

SUPREME COURT OF WASHINGTON

Kim v. Lakeside Adult Family Home, 185 Wn. 2d 532

374 P.3d 121 (2016) · Decided May 12, 2016

SUMMARY

The Washington Supreme Court held that Washington's Abuse of Vulnerable Adults Act creates an implied private cause of action against mandated reporters who negligently fail to report suspected abuse. The court further held that genuine issues of material fact regarding the nurses' reporting duties and conduct precluded summary judgment. Regarding service of process on a defendant in Norway, the court concluded that personal service by an independent process server did not comply with the Hague Convention but affirmed denial of dismissal because the plaintiff acted with reasonable diligence through Norway's designated central authority.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Stephens, J.; Madsen, C.J.; Johnson, J.; Owens, J.; Fairhurst, J.; Wiggins, J.; González, J.; Gordon McCloud, J.; Yu, J.
JURISDICTION	Washington
DECIDED	May 12, 2016
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Washington Supreme Court granted review of the Court of Appeals' affirmance of summary judgment for Alpha and Christine Thomas and its affirmance of the denial of Thomas's motion to dismiss for insufficient service of process.
STANDARD OF REVIEW	Statutory interpretation, summary judgment, and the propriety of service of process are reviewed de novo. Summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law; evidence and reasonable inferences are viewed in favor of the nonmoving party.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Esther Kim, personal representative of the estate of Ho Im Bae v. Alpha Nursing & Services Inc., Christine Thomas

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QUESTIONS PRESENTED

1. Whether Washington's Abuse of Vulnerable Adults Act creates an implied private cause of action against mandated reporters who negligently fail to report suspected abuse or neglect.
2. Whether genuine issues of material fact concerning the nurses' knowledge, reasonable cause or suspicion, and promptness of reporting precluded summary judgment.
3. Whether personal service on Thomas in Norway by an independent process server complied with the Hague Convention.
4. Whether timely service on Alpha tolled the statute of limitations as to Thomas and whether Kim acted diligently in serving Thomas.
5. Whether either party was entitled to attorney fees at that stage of the litigation.

HOLDINGS

1. RCW 74.34.035 creates an implied private cause of action against mandated reporters who fail to report suspected abuse or neglect of vulnerable adults.
2. Summary judgment was improper because genuine issues of material fact existed regarding whether Binondo had reasonable cause to believe abuse was occurring, whether Thomas had reason to suspect physical assault, and whether the reports were made immediately.
3. Personal service by an independent process server did not comply with the Hague Convention because Norway objected to alternative methods of service and service in Norway had to be effectuated through Norway's designated central authority.
4. Timely and proper service on Alpha tolled the statute of limitations as to Thomas, and Kim acted with reasonable diligence in attempting service through Norway's central authority.

KEY QUOTATIONS

"The AVAA creates a private cause of action against mandated reporters who fail to report abuse, and genuine issues of material fact preclude summary judgment." (at 542)

"Under the AVAA, mandated reporters have a duty to report suspected abuse or neglect to DSHS and, in appropriate circumstances, directly to law enforcement." (at 547)

"Compliance with the Convention is mandatory in all cases to which it applies" (at 555)

"Reversing in part and affirming in part, we remand this case to the trial court for further proceedings." (at 565)

FACTUAL BACKGROUND

Ho Im Bae, a resident of Lakeside Adult Family Home, died from acute morphine intoxication, which the medical examiner ruled a homicide. Alpha employed nurses Christine Thomas and Marion Binondo, who visited other patients at Lakeside but did not provide nursing services to Bae. Binondo observed Bae after a fall and received information suggesting Bae was being drugged, while Thomas observed Bae appearing heavily sedated and being dragged by a caregiver and later reported her concerns to the Department of Social and Health Services. Thomas had moved to Norway before Kim amended her complaint to add Alpha and Thomas, and Kim attempted both personal service and service through Norway's Hague Convention central authority.

PROCEDURAL HISTORY

The trial court granted Alpha and Thomas summary judgment and denied Kim's motion for reconsideration. It also denied Thomas's motion to dismiss based on the statute of limitations and allegedly defective service. The Court of Appeals affirmed both rulings. The Supreme Court reversed the summary judgment ruling on the Abuse of Vulnerable Adults Act claims in part, affirmed the tolling and eventual service conclusions, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the trial court for further proceedings on the AVAA claims. Summary judgment dismissal of those claims must be vacated or reversed because factual issues remain for the trier of fact. Service on Thomas may proceed through Norway's Royal Ministry, and the statute of limitations remains tolled until that service is completed.

CASES CITED

- Bennett v. Hardy, 113 Wn. 2d 912, 784 P.2d 1258 (1990)
- Beggs v. Department of Social & Health Services, 171 Wn. 2d 69, 247 P.3d 421 (2011)
- In re Washington Public Power Supply System Securities Litigation, 823 F.2d 1349 (9th Cir. 1987)
- Jane Doe v. Corporation of President of Church of Jesus Christ of Latter-Day Saints, 141 Wn. App. 407, 167 P.3d 1193 (2007)
- State ex rel. Phillips v. Washington State Liquor Control Board, 59 Wn. 2d 565, 369 P.2d 844 (1962)
- Wingert v. Yellow Freight System, Inc., 146 Wn. 2d 841, 50 P.3d 256 (2002)
- SentinelC3, Inc. v. Hunt, 181 Wn. 2d 127, 331 P.3d 40 (2014)
- Folsom v. Burger King, 135 Wn. 2d 658, 958 P.2d 301 (1998)
- Hertog v. City of Seattle, 138 Wn. 2d 265, 979 P.2d 400 (1999)
- State v. Baker, 30 Wn. 2d 601, 192 P.2d 839 (1948)
- Morse v. Antonellis, 149 Wn. 2d 572, 70 P.3d 125 (2003)
- State v. Sherman, 98 Wn. 2d 53, 653 P.2d 612 (1982)
- Scanlan v. Townsend, 181 Wn. 2d 838, 336 P.3d 1155 (2014)

- In re Marriage of Horner, 151 Wn. 2d 884, 93 P.3d 124 (2004)
- Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 108 S. Ct. 2104, 100 L. Ed. 2d 722 (1988)
- Societe Nationale Industrielle Aerospatiale v. U.S. District Court, 482 U.S. 522, 107 S. Ct. 2542, 96 L. Ed. 2d 461 (1987)
- Shenouda v. Mehanna, 203 F.R.D. 166 (D.N.J. 2001)
- Broad v. Mannesmann Anlagenbau, AG, 141 Wn. 2d 670, 10 P.3d 371 (2000)
- Sidis v. Brodie / Dohrmann, Inc., 117 Wn. 2d 325, 815 P.2d 781 (1991)
- Bosteder v. City of Renton, 155 Wn. 2d 18, 117 P.3d 316 (2005)
- Powers v. W.B. Mobile Services, Inc., 182 Wn. 2d 159, 339 P.3d 173 (2014)
- Scott Fetzer Co. v. Weeks, 114 Wn. 2d 109, 786 P.2d 265 (1990)

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