

SUPREME COURT OF THE STATE OF NEW MEXICO

Montaño v. Frezza

Montaño · No. S-1-SC-35214; S-1-SC-35297 · Decided March 13, 2017

SUMMARY

The New Mexico Supreme Court addresses whether New Mexico should recognize, under principles of interstate comity, a Texas law requiring dismissal of a medical-malpractice action against a Texas state-employed surgeon. Applying the factors from *Sam v. Sam*, the Court concludes that Texas sovereign-immunity law does not contravene a sufficiently strong New Mexico public policy and directs that the action against the surgeon be dismissed. The opinion arises from consolidated certiorari proceedings involving cross-petitions by the plaintiff and defendant.

CASE DETAILS

COURT	Supreme Court of the State of New Mexico
WRITING FOR THE COURT	Edward L. Chávez, Justice; Petra Jimenez Maes, Justice; Judith K. Nakamura, Justice; Linda M. Vanzi, Judge, sitting by designation; Barbara J. Vigil, Justice
JURISDICTION	New Mexico
DECIDED	March 13, 2017
DOCKET	S-1-SC-35214; S-1-SC-35297
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Cross-petitions for a writ of certiorari from the New Mexico Court of Appeals in a medical malpractice action. Dr. Frezza sought review of whether Texas law should apply under New Mexico choice-of-law or comity principles; Montaño sought review of the scope of the Court of Appeals' application of New Mexico law.
STANDARD OF REVIEW	Questions of comity are reviewed under a mixed standard: the decision whether to extend comity is reviewed de novo, fact-intensive aspects may be reviewed for abuse of discretion, and public-policy determinations are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Eldo Frezza, M.D., Kimberly Montaño v. Kimberly Montaño, Eldo Frezza, M.D.

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QUESTIONS PRESENTED

1. Whether New Mexico should extend interstate comity to Texas sovereign-immunity provisions under the Texas Tort Claims Act.
2. Whether Texas Tort Claims Act Section 101.106(f) required dismissal of Montaño's claims against Frezza because he was a state employee acting within the scope of employment and Montaño did not substitute the governmental employer within thirty days.
3. Whether applying Texas law in these circumstances would violate a strong New Mexico public policy.

HOLDINGS

1. New Mexico courts should presume that comity will be extended to a sister state's law unless applying that law would violate a sufficiently strong New Mexico public policy. Applying the Sam factors, the court found no strong New Mexico public policy that outweighed comity toward Texas in this case.
2. Texas Tort Claims Act Section 101.106(f) applied because Frezza was a governmental employee acting within the general scope of his employment, and Montaño did not amend her pleadings within thirty days to substitute the governmental unit as defendant.
3. The action had to be dismissed without prejudice because Montaño failed to amend her pleadings and name the proper governmental party within thirty days of Frezza's motion to dismiss.

KEY QUOTATIONS

"We initially presume that comity should be extended because cooperation and respect between states is important." (§ 1)

"The law of the sister state must not only contravene New Mexico public policy, but be "sufficiently offensive" to that policy "to outweigh the principles of comity."" (§ 12)

"Accordingly, in this case, we extend comity to Texas and apply TTCA Section 101.106(f)." (§ 37)

FACTUAL BACKGROUND

Kimberly Montaño, a New Mexico resident, underwent laparoscopic gastric bypass surgery in February 2004 at Texas Tech Hospital in Texas. Dr. Eldo Frezza, a Texas state-employed bariatric surgeon, performed the surgery while acting within the scope of his employment. Montaño later experienced severe abdominal pain, and a physician who treated her approximately six years later found tangled sutures from the original surgery and performed a revision procedure. Montaño sued Frezza in New Mexico for medical negligence and alleged misrepresentations concerning the procedure and the cause of her pain.

PROCEDURAL HISTORY

Montaño filed a New Mexico medical malpractice complaint against Dr. Frezza in October 2011. Frezza moved to dismiss under Rule 1-012(B)(6), arguing that New Mexico should recognize and apply the Texas Tort Claims Act under principles of interstate comity. The district court declined to extend comity and denied dismissal, and the Court of Appeals affirmed on that issue. The New Mexico Supreme Court granted both petitions, reversed, and directed dismissal without prejudice.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court shall dismiss Montaño's suit without prejudice because she failed to amend her pleadings and name the proper party within thirty days of Frezza's motion to dismiss.

