

SUPREME COURT OF CONNECTICUT

Tracy v. Scherwitzky Gutter Co.

279 Conn. 265 (2006) · Decided August 1, 2006

SUMMARY

The Connecticut Supreme Court held that nonmedical, guardian-type home care provided by family members to a workers’ compensation claimant was not compensable under General Statutes § 31-294d. The court concluded that the care did not constitute nursing service, medical aid, or medical rehabilitation services and was not provided under the direction or with the consent of a physician. The court affirmed the decision of the Workers’ Compensation Review Board.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Zarella, J.
JURISDICTION	Connecticut
DECIDED	August 1, 2006
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed a workers' compensation review board decision affirming a commissioner's dismissal of the claim for compensation for home care provided by family members. The appeal was transferred from the Appellate Court to the Supreme Court of Connecticut.
STANDARD OF REVIEW	The court does not retry facts and accepts the commissioner's factual conclusions unless they result from an incorrect application of law or an illegal or unreasonable inference. Although the court gives weight to the commissioner's and board's construction of workers' compensation statutes, it reviews plenary an issue of statutory construction that has not previously received judicial scrutiny.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Connecticut
PARTIES	Gregory Tracy, administrator of the estate of James Tracy v. Scherwitzky Gutter Company

TOPICS

- workers compensation
- statutory interpretation
- plain meaning rule
- administrative law

PRACTICE AREAS

workers compensation

employment law

administrative law

QUESTIONS PRESENTED

1. Whether nonmedical home convalescent care provided by a claimant's family members is compensable as nursing service, medical aid, or medical rehabilitation services under General Statutes § 31-294d.
2. Whether the family members' care was rendered with the consent and direction of an attending physician and was therefore compensable under the rule stated in *Galway v. Doody Steel Erecting Co.*

HOLDINGS

1. Purely nonmedical home care, including monitoring, reminders concerning hygiene and daily activities, and providing a calming presence, is not compensable under § 31-294d as nursing service, medical aid, or medical rehabilitation services. The caregiver's certification as a nurse's aide does not change the nature of nonmedical care.
2. Home convalescent care provided by a family member is compensable only when it is rendered in accordance with the consent and direction of the physician in charge, and the Tracys' care did not satisfy that requirement.

KEY QUOTATIONS

“This is because the Tracys’ care of the decedent was nonmedical in nature, and the terms “medical . . . aid” and “medical rehabilitation services,” by their own plain language, embrace only medical care.” (279 Conn. at 276)

“This course of care simply was not “in accordance with the consent and direction of the physician in charge . . . ,”” (279 Conn. at 280)

FACTUAL BACKGROUND

James Tracy suffered multiple fractures and a traumatic brain injury in a compensable 1999 workplace fall. After discharge from rehabilitation, he required continuous supervision because of severe memory deficits, unsafe behavior, and inability to manage basic daily activities. His nephew Gregory Tracy and Gregory's wife provided twenty-four-hour care, including monitoring, reminders, assistance with daily activities, and responding to seizures, but characterized the care as nonmedical guardian-type care. A physician recommended that Tracy remain in a supervised setting but did not direct or supervise the specific care provided by the Tracys.

PROCEDURAL HISTORY

The workers' compensation commissioner awarded total disability benefits but dismissed the claims for death benefits and compensation for care provided by the decedent's family under General Statutes § 31-294d. The compensation review board affirmed, concluding that the care did not qualify for compensation under § 31-294d. The plaintiff appealed, and the Supreme Court of Connecticut transferred the appeal from the Appellate Court and affirmed.

DISPOSITION

affirmed

CASES CITED

- Galway v. Doody Steel Erecting Co., 103 Conn. 431, 130 A. 705 (1925)
- Besade v. Interstate Security Services, 212 Conn. 441, 449, 562 A.2d 1086 (1989)
- Six v. Thomas O'Connor & Co., 235 Conn. 790, 798-99, 669 A.2d 1214 (1996)
- Doe v. Stamford, 241 Conn. 692, 696-97, 699 A.2d 52 (1997)
- Duni v. United Technologies Corp., 239 Conn. 19, 24-25, 682 A.2d 99 (1996)
- Davis v. Norwich, 232 Conn. 311, 317, 654 A.2d 1221 (1995)
- Dowling v. Slotnik, 244 Conn. 781, 798, 712 A.2d 396, cert. denied sub nom. Slotnik v. Considine, 525 U.S. 1017, 119 S. Ct. 542, 142 L. Ed. 2d 451 (1998)
- Fimiani v. Star Gallo Distributors, Inc., 248 Conn. 635, 641-42, 729 A.2d 212 (1999)
- Parrot v. Guardian Life Ins. Co. of America, 273 Conn. 12, 18, 866 A.2d 1273 (2005)
- Perodeau v. Hartford, 259 Conn. 729, 735, 792 A.2d 752 (2002)
- Boiano v. Eppoliti Construction, No. 2108 CRB-4-94-7 (June 26, 1996)
- Valentino v. United Parcel Service, No. 1907 CRB-4-93-11 (February 1, 1995)
- Mallette v. H. C. Field Co., 5 Conn. Comp. Dec. 301 (1923)
- Stephen v. Waterbury Rolling Mill Co., 5 Conn. Comp. Dec. 229 (1923)
- Lunsman v. Putnam, 4 Conn. Comp. Dec. 571 (1921)
- Swan v. New York, New Haven & Hartford R. Co., 2 Conn. Comp. Dec. 449 (1917)