

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Amaker v. King County

540 F.3d 1012 (9th Cir. 2008) · No. No. 07-35241 · Decided August 26, 2008

SUMMARY

The Ninth Circuit certified questions to the Washington Supreme Court concerning whether a decedent’s sister may bring a tortious-interference-with-a-corpse claim and whether Washington’s Anatomical Gift Act creates an implied private right of action. The court stayed further proceedings pending the Washington Supreme Court’s decision on whether to accept and answer the certified questions.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Alex Kozinski, Chief Judge; Richard R. Clifton; N. Randy Smith; Brian E. Sandoval, sitting by designation
JURISDICTION	Federal
DECIDED	August 26, 2008
DOCKET	No. 07-35241
DISPOSITION	other
PROCEDURAL POSTURE	In a diversity action, the district court granted summary judgment to defendants on the plaintiff's remaining claims, including tortious interference with a corpse and violation of the Washington Anatomical Gift Act. On appeal, the Ninth Circuit disposed of the invasion-of-privacy and civil-conspiracy claims in a contemporaneous memorandum disposition and certified three unsettled Washington-law questions to the Washington Supreme Court.
STANDARD OF REVIEW	The opinion applies the certification standard under RCW § 2.60.020: certification is appropriate when resolution of unsettled state law is necessary to dispose of the proceeding. The underlying district-court rulings included summary judgment.
PRECEDENTIAL VALUE	Published certification order; binding as to the Ninth Circuit's certification determination, but not a resolution of the certified Washington-law merits questions.

PARTIES

Robinette Amaker v. King County, Stanley Medical Research Institute,
E. Fuller Torrey

TOPICS

appellate procedure federalism torts health law

PRACTICE AREAS

appellate procedure torts health law federalism

QUESTIONS PRESENTED

1. Whether Washington law limits standing to bring a tortious-interference-with-a-corpse claim to persons who were the statutory next of kin entitled to dispose of the decedent's remains.
2. If Washington law recognizes a broader class of claimants, whether the decedent's sister falls within that class.
3. Whether the Washington Anatomical Gift Act creates an implied private right of action.

HOLDINGS

1. Certification was appropriate because Washington law did not clearly determine which persons may bring a tortious-interference-with-a-corpse claim and the answer was necessary and potentially dispositive of Amaker's claim.
2. Certification was appropriate because no Washington court had decided whether the Washington Anatomical Gift Act created an implied private right of action, and the answer was necessary to resolve the appeal.

KEY QUOTATIONS

"When we are left without a definitive rule statement on a question of state law, like we are here, "[w]e are not making the most of our opportunity to cooperate as judicial neighbors, and we are not in tune with the requirements of judicial federalism, when we declare state law . . . without first asking the state supreme court for clarification."" (540 F.3d at 1017)

"We do not intend our framing of the questions to restrict the Washington Supreme Court's consideration of these issues." (540 F.3d at 1019)

FACTUAL BACKGROUND

Bradley Gierlich died in Seattle in 1998 and was survived by his father, sister Robinette Amaker, and aunt. During an autopsy, the King County Medical Examiners Office attempted but failed to contact Bradley's father, the statutory next of kin, before harvesting and sending portions of Bradley's brain and other tissue to the Stanley Medical Research Institute for research. Amaker later learned of the tissue transfer and alleged that she would not have consented to the donation because Bradley had expressed opposition to organ donation.

PROCEDURAL HISTORY

Amaker filed suit in Pierce County Superior Court after learning that tissue from her deceased brother had been provided for medical research without consent. Defendants removed the action to the Western District of Washington. The district court granted summary judgment on several claims and ruled that Amaker lacked standing to pursue tortious interference with a corpse and that the Washington Anatomical Gift Act created no implied private right of action. The Ninth Circuit certified questions concerning both issues to the Washington Supreme Court and stayed further proceedings.

DISPOSITION

other

REMAND INSTRUCTIONS

The court certified three questions to the Washington Supreme Court, ordered transmission of the record and briefs, stayed further proceedings pending the Washington Supreme Court's decision whether to accept review and, if accepted, its answers, and withdrew the case from submission until further order.

CASES CITED

- Wright v. Beardsley, 46 Wash. 16, 89 P. 172 (1907)
- Gadbury v. Bleitz, 133 Wash. 134, 233 P. 299 (1925)
- Herzl Congregation v. Robinson, 142 Wash. 469, 253 P. 654 (1927)
- Jacobs v. Calvary Cemetery & Mausoleum, 53 Wash. App. 45, 765 P.2d 334 (1989)
- Reid v. Pierce County, 136 Wash. 2d 195, 961 P.2d 333 (1998) (en banc)
- Carney v. Knollwood Cemetery Ass'n, 33 Ohio App. 3d 31, 514 N.E.2d 430 (1986)
- O'Dea v. Mitchell, 350 Mass. 163, 213 N.E.2d 870 (1966)
- Siver v. Rockingham Mem'l Hosp., 48 F. Supp. 2d 608 (W.D. Va. 1999)
- Whaley v. County of Saginaw, 941 F. Supp. 1483 (E.D. Mich. 1996)
- Allinger v. Kell, 102 Mich. App. 798, 302 N.W.2d 576 (1981), rev'd on other grounds, 411 Mich. 1053, 309 N.W.2d 547 (1981)
- Wages v. Amisub of Georgia, 235 Ga. App. 156, 508 S.E.2d 783 (1998)
- Christensen v. Superior Court of Los Angeles, 54 Cal. 3d 868, 2 Cal. Rptr. 2d 79, 820 P.2d 181 (1992)
- Contreras v. Michelotti-Sawyers, 271 Mont. 300, 896 P.2d 1118 (1995)
- Johnson v. Hawe, 388 F.3d 676 (9th Cir. 2004)
- Sattler v. Nw. Tissue Ctr., 110 Wash. App. 689, 42 P.3d 440 (2002)
- Duffy v. Riveland, 98 F.3d 447 (9th Cir. 1996)
- Broad v. Mannesmann Anlagenbau AG, 196 F.3d 1075 (9th Cir. 1999)
- In re F.D. Processing, Inc., 119 Wash. 2d 452, 832 P.2d 1303 (1992) (en banc)
- Amaker v. King County, 479 F. Supp. 2d 1151 (W.D. Wash. 2007)

- Amaker v. King County, 479 F. Supp. 2d 1159 (W.D. Wash. 2007)
- Amaker v. King County, 479 F. Supp. 2d 1162 (W.D. Wash. 2007)

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