

DISTRICT OF COLUMBIA COURT OF APPEALS

Lacek v. Washington Hospital Center Corp.

978 A.2d 1194 (D.C. 2009) · Decided August 27, 2009

SUMMARY

The District of Columbia Court of Appeals affirmed dismissal of a medical malpractice complaint because the plaintiff did not provide the hospital with the required 90-day pre-suit notice. The court held that the Medical Malpractice Amendment Act of 2006 applied to the plaintiff's preexisting cause of action because the notice requirement was procedural and remedial. The court also rejected the plaintiff's arguments concerning good-faith compliance, waiver, and estoppel.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Thompson, Associate Judge; Oberly; Ruiz; Thompson
JURISDICTION	District of Columbia
DECIDED	August 27, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Superior Court's dismissal of a medical-malpractice complaint for lack of subject-matter jurisdiction based on failure to provide the statutory 90-day pre-suit notice.
STANDARD OF REVIEW	The court reviewed the Superior Court's failure-to-comply and good-faith determinations for abuse of discretion and reviewed the statutory applicability and waiver issues under applicable legal standards, including plain-error review for the unpreserved estoppel argument.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Anne C. Lacek v. Washington Hospital Center

TOPICS

- medical malpractice
- statutory interpretation
- subject matter jurisdiction
- motions to dismiss
- appellate procedure

PRACTICE AREAS

- medical malpractice
- health law
- civil procedure
- statutory interpretation
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Act's 90-day pre-filing notice requirement applied to Lacek's medical-malpractice claim, which accrued before the Act's effective date.
2. Whether Lacek made a good-faith effort to comply with the statutory notice requirement such that the Superior Court could excuse noncompliance.
3. Whether the Hospital waived the statutory notice requirement or was estopped from asserting it.
4. Whether the Superior Court abused its discretion or plainly erred by dismissing the complaint without excusing the notice failure.

HOLDINGS

1. The Medical Malpractice Amendment Act's 90-day pre-filing notice requirement applies to medical-malpractice causes of action that accrued before the Act's effective date.
2. Lacek did not establish a good-faith effort to provide the required pre-filing notice, and the Superior Court did not abuse its discretion by refusing to excuse the failure.
3. The Hospital did not clearly and unambiguously waive its right to the statutory 90-day notice.
4. Estoppel did not apply because the record did not show misleading conduct by the Hospital that caused Lacek's failure to comply, and the estoppel argument was raised for the first time on appeal.

KEY QUOTATIONS

"Given the express goals underlying the Council's adoption of the 90-day notice provision, we conclude, even in the absence of a clear articulation of the Council's intent about whether to apply the notice provision to causes of action that accrued before the Act's effective date, that the notice provision did apply to Lacek's suit." (1198)

"The Superior Court did not abuse its discretion in finding that Lacek had not shown "a good faith effort to give the required notice" that could "excuse [her] failure to give notice within the time prescribed."" (1200)

"On these facts, as a matter of law, estoppel will not lie." (1201)

FACTUAL BACKGROUND

Lacek alleged that she fell from her hospital bed on July 7, 2004, after nursing staff left a bed rail down, breaking her hip because the Hospital failed to maintain fall precautions. The Medical Malpractice Amendment Act became effective on March 14, 2007. Lacek filed her complaint on June 25, 2007, faxed the Hospital a copy four days later describing it as a courtesy copy of a suit already filed, and formally served the complaint on August 20, 2007.

PROCEDURAL HISTORY

Lacek sued Washington Hospital Center in the Superior Court alleging negligence arising from injuries sustained during her hospitalization. The Superior Court granted the Hospital's motion to dismiss after finding that Lacek

filed suit before providing the 90-day notice required by the Medical Malpractice Amendment Act of 2006. Lacek timely appealed, and the District of Columbia Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Landgraf v. USI Film Products, 511 U.S. 244, 265, 269 n. 23, 285 n. 37 (1994)
- Duvall v. United States, 676 A.2d 448, 450 (D.C. 1996)
- Edwards v. Lateef, 558 A.2d 1144, 1147 (D.C. 1989)
- Moore v. Agency for International Development, 994 F.2d 874, 879 (D.C. Cir. 1993)
- CFCU Community Credit Union v. Hayward, 552 F.3d 253, 262 (2d Cir. 2009)
- Finch v. District of Columbia, 894 A.2d 419, 421-422 (D.C. 2006)
- Block v. North Dakota, 461 U.S. 273, 286 n. 23 (1983)
- Owens-Corning Fiberglas Corp. v. Henkel, 689 A.2d 1224, 1234-1235 (D.C. 1997)
- Kalis v. Leahy, 188 F.2d 633, 634 (D.C. Cir. 1951)
- Eagle Maintenance Services v. District of Columbia Contract Appeals Board, 893 A.2d 569, 577 (D.C. 2006)
- Partnership Placements v. Landmark Insurance Co., 722 A.2d 837, 842 (D.C. 1998)
- Hamilton v. Howard University, 960 A.2d 308, 313 n. 5 (D.C. 2008)
- Gavin v. Washington Post Employees Federal Credit Union, 397 A.2d 968, 973 & n. 9 (D.C. 1979)
- Smith v. Pollin, 194 F.2d 349, 350 (D.C. Cir. 1952)