

SUPREME COURT OF VIRGINIA

Auer v. Miller, 270 Va. 172

613 S.E.2d 421 (2005) · No. Record No. 042226 · Decided June 9, 2005

SUMMARY

The Supreme Court of Virginia held that Code § 8.01-581.18(B) immunized a physician from civil liability for failing to review or act on laboratory-test results that the physician had neither requested nor authorized in writing. The court also affirmed the trial court's decision to vacate a verdict against the physician's practice group because the evidence did not establish that its negligence was a proximate cause of the patient's death.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Stephenson, Senior Justice; Hassell, C.J.; Lacy, J.; Keenan, J.; Kinser, J.; Lemons, J.; Agee, J.; Stephenson, S.J.
JURISDICTION	Virginia
DECIDED	June 9, 2005
DOCKET	Record No. 042226
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed a trial court's partial grant of a physician's statutory immunity plea and its order vacating a jury verdict against the physician's practice group.
STANDARD OF REVIEW	Statutory interpretation was reviewed under the plain-language rule. The court reviewed the trial court's proximate-cause determination as a matter of law because reasonable minds could not differ on the evidence.
PRECEDENTIAL VALUE	published and precedential decision of the Supreme Court of Virginia
PARTIES	Marybelle M. Auer, Administratrix of the Estate of Nicholas Auer, Deceased v. Edward Miller, M.D., Lenox Baker, M.D., Mid-Atlantic Cardiothoracic Surgeons, Ltd., Cardiovascular Associates, Ltd.

TOPICS

medical malpractice

wrongful death

proximate cause

statutory interpretation

appellate procedure

PRACTICE AREAS

health law

medical malpractice

wrongful death

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether Code § 8.01-581.18(B) immunized Dr. Miller from civil liability for failing to review or act on a laboratory report that he did not request or authorize.
2. Whether the trial court erred in excluding from the jury Dr. Miller's alleged negligence concerning the laboratory report and in temporally segregating the defendants' liability.
3. Whether the trial court properly vacated the verdict against Cardiovascular Associates because the evidence did not establish that its alleged negligence proximately caused Auer's death.

HOLDINGS

1. Code § 8.01-581.18(B) clearly and unambiguously immunizes a physician from civil liability for failing to review or act on a laboratory-test report that the physician neither requested nor authorized in writing, unless the report was provided directly by the person tested with a request for consultation. The statute is not limited to outpatient situations or nonattending physicians.
2. The trial court properly vacated the verdict against Cardiovascular Associates because the plaintiff's expert testimony did not establish that an appropriate response to the May 30 telephone calls would have destroyed a substantial possibility of Auer's survival or otherwise made survival more likely than not.

KEY QUOTATIONS

"It is firmly established that, when language of a statute is plain and unambiguous and its meaning is clear and definite, a court is bound by that language." (270 Va. at 173)

"This Court cannot amend or rewrite the statute." (270 Va. at 174)

"In a case involving the death of a patient, a physician's negligence is a proximate cause of the patient's death if it 'destroyed any substantial possibility of the patient's survival.'" (270 Va. at 174)

FACTUAL BACKGROUND

Nicholas Auer underwent aortic-valve replacement surgery, and Dr. Baker ordered a culture and sensitivity test of the removed valve. The test showed staphylococcus, but Dr. Baker and Dr. Miller did not review the report; Auer's prosthetic valve later became infected, and he was discharged without treatment for the infection. After Auer's family contacted Cardiovascular Associates on May 30, 2002, Auer was readmitted on June 3 with endocarditis and died shortly thereafter. The plaintiff's experts could not testify that treatment on May 30 would more likely than not have prevented his death.

PROCEDURAL HISTORY

The trial court granted Dr. Miller and Cardiovascular Associates immunity under Code § 8.01-581.18(B) for liability based on failure to review or act on a laboratory report concerning a test ordered by Dr. Baker, while allowing negligence claims concerning the practice group's response to post-discharge telephone calls to

proceed. A jury returned a verdict against Cardiovascular Associates, but the trial court vacated that verdict after concluding that the evidence was insufficient to establish proximate cause. The Supreme Court of Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Cummings v. Fulghum, 261 Va. 73, 77, 540 S.E.2d 494, 496 (2001)
- Halifax Corp. v. Wachovia Bank, 268 Va. 641, 653, 604 S.E.2d 403, 408 (2004)
- Horner v. Department of Mental Health, 268 Va. 187, 193, 597 S.E.2d 202, 205 (2004)
- Hadeed v. Medic-24, Ltd., 237 Va. 277, 285, 377 S.E.2d 589, 593 (1989)
- Brown v. Koulizakis, 229 Va. 524, 532, 331 S.E.2d 440, 446 (1985)