

SUPREME COURT OF WASHINGTON

Wynn v. Earin

163 Wash. 2d 361 (2008) · Decided April 3, 2008

SUMMARY

The Washington Supreme Court considered whether witness immunity barred claims against a mental health counselor who disclosed counseling information and testified in a child-placement proceeding. The court held that the Uniform Health Care Information Act overrides common-law witness immunity for claims based on unlawful disclosure of health care information, but witness immunity barred malpractice claims arising from the counselor’s testimony. The court also concluded that claims relating to the counselor’s appearance and testimony were otherwise barred or waived and affirmed the trial court’s limited award of attorney fees and costs.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                 |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Washington                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Madsen, J.; Alexander, C.J.; C. Johnson, J.; Owens, J.; Fairhurst, J.; J.M. Johnson, J.; Bridge, J. Pro Tem.                                                                                                                                                    |
| JURISDICTION          | Washington                                                                                                                                                                                                                                                      |
| DECIDED               | April 3, 2008                                                                                                                                                                                                                                                   |
| DISPOSITION           | other                                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Supreme Court review of a Court of Appeals decision reversing a trial court's application of witness immunity and partial attorney-fee award in an action involving alleged violations of Washington's Health Care Information Act and professional negligence. |
| STANDARD OF REVIEW    | Questions concerning application of witness immunity are reviewed de novo. The interpretation of the Health Care Information Act and the attorney-fee provision is a question of law reviewed de novo.                                                          |
| PRECEDENTIAL VALUE    | Published Washington Supreme Court opinion; precedential.                                                                                                                                                                                                       |
| PARTIES               | Jolene Earin v. Pardner Wynn                                                                                                                                                                                                                                    |

TOPICS

- medical records privacy
- health law
- professional negligence
- statutory interpretation
- civil procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the Health Care Information Act overrides common-law witness immunity for claims based on disclosure of confidential health care information during or in preparation for judicial proceedings.
2. Whether witness immunity bars malpractice claims based on a mental health professional's testimony concerning information acquired during a prelitigation professional relationship formed for nonlitigation purposes.
3. Whether Wynn waived statutory confidentiality rights by failing to object to Earin's testimony at the child-placement proceeding.
4. Whether Wynn could assert statutory claims based on Earin's appearance as a witness for Wynn's former wife.
5. Whether the Health Care Information Act entitled Wynn to attorney fees and costs incurred in pursuing unsuccessful, legally distinct claims in addition to fees attributable to successful statutory claims.

## HOLDINGS

1. The Health Care Information Act prevails over the common-law witness-immunity rule, so witness immunity does not bar claims based on disclosure of confidential health care information in violation of the Act.
2. Witness immunity may apply to testimony concerning information acquired during a professional relationship formed for nonlitigation purposes; the Court of Appeals' categorical contrary rule was too broad.
3. Wynn waived his confidentiality rights under the Health Care Information Act by failing to object to Earin's testimony at the child-placement proceeding on the ground that it violated the Act.
4. Under RCW 70.02.170(2), attorney fees and costs are awardable only for claims on which the plaintiff prevails and only to the extent reasonably incurred for those successful claims.

## KEY QUOTATIONS

*“Thus, the Act shows the legislature’s intent to allow a cause of action notwithstanding the witness immunity rule.” (at 372)*

*“We conclude that the Health Care Information Act prevails over the common law witness immunity rule.” (at 373)*

*“We agree and conclude the Courts of Appeals’ holding that witness immunity does not apply to information acquired in a prelitigation professional relationship formed for nonlitigation purposes is simply too broad.” (at 375)*

*“We interpret this by its plain language to mean that attorney fees and costs are award-able only when actually incurred for claims on which the plaintiff prevails.” (at 384)*

## FACTUAL BACKGROUND

Earin provided individual counseling to Pardner Wynn and later joint marital counseling to Wynn and his wife, Cynthia. During the Wynns' dissolution and child-placement proceedings, Earin disclosed counseling information to the guardian ad litem without having the required written release in hand and later testified on Cynthia Wynn's behalf. Wynn alleged violations of the Health Care Information Act and professional negligence, including negligent handling of his counseling records; the jury awarded \$2,790 for damages caused by the loss of those records.

## PROCEDURAL HISTORY

Wynn sued Earin for alleged violations of the Health Care Information Act and malpractice. The trial court dismissed claims based on Earin's appearance and testimony at a child-placement hearing under the witness-immunity doctrine, directed verdicts establishing two statutory violations, and awarded Wynn approximately 10 percent of his requested attorney fees and costs. The Court of Appeals reversed the witness-immunity rulings and fee ruling. The Washington Supreme Court reversed the Court of Appeals in part, affirmed in part, held that the statutory claims were otherwise barred by waiver and other grounds, and affirmed the trial court's fee award.

## DISPOSITION

other

## REMAND INSTRUCTIONS

No retrial is required. The Court of Appeals' contrary rulings are reversed, and the trial court's dismissal of claims arising from Earin's appearance and testimony and its award of attorney fees and costs are affirmed.

## CASES CITED

- Wynn v. Earin, 131 Wn. App. 28, 125 P.3d 236 (2005)
- Deatherage v. Examining Bd. of Psychology, 134 Wn.2d 131, 948 P.2d 828 (1997)
- Bruce v. Byrne-Stevens & Assocs. Eng'rs, Inc., 113 Wn.2d 123, 776 P.2d 666 (1989)
- Briscoe v. LaHue, 460 U.S. 325, 103 S. Ct. 1108, 75 L. Ed. 2d 96 (1983)
- Price v. Kitsap Transit, 125 Wn.2d 456, 886 P.2d 556 (1994)
- Tenney v. Brandhove, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (1951)
- Twelker v. Shannon & Wilson, Inc., 88 Wn.2d 473, 564 P.2d 1131 (1977)
- McUne v. Fuqua, 42 Wn.2d 65, 253 P.2d 632, 257 P.2d 636 (1953)
- Brand v. Department of Labor & Industries, 139 Wn.2d 659, 989 P.2d 1111 (1999)
- Caughell v. Group Health Cooperative of Puget Sound, 124 Wn.2d 217, 876 P.2d 898 (1994)
- Renzi v. Morrison, 249 Ill. App. 3d 5, 618 N.E.2d 794, 188 Ill. Dec. 224 (1993)
- Silberg v. Anderson, 50 Cal. 3d 205, 786 P.2d 365, 266 Cal. Rptr. 638 (1990)
- Butz v. Economou, 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978)
- Fahn v. Cowlitz County, 95 Wn.2d 679, 628 P.2d 813 (1981)

- Martinez v. City of Tacoma, 81 Wn. App. 228, 914 P.2d 86 (1996)
- Blair v. Washington State University, 108 Wn.2d 558, 740 P.2d 1379 (1987)

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