

Angersola v. Radiologic Associates of Middletown, P.C. (SC 19619) (SC 19749)

Brief Summary: Plaintiffs' sought to recover damages for the wrongful death of the decedent alleging that the hospital failed to notify the decedent of a suspicious mass in her left lung. Court held that the trial court erred in denying the plaintiff's request for limited discovery to resolve the disputed issue of whether the defendant doctor had reason to know that the plaintiff required ongoing treatment pursuant to the continuing course of conduct doctrine.

The plaintiffs, administrators of the estate of the decedent, sought damages pursuant to statute § 52-555 alleging the wrongful death of the decedent, Patricia Sienkiewicz. The decedent was admitted to the defendant hospital for surgery. After the surgery, Eileen Tobin, a physician's assistant, ordered an X-ray of the decedent's chest. Robert Wolek, a radiologist, interpreted the X-ray and dictated a report on his findings. Wolek reported the presence of pulmonary opacities indicative of congestive heart failure; and the presence of a separate 1.8 centimeter spiculated density in the left upper lung, indicative of lung cancer. His report indicated that his findings were called to the hospital floor at the time of the reading. A nurse's note in the decedent's hospital file indicated that the X-ray results were received at approximately 2:30 p.m. on November 5, 2007 and communicated to Tobin at that time. A week later, Tobin dictated a discharge summary for the decedent which referenced the finding regarding the congestive heart failure diagnosis but not the lung cancer diagnosis. On April 6, 2012, a CT scan of the decedent's lungs revealed a large neoplasm in the upper left lobe measuring 5.4 by 4 by 6.6 centimeters. The decedent died from stage IV lung cancer approximately two years later, on June 8, 2014.

Shortly after, the plaintiffs sued the defendant alleging that the decedent's death was the result of the defendant's failure to exercise reasonable care in a number of instances, including their failure to notify the decedent about the suspicious mass in her left lung even though were

aware of the condition. The defendants filed motions to dismiss for lack of subject matter jurisdiction. Arguing that because wrongful death action is a statutorily created right of action that does not exist at common law, the plaintiffs' failure to commence the action within the five year statutory repose period deprived the court of subject matter jurisdiction over the claim. The plaintiffs then filed a motion for limited discovery, asserting that the repose period had been tolled (paused) as to all of the defendants in accordance with the continuing course of conduct and continuing course of treatment doctrine. Furthermore, they argued that when a determination of subject matter jurisdiction turns on disputed issues of fact, the case cannot properly be decided on a motion to dismiss unless the plaintiff is afforded an opportunity to establish such facts either via discovery or an evidentiary hearing. The trial court denied the motion. Subsequently, the plaintiffs filed a brief in opposition to the defendants' motions to dismiss, claiming that compliance with the five-year repose provision of § 52-555 is not a jurisdictional prerequisite. Additionally, they requested an evidentiary hearing to address any disputed issues of fact not present in the initial complaint that the court may consider when determining whether they have jurisdiction. Tobin, Shoreline and Middlesex Hospital argued that the continuing course of conduct doctrine was inapplicable to them because none of them were aware, prior to the expiration of the repose period, that Wolek had diagnosed a mass in the decedent's left lung. Wolek and Radiologic Associates claimed that Wolek had fulfilled his duty to the decedent by correctly diagnosing the mass and reporting his diagnosis to the hospital floor. Lastly, all the defendants argued that the continuing course of treatment doctrine was inapplicable because none of them had provided the decedent with ongoing treatment for any identified condition following her discharge from the hospital. The plaintiff's argued that the nurses signature suggested that Torbin was aware of the X-ray result and that Torbin's discharge summary

indicated that the X-ray revealed evidence of congestive heart failure, thus, she was aware of some of the X-ray results. Consequently, the plaintiff argued that it ought to be up to the jury to decide which parties knew what information and when they knew it. The trial court dismissed the claim concluding that both doctrines were inapplicable.

