

Gagliano v. Advanced Specialty Care, P.C. (SC 19804)

Brief Summary: Plaintiff suffered a perforated colon following a hernia surgery performed by a resident surgeon at the defendant hospital. Court held that the resident surgeon was an agent of the hospital as the hospital had general control over his conduct, thus, the hospital was vicariously liable for the resident surgeon's negligence.

The plaintiff, Vivian Galiano, underwent hernia repair surgery at the hospital. A fourth-year surgical resident, Bodavula, was assigned to assist Gordon (her physician) with the surgery. As the surgery proceeded Gordon became concerned that Bodavula was applying too much force with the optical trocar so Gordon took over. Two days after the surgery, while recovering in the hospital, the plaintiff began to exhibit signs of infection, and her body went into septic shock. She was diagnosed with a perforated colon due to the surgery—a life threatening and altering injury. Consequently, the plaintiff filed a negligence claim against Gordon, his practice, Advanced Specialty Care, P.C., Bodavula and the hospital. Her husband also sued the same parties for loss of consortium. The plaintiff alleged that Gordon and Bodavula were agents of the hospital, thus, the hospital was vicariously liable for their actions. Following a settlement with Gordon and Advanced Specialty Care, P.C., the claims against Bodavula and the hospital went to trial. The jury returned a verdict in favor of the plaintiffs and awarded the plaintiff \$902,985.04 in economic damages and \$9.6 million in noneconomic damages. Furthermore, the jury found that Bodavula was an actual agent of the hospital and the hospital was liable for 80 percent of the damages and Gordon was liable for the remaining 20 percent. The Appellate Court held that the evidence did not establish that there was an understanding between Bodavula and the hospital that the hospital would be in control of Bodavula's performance of the surgery, thus, Bodavula was not an agent of the hospital. Consequently, it reversed the judgment of the trial court. The

primary issue before the Supreme Court of Connecticut was whether there was sufficient evidence that the defendant surgical resident was an actual agent of the defendant hospital, when he negligently performed the surgery under Gordon's supervision. The court held that the evidence was sufficient and reversed the judgment of the Appellate court.

The question when challenging the validity of a jury verdict on the grounds of insufficient evidence is whether the jury could have reasonably reached its conclusion based on the evidence. The court construe the evidence in light most favorable to sustaining the verdict.

The three elements required to show the existence of an agency relationship are: (1) a manifestation by the principal that the agent will act for them; (2) acceptance by the agent of the undertaking; and (3) an understanding between the parties that the principal will be in control of the undertaking. Essentially, there is an understanding between the agent and principal that the agent is acting on their behalf (like an employee) and is under the control of the principal—often indicated by the principal directing and/or controlling the work of the agent.

The Appellate court found that the third element—an understanding between the parties that the principal will be in control of the undertaking—was lacking. Thus, the court reviewed whether there was sufficient evidence regarding it. First, the court found that the “undertaking” includes Bodavula's performance of the surgery as it was the sole negligent act on which liability was premised. Second, the court clarified that the agency rule above requires only the general right to control be established, and not the actual exercise of specific control. Furthermore, the law allows for agents to retain discretion and independence in how they perform the work for the principal and be deemed subject to the principal's general right to control. Thus, the hospital just had to have a general right to control Bodavula for Bodavula to be considered an agent—they did not need to have specific control over every action he did.

The evidence at trial regarding the hospital's general control over Bodavula came from the hospital house staff manual, witness testimony, and a hospital consent form signed by the plaintiff. The court discussed how the manual stated that the hospital's executive vice president is responsible for overseeing the residency programs (like the one Bodavula was in). Second, that hospital's medical education committee monitors all aspects of residency education and implements an internal review process. Third, the hospital provided faculty to supervise the resident surgeons. Fourth, that the faculty commitments to the residents include evaluation and that unsatisfactory resident evaluation may result in temporary suspension from duties, or termination of employment and residency education. Furthermore, the manual stated that residents were to rotate among four surgical services—including hernia repairs. The plaintiff's expert, Gouge, testified that teaching hospitals benefit from a residency program because it affords them highly trained, low cost physicians to assist nurses and to provide patient care around the clock. Additionally, the hospital consent form signed by the plaintiff authorized a resident to perform the surgery; it contained the logo and name of the hospital with no indication that residents had any other affiliations. Lastly, Gordon testified that he did not believe that it was in his patient's best interests to allow a resident to participate, but he did so to advance the hospital's expectation of involving its residents to the extent that it was safe to do so. The court concluded that the above evidence collectively provided a sufficient basis for the jury to conclude that the hospital has a general right to control Bodavula. The court reasoned that the evidence was sufficient as the hospital agreed to oversee Bodavula's medical education in exchange for the low cost of labor; the hospital officials overseeing the program had the right to constrain Bodavula's activities and take disciplinary action if his performance was unsatisfactory. Thus, the court stated a reasonable inference from the evidence is that the chief

surgical resident who assigned Bodavula to the surgery was acting in furtherance of the hospital's obligation to surgical residents. Finally, the court supported their reasoning with cases from other jurisdictions which held that resident surgeons were acting as agents of their respective hospitals despite being supervised by an attending physician at the time of the negligence.

Lastly, the defendant argued that because they are not licensed to practice medicine, they cannot be vicariously liable for Bodavula's negligence as they were precluded from exercising any control over his surgical performance. The court rejected this argument citing their holding in *Cefaratti v. Aranow*, that it has never been the rule in Connecticut that hospitals cannot be held vicariously liable for the medical malpractice of their agents and employees. Consequently, the decision of the Appellate court was reversed.

The key takeaway from this case is that hospitals can be held vicariously liable for the negligence of resident surgeons at their hospitals. This is salient because it instills a duty upon the hospitals to ensure that their resident surgeons are performing their surgeries properly, thus, protecting potential patients. However, it is important to note that a resident surgeon will not automatically be deemed as an agent of the hospital, as the court stated it is a fact based determination illustrated by factors such as overseeing the resident and the right to take disciplinary action.