

SUPREME COURT OF SOUTH DAKOTA

Schafer v. Shopko Stores, Inc.

741 N.W.2d 758 (S.D. 2007) · No. No. 24436 · Decided November 7, 2007

SUMMARY

The Supreme Court of South Dakota affirmed summary judgment for Shopko Stores, holding that a pharmacy that dispenses a validly prescribed Schedule II drug to the patient's authorized agent is not liable under South Dakota's Drug Dealer Liability Act for the agent's consumption of the drug. The court harmonized the statutory provisions governing pharmacists, prescriptions, agents, and ultimate users and concluded that imposing liability for the lawful dispensing would produce an absurd result.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Meierhenry, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Sabers, Justice; Zinter, Justice
JURISDICTION	South Dakota
DECIDED	November 7, 2007
DOCKET	No. 24436
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from the circuit court's grant of summary judgment in favor of Shopko.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. Questions of statutory interpretation are reviewed de novo, and no deference is given to the circuit court's conclusions of law.
PRECEDENTIAL VALUE	published opinion; precedential
PARTIES	Jeanna Schafer, as Guardian Ad Litem of T.F. and T.F. v. Shopko Stores, Inc., Garry Freier, Avriel Hertz

TOPICS

- statutory interpretation
- plain meaning rule
- absurdity doctrine
- summary judgment
- civil procedure

PRACTICE AREAS

statutory interpretation

health law

torts

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether a pharmacy that dispenses a validly prescribed Schedule II controlled substance to the patient's authorized agent may be held liable under the South Dakota Drug Dealer Liability Act for the agent's consumption of the drug.
2. Whether summary judgment was proper where Shopko had filled and delivered the prescriptions pursuant to a valid prescription order.

HOLDINGS

1. A pharmacist that validly dispenses a prescribed Schedule II drug to the patient's authorized agent does not participate in the illegal drug market within the meaning of the Drug Dealer Liability Act merely because the drug is delivered to the agent rather than directly to the ultimate user.
2. Summary judgment in favor of Shopko was proper because the undisputed facts showed that Shopko acted pursuant to a valid prescription order and its conduct did not fall within the Drug Dealer Liability Act.

KEY QUOTATIONS

“Based on the language of the relevant statutes, we conclude that the Legislature did not intend for a pharmacist to be held liable under these circumstances.” (741 N.W.2d at 761)

“To interpret and apply the law as Schafer urges would make Shopko liable for a legal act.” (741 N.W.2d at 763)

FACTUAL BACKGROUND

Shopko filled two valid prescriptions for morphine sulfate, a Schedule II controlled substance, issued for Tully Knigge. Knigge, who had chronic pain and often could not travel, gave the prescriptions and a signed check to Shane Feistner, who was acting with Knigge's knowledge and consent. Shopko dispensed the prescriptions to Feistner, who consumed some of the morphine and later died from asphyxiation after aspirating stomach contents; the record also indicated that Feistner consumed a potentially toxic amount of Xanax that he did not obtain from Knigge.

PROCEDURAL HISTORY

Schafer sued Shopko under South Dakota's Drug Dealer Liability Act, alleging that Shopko unlawfully participated in the illegal drug market by dispensing morphine prescriptions to an agent of the patient rather than directly to the ultimate user. The circuit court granted Shopko summary judgment. The South Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- King v. Landguth, 2007 SD 2, 726 N.W.2d 603
- Martinmaas v. Engelmann, 2000 SD 85, 612 N.W.2d 600
- Moss v. Guttormson, 1996 SD 76, 551 N.W.2d 14
- U.S. West Communications, Inc. v. Public Utility Commission, 505 N.W.2d 115 (S.D. 1993)
- MGA Ins. Co., Inc. v. Goodsell, 2005 SD 118, 707 N.W.2d 483
- Moeller v. Weber, 2004 SD 110, 689 N.W.2d 1
- Wiersma v. Maple Leaf Farms, 1996 SD 16, 543 N.W.2d 787
- Zubke v. Melrose Township, 2007 SD 43, 731 N.W.2d 918

OPINION

MEIERHENRY, J.

