

SUPREME COURT OF GEORGIA

Blotner v. Doreika, 285 Ga. 481

678 S.E.2d 80 (2009) · No. S08G2016 · Decided June 8, 2009

SUMMARY

The Supreme Court of Georgia held that Georgia does not recognize a common-law doctrine of informed consent. It reversed the Court of Appeals, concluding that chiropractic treatment was not covered by Georgia's informed-consent statute and that no statute or regulation otherwise required chiropractors to obtain informed consent. The court overruled *Ketchup v. Howard* and held that the trial court properly refused to instruct the jury on informed consent.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hunstein, Presiding Justice; Carley, Justice; Sears, Chief Justice
JURISDICTION	Georgia
DECIDED	June 8, 2009
DOCKET	S08G2016
DISPOSITION	reversed
PROCEDURAL POSTURE	The Supreme Court of Georgia granted certiorari to review the Court of Appeals' decision adopting a common-law informed-consent doctrine and applying it to chiropractic treatment.
STANDARD OF REVIEW	De novo review of the legal question concerning the existence and scope of an informed-consent duty, including interpretation of governing statutes and precedent.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Georgia; overruled <i>Ketchup v. Howard</i> .
PARTIES	Blotner v. Doreika

TOPICS

[informed consent](#) [health law](#) [statutory interpretation](#) [appellate procedure](#)

PRACTICE AREAS

[health law](#) [medical malpractice](#) [appellate law](#)

QUESTIONS PRESENTED

1. Whether Georgia recognizes a common-law doctrine requiring health-care providers to disclose the material risks and alternatives of proposed treatment or procedures.
2. Whether Georgia statutes or regulations require chiropractors to obtain or provide informed consent for chiropractic treatment.
3. Whether the trial court correctly refused to instruct the jury on an informed-consent doctrine.

HOLDINGS

1. Georgia does not recognize a common-law duty requiring physicians or other health-care providers to disclose the material risks of proposed treatment or procedures absent a statutory or regulatory requirement.
2. Georgia law contains no statutory or regulatory requirement that chiropractors obtain a patient's informed consent for chiropractic treatment.
3. The trial court correctly refused to instruct the jury on the asserted common-law informed-consent doctrine.

KEY QUOTATIONS

“Because OCGA § 31-9-6.1 is in derogation of the common law rule against requiring physicians to disclose medical risks to their patients, it must be strictly construed and cannot be extended beyond its plain and explicit terms.” (482-483)

“We now hold that Ketchup was wrongly decided and is hereby overruled.” (483-484)

“the doctrine of informed consent for health procedures and treatment is defined in Georgia exclusively by statutes and regulations.” (484-485)

FACTUAL BACKGROUND

The case involved a claim arising from chiropractic treatment and an asserted failure to obtain or provide informed consent. The trial court declined to instruct the jury on a common-law informed-consent doctrine. The Court of Appeals reversed after concluding that Georgia recognized a common-law duty to disclose the material risks and available alternatives associated with proposed treatment.

PROCEDURAL HISTORY

The trial court refused to instruct the jury on an informed-consent doctrine. The Georgia Court of Appeals reversed, holding that Georgia recognized a common-law doctrine requiring disclosure of material risks and alternatives. The Supreme Court of Georgia reversed the Court of Appeals.

DISPOSITION

reversed

CASES CITED

- Doreika v. Blotner, 292 Ga. App. 850, 666 S.E.2d 21 (2008)
- Albany Urology Clinic v. Cleveland, 272 Ga. 296, 528 S.E.2d 777 (2000)
- Ketchup v. Howard, 247 Ga. App. 54, 543 S.E.2d 371 (2000)
- Nathans v. Diamond, 282 Ga. 804, 654 S.E.2d 121 (2007)
- Tiismann v. Linda Martin Homes Corp., 281 Ga. 137, 637 S.E.2d 14 (2006)
- Life Ins. Co. of Ga. v. Lawler, 211 Ga. 246, 85 S.E.2d 1 (1954)
- Etkind v. Suarez, 271 Ga. 352, 519 S.E.2d 210 (1999)
- Mason v. The Home Depot U.S.A., 283 Ga. 271, 658 S.E.2d 603 (2008)

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