

SUPREME COURT OF ILLINOIS

Loman v. Freeman, 229 Ill. 2d 104

890 N.E.2d 446 (2008) · No. No. 104289 · Decided April 17, 2008

SUMMARY

The Supreme Court of Illinois held that a veterinarian employed by the University of Illinois owed a common-law duty of care arising independently of his state employment when treating the plaintiffs' horse. Accordingly, the plaintiffs' negligence and conversion claims against the veterinarian were not within the exclusive jurisdiction of the Court of Claims on the basis that the State was the real party in interest. The court also held that the defendant forfeited his argument that the negligence claim was barred by the Moorman economic-loss doctrine and affirmed the appellate court's judgment.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Garman; Chief Justice Thomas; Justice Fitzgerald; Justice Karmeier; Justice Freeman; Justice Burke; Justice Kilbride
JURISDICTION	Illinois
DECIDED	April 17, 2008
DOCKET	No. 104289
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed dismissal with prejudice of negligence and conversion claims under Illinois Code of Civil Procedure sections 2-615 and 2-619.1. The appellate court reversed, and the Illinois Supreme Court affirmed the appellate court.
STANDARD OF REVIEW	De novo review applies to dismissal under section 2-615 because the motion challenges the legal sufficiency of the complaint. Well-pleaded facts are taken as true and construed in the plaintiff's favor to determine whether they state a cause of action.
PRECEDENTIAL VALUE	Published Illinois Supreme Court opinion; precedential.
PARTIES	David E. Freeman v. Brian Loman et al.

TOPICS

- professional negligence
- conversion
- subject matter jurisdiction
- motions to dismiss
- appellate procedure

PRACTICE AREAS

professional negligence

conversion

sovereign immunity

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the plaintiffs' negligence claim was barred by Illinois's Moorman economic-loss doctrine.
2. Whether the Court of Claims had exclusive jurisdiction because the University of Illinois was the real party in interest.
3. Whether Freeman was immune from tort liability because university-employed veterinarians were exempt from the Illinois Veterinary Medicine and Surgery Practice Act.
4. Whether the amended complaint adequately stated a claim for conversion despite not alleging that Freeman permanently deprived plaintiffs of possession of the horse.

HOLDINGS

1. The Moorman issue was forfeited because Freeman mentioned it but failed to clearly define or adequately argue it before the Illinois Supreme Court. The court therefore did not decide whether the Moorman doctrine barred the negligence claim or whether the sudden-and-dangerous-occurrence exception applied.
2. The Court of Claims did not have exclusive jurisdiction over plaintiffs' claims against Freeman because the duty allegedly breached by a veterinarian arises from common law independently of state employment, and a judgment against Freeman would neither control the State's actions nor subject the State to direct liability.
3. Section 4(3) of the Veterinary Medicine and Surgery Practice Act exempts qualifying university-employed veterinarians from the Act's licensing and regulatory requirements, but does not confer immunity from tort liability.
4. The amended complaint stated a claim for conversion because plaintiffs alleged ownership and an immediate right to possession, a futile demand for return in unaltered condition, and Freeman's unauthorized assumption of control over the horse by performing expressly forbidden surgery. Permanent dispossession was not required where the surgery materially altered the horse's physical condition and rendered it useless for its ordinary purpose.

KEY QUOTATIONS

"We conclude that section 299A of the Restatement (Second) of Torts is an accurate statement of the common law of Illinois with respect to the duty of care owed by members of professions or trades, and we, therefore, agree with the appellate court's holding that a veterinarian owes a duty of care." (119-20)

"Because of the constitutional guarantee of a certain remedy for every legal wrong, we will not imply tort immunity in the absence of such express language." (123-25)

"Thus, the Court of Claims does not have exclusive jurisdiction over a claim that a veterinarian employed by the state has breached the duty of care applicable to veterinarians because that duty arises from the common

law, independently of state employment, and a judgment against such a veterinarian will neither operate to control the state nor subject the state to liability.” (128)

FACTUAL BACKGROUND

In 2001, the plaintiffs brought their race horse, Master David Lee, to the University of Illinois College of Veterinary Medicine for treatment. They allegedly authorized surgery on the left carpal bone and drainage of fluid from the right stifle, while expressly forbidding any other right-stifle surgery. Freeman allegedly performed unauthorized right-stifle surgery, leaving the horse lame and unsuitable for racing and reducing its market value and racing revenue.

