

SUPREME COURT OF ALASKA

Harrold v. Artwohl

132 P.3d 276 (Alaska 2006) · No. S-11638 · Decided March 31, 2006

SUMMARY

The Alaska Supreme Court held that a patient’s informed-consent claim could not be resolved on summary judgment because evidence raised genuine issues of material fact regarding whether the surgeon explained that a CT scan could determine with near certainty whether appendicitis was present. The court concluded that a reasonable jury could find this information material to the patient’s decision to undergo an appendectomy. The court reversed and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Bryner, Chief Justice; Matthews, Justice; Fabe, Justice; Carpeneti, Justice
JURISDICTION	Alaska
DECIDED	March 31, 2006
DOCKET	S-11638
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the superior court's grant of summary judgment dismissing Harrold's informed-consent claim.
STANDARD OF REVIEW	The Supreme Court independently reviews summary-judgment orders, drawing all reasonable inferences in favor of the nonmoving party. Summary judgment is proper only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published opinion; binding Alaska Supreme Court precedent
PARTIES	Frank Harrold v. Robert R. Artwohl, M.D.

TOPICS

- informed consent
- medical malpractice
- summary judgment
- health law
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Harrold presented a genuine issue of material fact regarding whether Dr. Artwohl disclosed that a CT scan could nearly conclusively determine whether immediate surgery was necessary.
2. Whether the disputed information was material under Alaska's reasonable-patient informed-consent standard.
3. Whether the informed-consent form was invalid because it was witnessed by a nurse rather than the treating physician.
4. Whether the omission of specific disclosures from the written consent form created a genuine issue of material fact.
5. Whether Harrold's sister's affidavit created a genuine factual dispute regarding Dr. Artwohl's knowledge of the prior CT scan.

HOLDINGS

1. Harrold's affidavit, viewed in the light most favorable to him, raised a genuine factual dispute as to whether Dr. Artwohl informed him that a CT scan could effectively rule in or rule out appendicitis with approximately ninety-eight percent accuracy.
2. Whether a reasonable patient would consider information about the CT scan's near-certainty in determining whether to undergo immediate surgery was a material factual question for the jury.
3. The consent form was not invalid merely because Nurse Belic witnessed Harrold's signature rather than Dr. Artwohl personally witnessing it.
4. The consent form was not defective merely because it did not recite the specific information Dr. Artwohl claimed to have discussed with Harrold.
5. The sister's affidavit did not create a genuine factual dispute because Dr. Artwohl's post-surgical question about prior x-rays did not reasonably imply that he lacked knowledge of Harrold's recent CT scan.

KEY QUOTATIONS

“The informed consent doctrine is based on the principle that every human being of adult years and sound mind has a right to determine what shall be done to his or her own body.” (280)

“The credibility of Harrold's claim cannot be considered at summary judgment: we must assume that his claim is true.” (281)

“Because the dispute involves a genuine issue of fact, we hold that the superior court erred in granting summary judgment against Harrold.” (282)

FACTUAL BACKGROUND

Harrold presented to an Anchorage emergency room with abdominal pain and a prior CT scan suggesting an appendicolith. Dr. Artwohl suspected appendicitis, discussed the possibility of another CT scan, recommended immediate appendectomy, and advised that there was approximately a fifteen percent chance the appendix would be normal. The appendix was healthy, and Harrold later submitted an affidavit stating that no one told him a CT scan could determine with approximately ninety-eight percent accuracy whether he had appendicitis. He asserted that he would have chosen the CT scan had he known its accuracy.

PROCEDURAL HISTORY

Harrold sued Dr. Artwohl for failure to obtain informed consent and for medical malpractice arising from an allegedly unnecessary appendectomy. The superior court dismissed the malpractice claim for lack of expert evidence and later granted summary judgment to Dr. Artwohl on the informed-consent claim. Harrold appealed the informed-consent ruling and related attorney-fee award; the Alaska Supreme Court reversed the judgment on the informed-consent claim and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings on Harrold's informed-consent claim. The decision on the merits made it unnecessary to address the appeal from the prevailing-party attorney-fee award.

CASES CITED

- Kaiser v. Umialik Insurance Co., 108 P.3d 876, 879 (Alaska 2005)
- Sonneman v. State, 969 P.2d 632, 635 (Alaska 1998)
- French v. Jadon, Inc., 911 P.2d 20, 23 (Alaska 1996)
- Wassink v. Hawkins, 763 P.2d 971, 973 (Alaska 1988)
- Parker v. Tomera, 89 P.3d 761, 769 (Alaska 2004)
- Korman v. Mallin, 858 P.2d 1145, 1149, 1151 (Alaska 1993)
- Marsingill v. O'Malley, 58 P.3d 495, 503-504 (Alaska 2002)
- Canterbury v. Spence, 464 F.2d 772, 788 (D.C. Cir. 1972)
- Ward v. Lutheran Hospitals & Homes Society of America, Inc., 963 P.2d 1031, n. 12 (Alaska 1998)