

DISTRICT OF COLUMBIA COURT OF APPEALS

Frankeny v. District Hospital Partners, LP

Frankeny · No. 18-CV-628 · Decided February 27, 2020

SUMMARY

The District of Columbia Court of Appeals held that a consumer bringing claims under the District of Columbia Consumer Protection Procedures Act against a medical service provider need not prove intentional misrepresentation, knowledge, or an entrepreneurial nexus. The court concluded that Rachel Frankeny presented sufficient evidence that the hospital may have misrepresented or failed to disclose that a first-year resident would perform part of her tonsillectomy, and that the information was material. The court reversed summary judgment for the hospital and remanded for trial.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Blackburne-Rigsby, Chief Judge; Thompson, Associate Judge; Ruiz, Senior Judge
JURISDICTION	District of Columbia
DECIDED	February 27, 2020
DOCKET	18-CV-628
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a Superior Court order granting summary judgment to hospital defendants on the appellant's District of Columbia Consumer Protection Procedures Act claims.
STANDARD OF REVIEW	Summary judgment and statutory interpretation are reviewed de novo. The record is viewed in the light most favorable to the nonmoving party, who is entitled to all favorable inferences reasonably drawn from the evidence.
PRECEDENTIAL VALUE	published
PARTIES	Rachel M. Frankeny v. District Hospital Partners, LP d/b/a The George Washington University Hospital, Universal Health Services, Inc.

TOPICS

- consumer protection
- health law
- statutory interpretation
- standard of review
- appellate procedure

PRACTICE AREAS

consumer protection

health law

appellate procedure

QUESTIONS PRESENTED

1. Whether a consumer asserting District of Columbia Consumer Protection Procedures Act claims under D.C. Code § 28-3904(a), (d), (e), and (f) must prove intentional or knowing misrepresentation.
2. Whether a Consumer Protection Procedures Act claim against a medical service provider requires an entrepreneurial motive or entrepreneurial nexus connecting the alleged misrepresentation to business or financial interests.
3. Whether the evidence created a genuine dispute of material fact concerning whether the hospital misrepresented or failed to disclose a material fact about who would perform Frankeny's surgery.

HOLDINGS

1. A consumer need not prove that a merchant intentionally or knowingly represented that goods or services possessed characteristics, standards, qualities, grades, styles, or models that they did not in fact possess under D.C. Code § 28-3904(a) and (d).
2. A Consumer Protection Procedures Act claim against a medical service provider does not require proof of an entrepreneurial motive or entrepreneurial nexus.
3. The evidence, viewed in the light most favorable to Frankeny, created a genuine dispute about whether the hospital misrepresented or failed to disclose a material fact concerning the resident's role in performing the surgery; therefore, summary judgment was improper.

KEY QUOTATIONS

“We extend that reasoning and hold that a plaintiff consumer need not allege or prove intentional misrepresentation to claims made under D.C. Code § 28-3904(a) and (d). Moreover, we reject any requirement that a CPPA claim allege an “entrepreneurial nexus.”” (at 3)

“We expressly hold that there is not a different burden of proof for “general” CPPA claims and those against medical service providers, and a consumer is not required to proffer evidence of an “entrepreneurial motive” or an “entrepreneurial nexus” for the latter.” (at 15-16)

“Consequently, we reverse the grant of summary judgment. At present, there is no concern that Ms. Frankeny is blurring the line between CPPA claims and traditional medical malpractice claims, or raising public service or ethical considerations, that would require us to recognize any limitation on the CPPA’s reach to the practice of medicine.” (at 21-22)

FACTUAL BACKGROUND

Rachel Frankeny selected board-certified otolaryngologist Thomas Troost to perform a bilateral tonsillectomy at The George Washington University Hospital. She signed forms acknowledging that the hospital was a teaching institution and that residents and other personnel could be involved in her care, but she understood those provisions to permit observation or related services rather than performance of the surgery by someone other

than Troost. Without Frankeny's knowledge, first-year resident Johnny Mai performed at least part of the procedure under Troost's direction, and Frankeny alleged a resulting permanent loss of her sense of taste.

PROCEDURAL HISTORY

Rachel Frankeny sued District Hospital Partners, LP and related defendants after a first-year medical resident performed at least part of her tonsillectomy without her knowledge. The Superior Court granted summary judgment to the hospital defendants, reasoning that Frankeny had not produced evidence of an intentional misrepresentation motivated by financial or business interests, described as an entrepreneurial motive. The District of Columbia Court of Appeals reversed the summary-judgment ruling and remanded for trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for the CPPA claims to proceed to trial.

CASES CITED

- Fort Lincoln Civic Ass'n, Inc. v. Fort Lincoln New Town Corp., 944 A.2d 1055, 1073 (D.C. 2008)
- Briscoe v. District of Columbia, 62 A.3d 1275, 1278 (D.C. 2013)
- Night & Day Mgmt., LLC v. Butler, 1010 A.3d 1033, 1037 (D.C. 2014)
- Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)
- District of Columbia v. Cato Inst., 829 A.2d 237, 239 (D.C. 2003)
- Tolu v. Ayodeji, 945 A.2d 598, 601 (D.C. 2008)
- Ford v. Chartone, Inc., 908 A.2d 72, 81 (D.C. 2006)
- Caulfield v. Stark, 893 A.2d 970, 976-79 (D.C. 2006)
- Saucier v. Countrywide Home Loans, 64 A.3d 428, 442 (D.C. 2013)
- Dorn v. McTigue, 121 F. Supp. 2d 17, 19-20 (D.D.C. 2000)
- Dorn v. McTigue, 157 F. Supp. 2d 37, 48 (D.D.C. 2001)
- M.A.P. v. Ryan, 285 A.2d 310, 312 (D.C. 1971)
- Morrison v. MacNamara, 407 A.2d 555, 560 (D.C. 1979)
- Nelson v. Ho, 564 N.W.2d 482, 486 (Mich. Ct. App. 1997)
- Gomez v. Indiana Management of Delaware, Inc., 967 A.2d 1276, 1288 (D.C. 2009)
- Goldfarb v. Virginia State Bar, 421 U.S. 773, 788-89 n.17 (1975)
- Arizona v. Maricopa County Medical Society, 457 U.S. 332, 348-49 (1982)
- Pearson v. Chung, 961 A.2d 1067, 1073 (D.C. 2008)
- Bennett v. Kiggins, 377 A.2d 57, 59 (D.C. 1977)
- Snyder v. George Washington University, 890 A.2d 237, 244 (D.C. 2006)

- Norried v. Caribbean Contractors, Inc., 899 A.2d 129, 134 (D.C. 2006)

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