

SUPREME COURT OF KANSAS

Pipe v. Hamilton, 274 Kan. 905

56 P.3d 823 (2002) · No. No. 88,371 · Decided November 1, 2002

SUMMARY

The Supreme Court of Kansas considered whether a plaintiff may pursue a medical-malpractice loss-of-chance claim when the patient had a 5% to 10% chance of survival with appropriate treatment. The court held that a 10% chance of survival is not token or de minimis as a matter of law and is sufficient to withstand summary judgment under Kansas's substantial-chance standard. The court reversed the grant of summary judgment and remanded the case.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Lockett, J.; Larson, S.J., assigned
JURISDICTION	Kansas
DECIDED	November 1, 2002
DOCKET	No. 88,371
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the grant of summary judgment to a physician in a medical-malpractice loss-of-chance action.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the district court. The court must resolve facts and reasonable inferences in favor of the nonmoving party, and summary judgment must be denied when reasonable minds could differ on the conclusions to be drawn from the evidence.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential.
PARTIES	James Pipe, individually and for and on behalf of the heirs at law of Edwina Pipe, deceased, and James Pipe, as administrator of the estate of Edwina Pipe, deceased v. James J. Hamilton, M.D.

TOPICS

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PRACTICE AREAS

medical malpractice

medical negligence

appellate procedure

summary judgment

QUESTIONS PRESENTED

1. Whether a plaintiff may proceed with a Kansas medical-malpractice loss-of-chance claim when expert testimony establishes only a 5% to 10% chance of survival with appropriate treatment.
2. Whether the district court properly granted summary judgment on the ground that a 5% to 10% chance of survival was not substantial as a matter of law.

HOLDINGS

1. A loss of a 10% chance of survival cannot be deemed token or de minimis as a matter of law and is sufficient to satisfy the substantial-chance threshold for a Kansas medical-malpractice loss-of-chance claim.
2. Summary judgment was improper because Pipe presented evidence sufficient to create a prima facie loss-of-chance claim and a genuine issue concerning causation.

KEY QUOTATIONS

“In an action to recover for the loss of a chance to survive or for the loss of a chance for a better recovery, the plaintiff must first prove the traditional elements of a medical malpractice action by a preponderance of the evidence.” (910)

“Thus, the jury must find by a preponderance of the evidence that the alleged negligence was the proximate cause of the lost chance, but the lost chance itself need only be a substantial or significant chance, for a better result, absent any malpractice, rather than a greater than 50 percent chance of a better result.” (910)

“As a matter of law, a 10 percent loss of chance cannot be said to be token or de minimis.” (913)

FACTUAL BACKGROUND

Edwina Pipe was hospitalized for a small bowel obstruction and underwent surgery by Dr. Hamilton on May 29, 1998, followed by a second operation on June 3, during which Hamilton discovered gangrenous tissue. Hamilton advised Edwina's husband, James Pipe, that she was expected to live only 6 to 12 hours, and James then requested withdrawal of life support under Edwina's living will and durable power of attorney. Pipe's expert testified that Hamilton breached the standard of care by failing to perform additional tests and that, with appropriate care, Edwina had a 5% to 10% chance of leaving the hospital.

PROCEDURAL HISTORY

James Pipe sued Dr. James J. Hamilton in Shawnee County District Court, alleging medical malpractice and loss of Edwina Pipe's chance of survival. The district court granted Hamilton summary judgment, concluding that a 5% to 10% chance of survival was not substantial as a matter of law. The district court denied Pipe's motion for a new trial and reconsideration, and Pipe timely appealed.

DISPOSITION

REMAND INSTRUCTIONS

The summary judgment in favor of Dr. Hamilton is reversed, and the case is remanded for further proceedings consistent with the opinion.

CASES CITED

- Irvin v. Smith, 272 Kan. 112, 31 P.3d 934 (2001)
- Dominguez v. Davidson, 266 Kan. 926, 974 P.2d 112 (1999)
- Friesen-Hall v. Colle, 270 Kan. 611, 17 P.3d 349 (2001)
- Moran v. State, 267 Kan. 583, 985 P.2d 127 (1999)
- Bergstrom v. Noah, 266 Kan. 847, 974 P.2d 531 (1999)
- Colorado Interstate Gas Co. v. Beshears, 271 Kan. 596, 24 P.3d 113 (2001)
- Roberson v. Counselman, 235 Kan. 1006, 686 P.2d 149 (1984)
- Hicks v. United States, 368 F.2d 626 (4th Cir. 1966)
- Delaney v. Cade, 255 Kan. 199, 873 P.2d 175 (1994)
- Perez v. Las Vegas Medical Center, 107 Nev. 1, 805 P.2d 589 (1991)
- McKellips v. Saint Francis Hospital, Inc., 741 P.2d 467 (Okla. 1987)
- Borgren v. United States, 716 F. Supp. 1378 (D. Kan. 1989)
- Falcon v. Memorial Hospital, 436 Mich. 443, 462 N.W.2d 44 (1990)
- Stewart v. New York City Health and Hospitals Corp., 207 App. Div. 2d 703, 616 N.Y.S.2d 499 (1994)
- Kallenberg v. Beth Israel Hospital, 45 App. Div. 2d 177, 357 N.Y.S.2d 508 (1974)
- Boody v. United States, 706 F. Supp. 1458 (1989)