741 N.W.2d 758 (2007) 2007 SD 116 Jeanna SCHAFER, as Guardian Ad Litem of T.F. and T.F., Plaintiff and Appellant, v. SHOPKO STORES, INC., a foreign Corporation, Garry Freier, and Avriel Hertz, Defendants and Appellees. No. 24436. Supreme Court of South Dakota. Considered on Briefs October 1, 2007. Decided November 7, 2007. *759 Patrick T. Pardy of Mumford, Protsch and Pardy, Howard, South Dakota; Gary W. Schumacher of Wilkinson & Wilkinson, DeSmet, South Dakota, Attorneys for plaintiff and appellant.

Edwin E. Evans, Mitchell A. Peterson of Davenport, Evans, Hurwitz & Smith L.L.P., Sioux Falls, South Dakota, Attorneys for defendants and appellees. MEIERHENRY, Justice. [¶ 1.] Jeanna Schafer, as Guardian Ad Litem of T.F. and T.F. (Schafer), filed an action against Shopko Stores, Inc. (Shopko) for damages under SDCL 34-20C, the Drug Dealer Liability Act (DDLA).

Shopko *760 filled two valid prescriptions for morphine sulphate, a Schedule II controlled drug, for Tully Knigge (Knigge). Knigge sent Shane Feistner (Feistner) to pick up his prescriptions. Shopko gave the filled prescriptions to Feistner. Feistner consumed some of the morphine pills and died of a drug overdose. Schafer sued Shopko claiming that Shopko was liable under the provisions of the DDLA.

The circuit court granted summary judgment in favor of Shopko. Schafer appeals. We affirm. FACTS [¶ 2.] Knigge is a person with disabilities and chronic pain, who is often unable to travel to have his prescriptions filled.

On July 22, 2004, Knigge had Feistner fill two morphine sulphate prescriptions. Knigge gave Feistner his prescriptions and a signed blank check payable to Shopko. Knigge frequently had his prescriptions filled at Shopko by others. Shopko filled the prescriptions according to the

prescription order. [¶ 3.] Feistner, with Knigge's knowledge and consent, consumed some of Knigge's morphine before and after delivering the prescriptions to Knigge.

Feistner also consumed a potentially toxic amount of alprazolam (Xanax) either on July 22nd or in the early morning hours of July 23rd. Feistner did not obtain the Xanax from Knigge. Feistner died as a result of asphyxiation from aspirating the contents of his stomach on July 23rd. [¶ 4.] Schafer filed an action alleging that Shopko was liable for damages under SDCL 34-20C-2, the DDLA.

Schafer claimed that Shopko had "participat[ed] in the illegal drug market" by dispensing the controlled drug to one other than Knigge or a member of his household. Schafer relied on the definition of "ultimate user" as used in SDCL 22-42-1 and 34-20B-1(21). "Ultimate user" as used in the statutes is defined as "a person who lawfully possesses a controlled drug or substance for personal use or for the use of a member of that person's household...."

Schafer argued that in dispensing the prescription to Feistner, Shopko did not dispense the drug to the "ultimate user," Knigge or a member of his household and was thus liable under the DDLA. Shopko, on the other hand, pointed to SDCL 36-11-2(7), which allows a pharmacist to dispense a prescription drug order "to a patient or a patient's agent[.]" Shopko argued that since the pharmacist legally dispensed the drug to Feistner who was Knigge's agent, it could not be liable under the DDLA.

Schafer claims that the circuit court erred by granting summary judgment in favor of Shopko. STANDARD OF REVIEW [¶ 5.] Summary judgment is authorized "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

SDCL 15-6-56(c)(3). "[S]ummary judgment will only be affirmed if there are no genuine issues of material fact and the legal questions have been decided correctly... No deference is afforded the circuit court's conclusions of law." *King v. Landguth*, 2007 SD 2, ¶ 8, 726 N.W.2d 603, 607 (citations omitted). "Questions of law such as statutory interpretation are reviewed by the Court de novo."

