



Monday, September 18, 2010

Hightower v. Baylor University Medical Center
Cause No. 05-10-00300-CV
Fifth District Court of Appeals

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The Facts

Joshua Hightower, suffering from end-stage renal disease, underwent a kidney transplant on May 4, 2004, at Baylor University Medical Center. The kidney was harvested from a deceased donor. Forty-eight days after the transplant, Hightower died of complications from rabies acquired from the infected kidney. Several other patients receiving organs from the same donor died of rabies acquired from the infected organs.

The Trial Court Proceeding

In 2006, Joshua Hightower's parents filed a medical malpractice suit against the hospital and Drs. Sanchez and Chinnakotla, the doctors involved with the kidney transplant. The case was transferred to the 192nd Judicial District Court of Dallas with the Honorable Craig Smith presiding.

A medical malpractice suit is a civil suit in which the plaintiffs seek damages from the defendants. In this case, the Hightowers claim that the hospital and doctors acted negligently, i.e., without sufficient care. Specifically, the Hightowers claim that the kidney transplant was unnecessary because Joshua did not need the transplant immediately, and the transplant was risky given the donor's history of drug abuse and incarceration. The Hightowers also claim that the hospital and the doctors misrepresented the risks involved with the transplant to Joshua and his parents.

As part of the lawsuit, the Hightowers served the hospital and Drs. Sanchez and Chinnakotla with reports prepared by Drs. Wu and Eastland. These expert reports supported the Hightowers' claim that the defendants had acted negligently. The defendants objected to the reports, claiming that the reports did not meet certain requirements imposed by law. The defendants moved to have the trial court dismiss the Hightowers' claims.

In November 2009, the trial court found the Hightowers' expert reports deficient and granted a thirty day extension to allow the Hightowers to fix the reports. The trial court, however, also found the new reports deficient, and the judge granted the defendants' motion to dismiss.

The Appeal

The Hightowers appealed the trial court's order granting the motion to dismiss. The appeal will be heard by the Fifth District Court of Appeals of Texas. On appeal, the Hightowers contend that the expert reports they submitted comply with relevant law and that the trial court should not have dismissed their case. They ask the appellate court to reverse the trial court's order of dismissal.

Because the Hightowers are appealing the trial court's decision, they are the "Appellants." The hospital and Drs. Sanchez and Chinnakotla, who prevailed in the trial court, are the "Appellees."

After the appeal was filed, the Hightowers submitted a legal document called a "brief," describing the legal arguments in support of their position. The Appellees also submitted briefs addressing the issues raised by the Appellants.

The Attorneys

Each party is represented by experienced attorneys. The attorneys prepared the briefs and will present the parties' arguments to the appellate court. The Hightowers, are represented on appeal by Robert D. O'Connor of Cotham, Harwell & Evans, P.C. in Houston and by Matthew R. Patton of Gilmer, Texas. Baylor University Medical Center is represented by Michelle E. Robberson of Cooper & Scully, P.C. in Dallas. Drs. Sanchez and Chinnakotla are represented by Michael Yanof of Stinnett, Thiebaud & Remington, L.L.P. in Dallas.

The Oral Argument

The Fifth District Court of Appeals will hear this appeal on October 18, 2010, at the Belo Mansion in Dallas. The Hightowers and the Appellees will each have twenty minutes to address the court. During this time, the attorneys will present their arguments, and the judges will ask questions regarding the case and applicable law. The Hightowers' lawyers will argue first, followed by the Appellees' lawyers. Once the Appellees have concluded their arguments, the Hightowers' lawyers will have five more minutes for a final rebuttal argument.

Fifth District Court of Appeals

The Fifth District Court of Appeals is an intermediary court, which hears both civil and criminal cases and has jurisdiction over appeals from both district and county courts located in Dallas, Collin, Grayson, Hunt, Rockwall, and Kaufman Counties. The court consists of a Chief Justice and twelve other judges, all of whom are elected and hold their offices for terms of four years. Ordinarily, three judges will preside over oral arguments. After an oral argument, the judges will review the briefs and the trial record. After they have fully considered the case, the three judges will vote and decide the outcome of the case. For a panel of three to reach a final decision, two of the three judges must agree. Decisions issued by the Fifth District Court of Appeals can be appealed to either the Texas Supreme Court, which hears only civil cases, or the Texas Court of Criminal Appeals, which hears only criminal cases. To learn more about the Fifth District Court of Appeals, visit <http://www.5thcoa.courts.state.tx.us/>.

The Legal Standard

The Fifth District Court of Appeals reviews decisions of trial courts. The Court of Appeals does not preside over trials, and no new witnesses or evidence can be introduced during an appeal. The appellate court's role is to review the trial court's record to see if any legal errors occurred. The record includes the transcripts from the trial, including the jury selection process, and all evidence that was introduced during the trial.

In this case, the Fifth District Court of Appeals will review the case applying the standard of "abuse of discretion." To establish an abuse of discretion, the Hightowers' must show that they were prejudiced by discretionary decisions of the trial court judge. The Fifth District Court of Appeals will affirm the trial court's decision if it finds that no error occurred. Alternatively, the appellate court may send the case back to the trial court if an error occurred. The appellate court will affirm the trial court's decision unless the trial judge acted in an unreasonable manner or without reference to guiding legal principles.

