santopietro v. New Haven, 239 Conn. 207, 682 A.2d 106 (1996)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/connecticut-supreme-court-of-connecticut/2003/dugan-v-mobile-medical-testing-services-inc-265-conn-791-muujht3k>