Martinmaas v. Engelmann, 2000 SD 85, ¶ 49, 612 N.W.2d 600, 611. ANALYSIS [¶ 6.] The issue before this Court is whether a pharmacy that dispenses a validly prescribed Schedule II drug to an authorized agent of a user can be held *761 liable under the DDLA for the agent's consumption of the drug. Based on the language of the relevant statutes, we conclude that the Legislature did not intend for a pharmacist to be held liable under these circumstances. [¶ 7.]

We have said that legislative "intent must be determined from the statute as a whole, as well as enactments relating to the same subject." *Moss v. Guttormson*, 1996 SD 76, ¶ 10, 551 N.W.2d 14, 17 (citing *U.S. West Communications, Inc. v. Public Util. Comm'n*, 505 N.W.2d 115, 122-23

(S.D.1993) (citations omitted)). "There are instances when it is necessary to look beyond the express language of a statute in determining legislative intent.

Most notably... if confining ourselves to the express language would produce an absurd result." MGA Ins. Co., Inc. v. Goodsell, 2005 SD 118, ¶ 17, 707 N.W.2d 483, 487 (citations omitted). "We presume that the Legislature intended no absurd or unreasonable result." Moeller v. Weber, 2004 SD 110, ¶ 46, 689 N.W.2d 1, 16. "[W]here statutes appear to conflict, it is our responsibility to give reasonable construction to both, and if possible, to give effect to all provisions under consideration, construing them together to make them 'harmonious and workable.'" Wiersma v. Maple Leaf Farms, 1996 SD 16, ¶ 4, 543 N.W.2d 787, 789 (citations omitted).

"Furthermore, '[w]e should not adopt an interpretation of a statute that renders the statute meaningless when the Legislature obviously passed it for a reason.'" Zubke v. Melrose Tp., 2007 SD 43, ¶ 14, 731 N.W.2d 918, 922. [¶ 8.]

Under the DDLA, "[a]ny person who knowingly participates in the illegal drug market within this state is liable for civil damages..." SDCL 34-20C-2.[1] South Dakota adopted most of the provisions of the model DDLA, with only minor modifications.[2] The purpose of the DDLA is to relax causation requirements to prove negligence because the common law effectively barred family members of drug users from filing suit against illegal drug dealers.[3]See, e.g., SC Code of Laws 44-54-20 (stating purpose of DDLA is to "establish a cause of action against drug dealers for damages") and 44-54-40(B)(2) (in order to recover damages a person need only prove "a person knowingly participated in the marketing of illegal controlled substances at any time" during which a person used the same type of illegal drugs in the same geographical *762 area).

There is no evidence that the Legislature adopted the DDLA for any purpose other than to impose civil liability on illegal drug dealers. South Dakota DDLA provides third parties, and in limited circumstances drug users, harmed by the use of illegal drugs a civil remedy against those who knowingly distribute illegal drugs. SDCL 34-20C-5. [¶ 9.]

In this case, for liability to attach under the DDLA, Schafer would have to show that the Shopko pharmacist "participate[d] in the illegal drug market." SDCL 34-20C-5(1). Schafer relies on the definition of the term "participate in the illegal drug market," which includes distribution of an illegal drug. SDCL 34-20C-1(9). "Illegal drug" for purposes of the DDLA is defined as "a controlled drug or substance or marijuana whose distribution is a violation of state law."

SDCL 34-20C-1(2). Schafer claims that the pharmacist violated state law by dispensing the controlled drug to Feistner rather than to Knigge or a member of Knigge's household. To support this interpretation, Schafer relies on criminal statutes which Schafer claims limit a pharmacist to dispensing controlled drugs only to the "ultimate user." SDCL 22-42-2.1.

The criminal statute provides: No person other than a practitioner who is not a pharmacist, may dispense a controlled drug or substance included in Schedule II to an ultimate user without the written prescription of a practitioner who is not a pharmacist. No prescription for a Schedule II drug or substance shall be refilled. A violation of this statute is a Class 4 felony.

