

SUPREME COURT OF THE STATE OF IDAHO

Dlouhy v. Kootenai Hospital District

Dlouhy · No. 47165 · Decided October 19, 2020

SUMMARY

The Idaho Supreme Court reviewed a summary judgment ruling in a medical malpractice action against Kootenai Hospital District. The court held that the plaintiffs’ out-of-area gastroenterology expert had adequately established familiarity with the applicable community standard of care, but that a second expert’s opinion lacked sufficient foundation because it was not supported by sworn testimony or an affidavit. The court reversed in part, vacated the judgment, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of the State of Idaho
WRITING FOR THE COURT	Burdick, Chief Justice; Brody, Justice; Bevan, Justice; Stegner, Justice; Moeller, Justice
JURISDICTION	Idaho
DECIDED	October 19, 2020
DOCKET	47165
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiffs appealed from an Idaho district court order granting summary judgment to Kootenai Health in a medical malpractice action based on the alleged lack of admissible expert testimony establishing the applicable community standard of care.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the district court. The admissibility of expert testimony at summary judgment is a threshold issue distinct from whether the testimony creates a genuine issue of material fact. Evidentiary rulings are reviewed for clear abuse of discretion under the four-part Lunneborg standard.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Debra Dlouhy, individually and as surviving spouse of Duane Dlouhy, Dustin Dlouhy, individually and as Personal Representative of the Estate of Duane Dlouhy, Drue Hatfield, individually, Demi Dlouhy,

TOPICS

medical malpractice

expert testimony

standard of care

summary judgment

appellate procedure

PRACTICE AREAS

medical malpractice

health law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court erred in granting summary judgment because the plaintiffs failed to provide sufficient expert testimony establishing the applicable community standard of care.
2. Whether Kenneth Hammerman, an out-of-area, board-certified gastroenterologist, had adequately established actual knowledge of the applicable community standard of care.
3. Whether Judy Schmidt's unsworn expert report and the parties' expert witness disclosure supplied admissible testimony establishing the applicable community standard of care.

HOLDINGS

1. An out-of-area expert may testify that a national standard of care applies to a board-certified defendant specialist when the expert and defendant are board-certified in the same specialty and the expert inquires into the local standard to ensure that it does not deviate from the national standard.
2. Hammerman's testimony was admissible on summary judgment because he and the defendant physician were board-certified gastroenterologists, and Hammerman's review of the defendant's deposition established that the community standard in Coeur d'Alene did not deviate from the national standard.
3. Schmidt's opinion regarding the standard of care was inadmissible because the plaintiffs submitted neither sworn testimony from Schmidt nor an affidavit or declaration establishing how she became familiar with the applicable community standard.

KEY QUOTATIONS

“An expert’s review of a deposition stating that the local standard does not vary from the national standard, coupled with the expert’s personal knowledge of the national standard, is sufficient to lay a foundation for the expert’s opinion.” (10)

“An expert witness disclosure may certainly be referred to in an affidavit or during a deposition, but absent some form of testimony, any statement of the standard of care contained therein cannot be rightly attributed to the expert witness.” (12)

FACTUAL BACKGROUND

In May 2015, Duane Dlouhy presented to Kootenai Health with rectal bleeding and underwent imaging and a colonoscopy that did not provide a complete view of the rectum. He was discharged and received several follow-

up appointments, but the possibility of colorectal cancer was not discussed or documented. In August 2016, he was diagnosed with stage IV colorectal cancer and later died. The plaintiffs alleged that Kootenai Health was vicariously liable for the negligent acts or omissions of healthcare providers involved in his care.

PROCEDURAL HISTORY

The Dlouhys filed a medical malpractice complaint in 2017, later amending it to add parties and defendants. After other defendants were dismissed, the claims against Kootenai Health were limited by stipulation to vicarious liability for specified employees. The district court granted Kootenai Health summary judgment, entered judgment dismissing the claim, and later awarded costs. The Idaho Supreme Court reversed the summary judgment ruling in part, vacated the final judgment, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings consistent with the opinion after reversal in part of the summary judgment order and vacation of the final judgment.

CASES CITED

- Mattox v. Life Care Ctrs. of Am., Inc., 157 Idaho 468, 337 P.3d 627 (2014)
- Arregui v. Gallegos–Main, 153 Idaho 801, 291 P.3d 1000 (2012)
- Dulaney v. St. Alphonsus Reg'l Med. Ctr., 137 Idaho 160, 45 P.3d 816 (2002)
- Navo v. Bingham Mem'l Hosp., 160 Idaho 363, 373 P.3d 681 (2016)
- Lunneborg v. My Fun Life, 163 Idaho 856, 421 P.3d 187 (2018)
- Frank v. E. Shoshone Hosp., 114 Idaho 480, 757 P.2d 1199 (1988)
- Suhadolnik v. Pressman, 151 Idaho 110, 254 P.3d 11 (2011)
- Phillips v. E. Idaho Health Servs., 166 Idaho 731, 463 P.3d 365 (2020)
- Buck v. St. Clair, 108 Idaho 743, 702 P.2d 781 (1985)
- Grimes v. Green, 113 Idaho 519, 746 P.2d 978 (1987)
- Samples v. Hanson, 161 Idaho 179, 384 P.3d 943 (2016)
- Grover v. Smith, 137 Idaho 247, 46 P.3d 1105 (2002)
- Morrison v. St. Luke's Reg'l Med. Ctr., 160 Idaho 599, 377 P.3d 1062 (2016)
- Ciccarello v. Davies, 166 Idaho 153, 456 P.3d 519 (2019)