CASES CITED

- Sam v. Sam, 2006-NMSC-022, 139 N.M. 474, 134 P.3d 761
- N.M. Pub. Sch. Ins. Auth. v. Arthur J. Gallagher & Co., 2008-NMSC-067, 145 N.M. 316, 198 P.3d 342
- United States v. Tex. Tech Univ., 171 F.3d 279, 289 n.14 (5th Cir. 1999)
- Montaño v. Frezza, 2015-NMCA-069, 352 P.3d 666
- Nevada v. Hall, 440 U.S. 410, 422, 425 (1979)
- Bank of Augusta v. Earle, 38 U.S. (13 Pet.) 519, 590 (1839)
- Leszinske v. Poole, 1990-NMCA-088, 110 N.M. 663, 798 P.2d 1049
- Torres v. State, 1995-NMSC-025, 119 N.M. 609, 894 P.2d 386
- Hartford Ins. Co. v. Cline, 2006-NMSC-033, 140 N.M. 16, 139 P.3d 176
- State v. Attaway, 1994-NMSC-011, 117 N.M. 141, 870 P.2d 103
- State v. Lopez, 2005-NMSC-018, 138 N.M. 9, 116 P.3d 80
- Ponder v. State Farm Mut. Auto. Ins. Co., 2000-NMSC-033, 129 N.M. 698, 12 P.3d 960
- Franchise Tax Bd. of Cal. v. Hyatt, 538 U.S. 488, 499 (2003); ___ U.S. ___, 136 S. Ct. 1277, 1281-83 (2016)
- New Mexico State University v. Winfrey, 2011 WL 3557239 (Tex. App. Aug. 11, 2011)
- New Mexico v. Caudle, 108 S.W.3d 319 (Tex. App. 2002)
- Greenwell v. Davis, 180 S.W.3d 287 (Tex. App. 2005)
- Hawsey v. La. Dep't of Soc. Servs., 934 S.W.2d 723 (Tex. App. 1996)
- K.D.F. v. Rex, 878 S.W.2d 589, 593 (Tex. 1994)
- Wittkowski v. State, 1985-NMCA-066, 103 N.M. 526, 710 P.2d 93
- Silva v. State, 1987-NMSC-107, 106 N.M. 472, 745 P.2d 380
- Zavala v. El Paso County Hospital District, 2007-NMCA-149, 143 N.M. 36, 172 P.3d 173
- Teco Invs., Inc. v. Taxation & Revenue Dep't, 1998-NMCA-055, 125 N.M. 103, 957 P.2d 532

- Loucks v. Standard Oil Co. of N.Y., 120 N.E. 198, 201 (N.Y. 1918)
- Tarango v. Pastrana, 1980-NMCA-110, 94 N.M. 727, 616 P.2d 440
- Wright v. Yackley, 459 F.2d 287, 290 (9th Cir. 1972)
- Simmons v. State, 670 P.2d 1372 (Mont. 1983)
- Newberry v. Ga. Dep't of Indus. & Trade, 336 S.E.2d 464 (S.C. 1985)
- In re Estate of Gilmore v. Gilmore, 1997-NMCA-103, 124 N.M. 119, 946 P.2d 1130
- Maestas v. Zager, 2007-NMSC-003, 141 N.M. 154, 152 P.3d 141
- Timmons v. Univ. Med. Ctr., 331 S.W.3d 840 (Tex. App. 2011)
- Tex. Tech Univ. Health Sci. Ctr. v. Jackson, 354 S.W.3d 879, 884 (Tex. App. 2011)
- Kamel v. Univ. of Tex. Health Sci. Ctr. at Hous., 333 S.W.3d 676, 686 (Tex. App. 2010)
- Miers v. Tex. A & M Univ. Sys. Health Sci. Ctr., 311 S.W.3d 577, 579-80 (Tex. App. 2009)

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