Id. "Ultimate user" is defined as "a person who lawfully possesses a controlled drug or substance for that person's own use or for the use of a member of that person's household..." SDCL 22-42-1(11); SDCL 34-20B-1(21). [¶ 10.]

The fallacy of Schafer's argument is her reliance on SDCL 22-42-2.1, which she claims requires a pharmacist to dispense controlled drugs only to the ultimate user or a member of his household. The plain meaning of the statutory language does not support her interpretation.

In fact, the statutory provision expressly does not apply to pharmacists under these circumstances. The statute allows a licensed practitioner of the medical profession, who is not a pharmacist, to dispense drugs without a prescription to the ultimate user. [¶ 11.]

On the other hand, the law specifically allows pharmacists to dispense drugs with a prescription to a patient's agent. The statute defines "dispense" as follows: (7) "Dispense" or "Dispensing," the preparation and delivery of a drug to a patient or a patient's agent pursuant to a prescription drug order in a suitable container with appropriate labeling for subsequent administration to or use by a patient....

SDCL 36-11-2(7) (emphasis added). The law prohibits a pharmacist from distributing Schedule I and II controlled drugs or substances without a prescription. SDCL 34-20B-46. The law makes it a felony "for any person who is a [registered pharmacist] knowingly to distribute a controlled drug or substance classified in Schedules I or II, in the course of his legitimate business, except pursuant to an order form as required by this chapter."

SDCL 34-20B-46 (emphasis added). Additionally, pharmacists are prohibited from refilling Schedule II drug or substance prescriptions. SDCL 22-42-2.1. However, no provision of the DDLA provides, as Schafer argues, that a pharmacist may only legally dispense a controlled drug to an "ultimate user" and not an agent. *763 [¶ 12.] It is undisputed that Shopko had a valid prescription order form for the controlled drug that it filled and delivered to Knigge's agent, Feistner.

Clearly, Shopko met the requirements of the law. To interpret and apply the law as Schafer urges would make Shopko liable for a legal act. Such an interpretation is strained and would cause an absurd result. Because we hold that Shopko's conduct did not fall within the purview of the DDLA, we do not reach Schafer's other issues. [¶ 13.] Affirmed. [¶ 14.] GILBERTSON, Chief Justice, and SABERS, KONENKAMP, and ZINTER, Justices, concur.

NOTES [1] The DDLA provides a civil penalty for those harmed by illegal drug use under a market participant liability theory or a direct liability theory. SDCL 34-20C et seq. South Dakota adopted the Model Drug Dealer Liability Act promulgated by the American Legislative Exchange Council. Arkansas, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Michigan, New Hampshire, Oklahoma, South Carolina and Utah have also adopted the model legislation.

Ark. Code Ann. 16-124-101-112; Cal. Health & Safety Code 11700-11717; Colo. Rev. Stat. XX-XX-XXX to -614; Fla. Stat. Ann. 772.12; OCGA 51-1-46; Haw. Rev. Stat. Ann. 663D; 740 Ill. Comp. Stat. Ann. N. 57/1-25; Ind. Code Ann. 34-1-70; L.A. Rev. Stat. Ann. 9:2800.61-.76; Mich. Comp. Laws Ann. 691.1601-.1619; N.H. Stat. tit. XXX, ch. 318-C et seq.; Okla. Stat. Ann. tit.

63, 2-421 to -435; S.C. Code of Laws 44-54-10 to -140; Utah Code Ann. 58-37e-1-14. [2] Nicholas Reiter, Note: Dollars for Victims of a "Victimless" Crime: A Defense of the Drug Dealer Liability Acts, 15 J.L. & Pol'y 1329, 1338 n. 40-41 (2007) ("fifteen jurisdictions have enacted drug dealer liability statutes, each jurisdiction closely follows the provisions set forth in the Model [DDLA], which has been adopted by the American Legislative Exchange Council").

[3] Joel W. Barr, Let the Drug Dealer Beware: Market-Share Liability in Michigan for the Injuries Caused by the Illegal Drug Market, 32 Val. U.L. Rev. 139 (1997).