PROCEDURAL HISTORY

Plaintiffs alleged that Freeman, a University of Illinois veterinary professor, performed unauthorized surgery on their race horse. The circuit court of Champaign County dismissed the amended complaint with prejudice. The appellate court reversed, holding that the negligence and conversion claims were sufficiently pleaded and that the claims were not within the exclusive jurisdiction of the Court of Claims. The Illinois Supreme Court granted Freeman's petition for leave to appeal and affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The cause was remanded to the circuit court of Champaign County for further proceedings on the negligence and conversion claims.

CASES CITED

- Moorman Manufacturing Co. v. National Tank Co., 91 Ill. 2d 69, 435 N.E.2d 443 (1982)
- Anderson Electric, Inc. v. Ledbetter Erection Corp., 115 Ill. 2d 146, 503 N.E.2d 246 (1986)
- In re Marriage of Bates, 212 Ill. 2d 489, 819 N.E.2d 714 (2004)
- Fritz v. Johnston, 209 Ill. 2d 302, 807 N.E.2d 461 (2004)
- Jinkins v. Lee, 209 Ill. 2d 320, 807 N.E.2d 411 (2004)
- Currie v. Lao, 148 Ill. 2d 151, 592 N.E.2d 977 (1992)
- Healy v. Vaupel, 133 Ill. 2d 295, 549 N.E.2d 1240 (1990)
- Campbell v. White, 207 Ill. App. 3d 541, 566 N.E.2d 47 (1991)
- Nikolic v. Seidenberg, 242 Ill. App. 3d 96, 610 N.E.2d 177 (1993)
- Jankoski v. Preiser Animal Hospital, Ltd., 157 Ill. App. 3d 818, 510 N.E.2d 1084 (1987)
- Spilotro v. Hugi, 93 Ill. App. 3d 837, 417 N.E.2d 1066 (1981)
- Purtill v. Hess, 111 Ill. 2d 229, 489 N.E.2d 867 (1986)
- Advincula v. United Blood Services, 176 Ill. 2d 1, 678 N.E.2d 1009 (1996)

- Dolan v. Galluzzo, 77 Ill. 2d 279, 396 N.E.2d 13 (1979)
- Rosenberg v. Miller, 247 Ill. App. 3d 1023, 617 N.E.2d 493 (1993)
- Janes v. Albergo, 254 Ill. App. 3d 951, 626 N.E.2d 1127 (1993)
- Kiersch v. Ogena, 230 Ill. App. 3d 57, 595 N.E.2d 696 (1992)
- Seifert v. Standard Paving Co., 64 Ill. 2d 109, 355 N.E.2d 537 (1976)
- Wozniak v. Conry, 288 Ill. App. 3d 129, 679 N.E.2d 1255 (1997)
- Cirrincione v. Johnson, 184 Ill. 2d 109, 703 N.E.2d 67 (1998)
- Eastern v. Canty, 75 Ill. 2d 566, 389 N.E.2d 1160 (1979)
- Sass v. Kramer, 72 Ill. 2d 485, 381 N.E.2d 975 (1978)
- Scott Wetzel Services v. Regard, 271 Ill. App. 3d 478, 648 N.E.2d 1020 (1995)
- People v. Jung, 192 Ill. 2d 1, 733 N.E.2d 1256 (2000)
- Oppe v. State of Missouri, 171 Ill. App. 3d 491, 525 N.E.2d 1189 (1988)