

SUPREME COURT OF VIRGINIA

Parker v. Carilion Clinic

819 S.E.2d 809 (Va. 2018) · No. Record No. 170132 · Decided November 1, 2018

SUMMARY

The Supreme Court of Virginia held that the plaintiff’s notice of appeal was timely because the circuit court’s order sustaining demurrers and allowing time to amend did not become final until the amendment deadline expired. The Court further held that the complaint adequately stated a respondeat superior claim against the healthcare employer based on a rebuttable presumption that employees acted within the scope of employment. It affirmed dismissal of the direct liability claims against the employer and dismissed an assignment of error concerning the individual employees because the circuit court had not ruled on that issue.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice D. Arthur Kelsey; All the Justices
JURISDICTION	Virginia
DECIDED	November 1, 2018
DOCKET	Record No. 170132
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Parker appealed the Circuit Court of the City of Roanoke's order sustaining Carilion's demurrers and dismissing her claims against Carilion. The Supreme Court of Virginia addressed both the timeliness of the appeal and the sufficiency of Parker's pleaded theories of vicarious and direct liability.
STANDARD OF REVIEW	A demurrer tests the legal sufficiency of the facts alleged, not the strength of the proof. The court accepts expressly pleaded factual allegations and reasonable inferences as true and views them in the light most favorable to the claimant, but disregards unreasonable inferences and conclusions of law; legal conclusions are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Lindsey Parker v. Carilion Clinic, Carilion Healthcare Corporation,
Christy Davis, Lindsey Young

TOPICS

motions to dismiss

appellate procedure

vicarious liability

health law

civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

torts

health law

QUESTIONS PRESENTED

1. Whether Parker's notice of appeal was timely when the circuit court sustained a demurrer and allowed twenty-one days to amend before dismissing the case.
2. Whether allegations that Carilion employees committed tortious disclosures in the context of their employment created a rebuttable presumption that they acted within the scope of employment for purposes of a respondeat superior claim at the demurrer stage.
3. Whether Carilion could be directly liable for breach of the healthcare-provider duty of nondisclosure based solely on disclosures by ordinary employees.
4. Whether alleged HIPAA violations supported a Virginia negligence per se claim against Carilion for failing to secure confidential medical information.
5. Whether the court should decide Parker's separate claims against Davis and Young individually when the circuit court had not ruled on that issue.

HOLDINGS

1. An order sustaining a demurrer while allowing a specified period to amend is not final until the amendment period expires without an amendment; the thirty-day period for filing a notice of appeal therefore begins upon entry of the final order, not upon entry of the conditional demurrer order.
2. When a complaint alleges an employer-employee relationship and tortious conduct by the employee, a rebuttable presumption that the employee acted within the scope of employment applies at the demurrer stage as well as at trial.
3. Parker adequately pleaded a respondeat superior claim against Carilion; the allegations did not establish as a matter of law that Davis and Young acted outside the scope of employment.
4. Carilion was not directly liable for breach of the healthcare-provider duty of nondisclosure merely because its ordinary employees allegedly disclosed Parker's information; on the pleaded facts, any potential liability was vicarious.
5. Alleged HIPAA violations did not support Parker's Virginia negligence per se claim because Virginia negligence per se requires an underlying common-law duty, and Virginia law had not imposed on healthcare providers a duty to manage information systems to prevent employees from obtaining unauthorized access.

6. The court declined to decide whether Parker adequately pleaded individual tort claims against Davis and Young because the circuit court had not ruled on that issue and the assignment of error did not address a ruling from which the appeal was taken.

KEY QUOTATIONS

“Absent a statutory provision stating otherwise, an order must be both entered and final before the 30-day period for filing a notice of appeal commences.” (Section II)

“In Virginia, the first principle of respondeat superior is that vicarious liability may be imposed on an employer when “the service itself, in which the tortious act was done, was within the ordinary course of [the employer’s] business,” i.e., when the employee committed the tort while “performing a normal function” of his assigned job.” (Section III.B.2)

“At the demurrer stage of a case, however, the self-refutation must be clear, not conjectural, and irrefutable rather than debatable.” (Section III.B.4)

“The doctrine of negligence per se does not create a cause of action where one did not exist at common law. Thus, the doctrine does not create a duty of care.” (Section III.C.2)

FACTUAL BACKGROUND

Parker had previously been diagnosed with a medical condition at a Carilion-owned obstetrics and gynecology facility. Months later, while visiting another Carilion facility for unrelated treatment, Carilion employee Davis accessed Parker's confidential medical information and disclosed the diagnosis to employee Young. Young accessed the information, confirmed the diagnosis, and disclosed it to Parker's acquaintance, who informed Parker.

PROCEDURAL HISTORY

Parker alleged that Carilion employees disclosed confidential medical information concerning her. Carilion admitted that Davis and Young were its employees but demurred to claims based on respondeat superior, direct wrongful-disclosure liability, and negligence per se based on HIPAA. The circuit court sustained the demurrers and allowed Parker twenty-one days to amend; she did not amend and filed a notice of appeal after the amendment period expired. The Supreme Court held the appeal timely, reversed dismissal of the respondeat superior claim, affirmed dismissal of the direct-liability claims, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings consistent with the opinion. The circuit court was to allow the respondeat superior claim against Carilion to proceed; the direct nondisclosure and HIPAA-based negligence per se claims remained dismissed. The parties could raise the unresolved individual-liability issue on remand.

CASES CITED

- Coutlakis v. CSX Transportation, Inc., 293 Va. 212, 215-16 (2017)
- Norris v. Mitchell, 255 Va. 235, 239-40 (1998)
- Fairfax Hospital v. Curtis, 254 Va. 437, 442 (1997)
- Majorana v. Crown Central Petroleum Corp., 260 Va. 521, 525-27 (2000)
- Giant of Maryland, Inc. v. Enger, 257 Va. 513, 516-17 (1999)
- Gina Chin & Associates v. First Union Bank, 260 Va. 533, 541-45 (2000)
- Williamson v. Old Brogue, Inc., 232 Va. 350, 355 (1986)
- Steward v. Holland Family Properties, LLC, 284 Va. 282, 287, 290 (2012)
- Vansant & Gusler, Inc. v. Washington, 245 Va. 356, 360-61 (1993)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/virginia-supreme-court-of-virginia/2018/parker-v-carilion-clinic-zp0vds2g>