

*Jane Doe v. Charles Cochran (SC 19879)*

The plaintiff in this case sought damages for negligence against the defendant physician for failing to accurately report a positive genital herpes test to the plaintiff's boyfriend ("S"). As a result of the defendant incorrectly informing S that he did not carry the herpes virus, the plaintiff contracted the virus. At the time S was tested for sexually transmitted diseases, he informed the defendant that he was doing so for the benefit of his exclusive girlfriend. S's test came back positive for herpes. The defendant instructed a staff member to inform S of the results of the test. The staff member incorrectly informed S that his STD test came back negative. Based on the results of the test, S and the plaintiff began a sexual relationship. Shortly thereafter, the plaintiff began experiencing outbreaks consistent with the symptoms of herpes and was eventually diagnosed with the herpes virus. S then contacted the defendant at which point the defendant informed S of the mistake regarding the result of his STD test.

The defendant filed a motion to strike the complaint on the grounds that it stemmed from a claim of medical malpractice. The defendant claimed that because the plaintiff was not his patient the complaint must fail. The defendant further claimed that the plaintiff could not prevail even on a claim of ordinary negligence because no special relationship existed between the defendant and the plaintiff that would afford the plaintiff an extended duty of care from the defendant. The trial court granted the defendant's motion, ruling that the defendant did not owe a duty of care to the plaintiff.

The issue presented to the Court in this case is "whether a physician who mistakenly informs a patient that he does not have an [STD] may be held liable in ordinary negligence to the patient's exclusive sexual partner for her resulting injuries when the physician knows that the patient sought testing and treatment for the express benefit of that partner." The Court concluded

that the defendant did owe a duty of care to the plaintiff, despite the fact that she was not his patient. In reaching this conclusion, the Court looked first to the defendant's initial claim that the plaintiff's complaint sounded in a medical malpractice claim. The Court found that the defendant could not prevail on this claim. The Court found that although the plaintiff's claim could be interpreted as an allegation of malpractice, it could also be interpreted as a claim of ordinary negligence. The Court reasoned that even though the alleged negligent act took place in a medical setting and involved a medical diagnosis, the error did not implicate the defendant's professional medical skills. Rather, the error involved miscommunication of test results which is a "ministerial task" and involves no medical training. Further, determining whether this mistake constituted negligence would require no expert testimony nor does it require the establishment of a professional standard of care for a fact finder to determine the defendant's liability.

The Court next examined whether the defendant owed a duty of care to the plaintiff, who is not his patient. The court found that a physician testing a patient for STDs owes a duty of care to a third party engaged in an exclusive romantic relationship with the patient, so long as that third party is identifiable at the time the alleged negligent act occurred. Here, the defendant owed a duty of care to the plaintiff as an identifiable third party who could foreseeably contract the STD as a result of her reliance on the defendant's erroneous communication to S that he did not carry any STDs.

In reaching this conclusion, the Court also considered their "general aversion to extending a physician's duty of care to nonpatients" in the past. However, the Court also noted that it has, in specific and limited circumstances, allowed for the "imposition of liability in cases . . . involving an identifiable potential victim who will be foreseeably harmed by a physician's negligence." Here, the plaintiff was an identifiable third party of the defendant's

negligence as S's exclusive girlfriend. Because it is only possible for one person to fit the description of S's exclusive girlfriend, and S could have identified her by name had he been asked to, the plaintiff was an identifiable potential third party victim of the defendant's negligence, and was therefore owed a duty of care by the defendant. In making this determination, the Court looked to the Restatement (Second) of Torts, which suggests that, "[o]ne who negligently gives false information to another is subject to liability for the physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results . . . (b) to such third persons as the actor should expect to be put in peril by the action taken."

The Court further considered the public policy reasons for holding a physician liable for violating a duty of care to a third party. In cases such as the present case, where communicable diseases are involved and therefore broader public health is at issue, imposing a third-party duty does not infringe on the "sanctity of the patient-physician relationship." Such a duty requires only that physicians take care to accurately relay test results to their patients. Additionally, the Court reasoned that if a defendant could not be held liable in such cases, then plaintiffs similarly situated would be without remedy or compensation for their injuries incurred as a result of a physician's negligence. Lastly, the Court rejected the defendant's argument that imposing third party liability would drastically impact medical malpractice insurance rates and the overall cost of health care as such claims are not common or prevalent enough to have a meaningful impact on insurance rates of health care costs and the avoidance of such incidents is wholly within the power of physicians.