The Disputed Issues

I. Did the Hightowers' expert reports meet statutory requirements, and did the trial court abuse its discretion in dismissing the case?

Under the Texas Civil Practice and Remedies Code § 74.351, the Hightowers had to provide the trial court with expert reports and a curriculum vitae for each of their experts, Drs. Wu and Eastland. A curriculum vitae is similar to a resumé. To comply with § 74.351, the expert reports must include three elements: 1) the applicable standard of care, 2) the manner in which the care rendered by the health care provider failed to meet the standard, and 3) the causal relationship between that failure and the harm claimed. The purpose of § 74.351 is to ensure that the Hightowers have a sound basis for their medical malpractice claim and that the suit is not frivolous.

The Hightowers argue that their experts made a "good faith" effort to comply with § 74.351. They argue that their expert reports show that the Appellees did not comply with the relevant standard of care and that as a result, Joshua died. In particular, the Hightowers argue that Joshua should not have received the kidney transplant because he did not need it immediately and the donor presented a high risk of infection. Also, the kidney transplant resulted in a rabies infection that caused Joshua's death. Additionally, the Hightowers argue that even if their expert reports are somewhat lacking in detail or clarity, they do inform the Appellees of the specific conduct that the Hightowers claim is negligent. For these reasons, the Hightowers contend that the trial court abused its discretion in dismissing their claim.

Appellees respond that the reports issued by Drs. Wu and Eastland fail to comply with § 74.351 because the reports were conclusory (i.e., lacking sufficient detail). The reports failed to adequately discuss the standard of care and how it was breached. The reports also failed to establish that the Appellees' breach of the standard of care caused Joshua's death. For these reasons, Appellees contend that the trial court acted within its discretion when it granted their motion to dismiss.

II. Does § 74.351 violate the Texas Constitution, and can the Hightowers raise this issue on appeal?

A. Is § 74.351 unconstitutional?

As an alternative to their argument that their expert reports comply with § 74.351, the Hightowers argue that § 74.351 is unconstitutional. The Texas Constitution states that the legislature cannot pass a special law that regulates the practice or jurisdiction or that changes the rules of evidence in a judicial proceeding. A "special law" is one that treats a particular group or class of people differently. The Hightowers argue that § 74.351 is a special law, and the statute violates the Texas Constitution because it treats medical malpractice negligence differently from other negligence claims. The Hightowers contend that the difference unfairly benefits the Appellees. Additionally, the Hightowers point specifically to a similar law that was declared unconstitutional in Oklahoma.

Appellees point out the difficulty in proving a statute unconstitutional and argue that the Hightowers have not met that challenge. The court will presume the statute is constitutional, and the Hightowers have to show that there are no circumstances under which the statute would be valid. Further, Appellees argue that the Texas courts have already found § 74.351 constitutional in other cases. Finally, Appellees argue that the Oklahoma court decision finding a similar Oklahoma statute unconstitutional is not binding on Texas courts.

The Hightowers also argue § 74.351 is unconstitutionally vague because the legislature failed to provide any guidelines as to what an expert report must look like. A statute that prohibits conduct without providing sufficient guidelines creates a situation where people must guess as to the statute's meaning. If a statute is unconstitutionally vague, the statute must be declared void. Appellees respond that § 74.351 includes sufficient guidance for a plaintiff to provide a satisfactory expert report, and the statute grants the plaintiff a second chance to correct any errors noted by the court before the case will be dismissed.

Finally, the Hightowers argue that the statute violates the separation of powers and the due course of law provisions of the Texas Constitution. The separation of powers provision restricts the legislature's power to interfere with the courts. The due course of law provision permits an injured party access to a remedy. The Hightowers argue that § 74.351 violates these provisions by requiring an expert report in medical malpractice cases and by requiring the court to dismiss the case and sanction a plaintiff who fails to file an adequate report. Appellees respond that the statute did not keep the Hightowers from presenting their claim in court. Appellees argue the Hightowers' claims were dismissed because the Hightowers failed to comply with the statute even after being given a second opportunity to do so.

B. May the Hightowers raise the constitutionality issue on appeal?

Appellees argue that in order for the Hightowers to raise an issue on appeal, the trial court must have ruled on the issue or refused to rule on the issue. If the trial court refused to rule, the Hightowers must have objected to the refusal in order to preserve the issue for appeal. Appellees also argue that the trial court did not issue any ruling regarding the constitutionality of § 74.351, so the issue cannot be raised on appeal. If the Court of Appeals agrees with this position, the court will not address whether the statute is constitutional.

The Decision and Opinion

After the attorneys present their oral arguments, the Fifth District Court of Appeals may take several weeks or months to decide the appeal. The Fifth District Court of Appeals' decision and any opinions written by the judges will be made available for review at <http://www.dallasbar.org/appealing/>. In addition, the opinions can be accessed using the case number (05-10-00300-CV) at http://www.5thcoa.courts.state.tx.us/search_o.htm. It is also possible to register your email address for updates on the case, including notice of the final opinion. To register go to <http://courtstuff.net/5th/Register.html>. You will need to register with the court's vNotice! system first and then send an email to caseinfo@courtstuff.com with "Subscribe 05-10-00300-CV" in the subject line. For more detailed instructions on this process, go to <http://www.5thcoa.courts.state.tx.us/vNotice.htm>.

Questions and Additional Information

For additional information regarding these teaching materials, please feel free to contact:

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