

SUPREME COURT OF OREGON

Marcum v. Adventist Health System/West, 345 Or. 237

193 P.3d 1 (2008) · No. SC S055431 · Decided September 16, 2008

SUMMARY

The Oregon Supreme Court held that expert medical causation testimony based on a differential diagnosis was scientifically valid and should have been admitted. The court concluded that an expert may rely on the temporal and spatial relationship between a single exposure and immediate, localized symptoms, together with biological plausibility and the exclusion of alternative causes, even without a scientifically established mechanism or high-correlation studies. The court reversed the Court of Appeals' decision concerning the negligence claim and remanded for consideration of alternative arguments regarding the informed-consent claim.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Balmer, J.
JURISDICTION	Oregon
DECIDED	September 16, 2008
DOCKET	SC S055431
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of a Court of Appeals decision affirming a directed verdict for defendants in a medical malpractice action after the trial court excluded plaintiff's expert medical-causation testimony under the scientific-validity standard.
STANDARD OF REVIEW	The Supreme Court reviewed the admissibility of the expert medical-causation testimony under the Oregon Evidence Code and reviewed the resulting directed verdict. Scientific evidence must be relevant, helpful to the trier of fact, and not excludable under OEC 403; the trial court acts as a gatekeeper, but the court may not impose an unnecessarily rigid requirement of a scientifically demonstrated mechanism or high statistical correlation.
PRECEDENTIAL VALUE	published opinion; precedential Oregon Supreme Court decision
PARTIES	Deborah Marcum v. Adventist Health System/West, Northwest Medical Foundation of Tillamook, Alliance Imaging, Inc., Alliance

TOPICS

expert testimony evidence medical malpractice appellate procedure standard of review

PRACTICE AREAS

evidence medical malpractice torts appellate procedure

QUESTIONS PRESENTED

1. Whether plaintiff's expert medical-causation testimony that gadolinium extravasation caused her hand injury satisfied the scientific-validity requirements governing expert scientific evidence under OEC 401, OEC 402, OEC 403, and OEC 702.
2. Whether the trial court properly excluded the expert testimony and directed a verdict for defendants on plaintiff's negligence claim.
3. Whether the directed verdict on plaintiff's informed-consent claim could stand when the Court of Appeals had not considered defendants' alternative arguments supporting that ruling.

HOLDINGS

1. Expert medical-causation testimony based on a differential diagnosis or differential etiology is admissible when the particular application of that methodology has a scientifically valid basis. Scientific validity does not invariably require a scientifically demonstrable mechanism of causation, epidemiological studies showing a high correlation, or elimination of every alternative cause.
2. The Court of Appeals erred by treating the absence of a scientifically accepted mechanism of causation or independently verified correlation as effectively precluding the expert from ruling in gadolinium extravasation as a potential cause.
3. The directed verdict on plaintiff's negligence claim was improper because the excluded expert testimony should have been admitted and supplied evidence of medical causation.
4. The Supreme Court did not resolve defendants' alternative arguments concerning the directed verdict on the informed-consent claim and remanded that issue to the Court of Appeals for consideration.

KEY QUOTATIONS

"The function of the court is to ensure that the persuasive appeal is legitimate." (193 P.3d at 4)

"Rather, admissibility will turn on whether the particular use of differential diagnosis to determine causation meets the more general test of scientific validity." (193 P.3d at 6)

"Questions as to the weight to be given that testimony, possible weaknesses in the expert's theory, and the ultimate issue of causation were for the jury to decide based on all the evidence." (193 P.3d at 9)

FACTUAL BACKGROUND

After an automobile accident, Marcum underwent an MRI involving injection of the contrast agent gadolinium. After unsuccessful injections in both arms, the MRI technologist injected the back of her left hand; she immediately reported a sensation that her hand was filling up. Her hand became painful, discolored, and swollen, and she continued to experience pain and impaired hand function. Plaintiff's medical expert attributed the injury to gadolinium extravasation, relying on the immediate and localized symptoms, the toxicity of gadolinium, and the exclusion of alternative causes.

PROCEDURAL HISTORY

Marcum sued the defendants for negligent injury and failure to obtain informed consent after a gadolinium injection during an MRI. The trial court excluded portions of the testimony of plaintiff's experts, including testimony that gadolinium extravasation caused her hand injury, and directed a verdict for defendants because plaintiff lacked causation evidence. The Court of Appeals affirmed, and the Oregon Supreme Court granted review, reversed, and remanded for further proceedings concerning the negligence and informed-consent claims.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The decision of the Oregon Court of Appeals was reversed. The case was remanded to the Court of Appeals to consider defendants' alternative arguments concerning the directed verdict on the informed-consent claim and for further proceedings consistent with the Supreme Court's ruling that the expert causation testimony should have been admitted.

CASES CITED

- Marcum v. Adventist Health System/West, 215 Or. App. 166, 168 P.3d 1214 (2007)
- State v. Brown, 297 Or. 404, 687 P.2d 751 (1984)
- State v. O'Key, 321 Or. 285, 899 P.2d 663 (1995)
- Jennings v. Baxter Healthcare Corp., 331 Or. 285, 14 P.3d 596 (2000)
- State v. Lyons, 324 Or. 256, 924 P.2d 802 (1996)
- Joshi v. Providence Health System, 342 Or. 152, 149 P.3d 1164 (2006)