The issues before the Supreme Court of Connecticut were: (1) whether noncompliance with the repose provision of § 52-555 deprives a trial court of subject matter jurisdiction; (2) whether the continuing course of treatment doctrine is applicable in the case; and (3) whether the trial court improperly denied the plaintiffs' request to conduct limited discovery to resolve disputed facts relating to their claim that the repose period was tolled by the continuing course of conduct doctrine. The court concluded that: (1) noncompliance with the repose provision of § 52-555 deprives a trial court of subject matter jurisdiction; (2) the trial court correctly determined that the continuing course of treatment doctrine is inapplicable in the present case; and (3) the trial court improperly denied the plaintiffs' request to conduct limited discovery to resolve disputed facts relating to their claim that the repose period was tolled by the continuing course of conduct doctrine.

Regarding the first issue the court explained that when a specific time limitation is contained in a statute that creates a right of action that did not exist at common law, then the remedy exists only during the prescribed period and not after. Thus, because § 52-555 (the statute permitting an executor or administrator of the estate to recover for injuries resulting in the death of the decedent) created liability when none previously existed, the three-year repose period is a jurisdictional prerequisite. However, the courts rejected the defendant's argument that the court lacked subject matter jurisdiction over the action because the continuing course of action and treatment doctrines do not apply to § 52-555. The court rejected this argument stating

that they are unaware of any authority suggesting that rules governing when an action begins for statute of limitation purposes are inapplicable to statutorily created causes of action. Thus, the court had jurisdiction to determine whether either doctrine applies as either could be invoked to toll the statute of limitations period, making the present complaint timely.

Under the course of treatment doctrine when injuries arise from a course of treatment, the statute does not begin to run until the treatment is terminated as long as the relationship of the physician and patient continues as to the particular condition the physician is employed to cure, and the physician continues to attend and examine the patient in relation thereto, and there is something more to be done by the physician in order to effect a cure, it cannot be said that the treatment has ceased. The three elements are (1) the plaintiff had an identified medical condition requiring ongoing treatment; (2) the defendant provided ongoing treatment after the allegedly negligent conduct; and (3) the plaintiff brought the action within the appropriate statutory period. The court concluded that this doctrine was inapplicable in the present case because the decedent had no knowledge of the medical condition (lung cancer), thus, the defendant could not have been providing ongoing treatment for the condition.

Under the continuing course of conduct doctrine when the wrong consists of a continuing course of conduct, the statute does not run until that course of conduct is complete. The key difference between this doctrine and the above is that this one focuses on the defendant's duty to the plaintiff arising from his/her knowledge of the plaintiff's condition. Consequently, if the defendant has reason to know that the plaintiff required ongoing treatment or monitoring for a particular condition, then the defendant may have had a continuing duty to warn the plaintiff or to monitor the condition, and the continuing breach of that duty tolls the statute of limitations, regardless of whether the plaintiff had knowledge of any reason to seek further treatment. The

court explained that the trial court was unable to properly determine whether this doctrine applied because they did not allow for an evidentiary hearing or limited discovery. The court explained that when a jurisdictional determination is dependent on a critical factual dispute it cannot be decided on a motion to dismiss in the absence of an evidentiary hearing or limited discovery—as it was here. The critical fact dispute was whether the defendants knew about the mass in the decedent’s lung prior to the expiration of the statute of repose. If they did know, then the doctrine continuing conduct is applicable, consequently, the court would have jurisdiction. The facts were disputed because Tobin’s affidavit stated that she was never informed about the mass, however, the nurse’s note appears to contradict this claim because it states that the decedent’s X-ray results were communicated to Tobin at 2:30 p.m. on November 5, 2007. Thus, it was not undisputed that Tobin was never informed as the trial court concluded when dismissing the case. Consequently, the court concluded by stating that based on the above evidentiary hearing rule the plaintiffs have a right to request any information from the defendants regarding the question of whether the defendants knew about the mass as the jurisdictional determination of the case is dependent on this factual dispute. Therefore, the decision was reversed and remanded.

The key takeaway from this case is that the doctrines of continuing treatment and conduct are applicable to statutorily created causes of action such as the one in this case. This is salient because a contrary ruling would lead to the bizarre result of preventing plaintiffs from invoking these doctrines in cases that they were created to be invoked in—disputes involving whether the statute of limitations period expired.