

Labissoniere v. Gaylord Hospital, Inc. (AC 39681)

Brief Summary: The plaintiffs filed a medical practice claim against the defendant physicians and hospital on behalf of the decedent due to the decedent suffering from a retroperitoneal hematoma while in the defendants' care. The court held: that (1) the plaintiffs failed to comply with § 521-90a (a) because their opinion letter was authored by a physician certified in surgery, not internal medicine like the defendants; and (2) the exception in § 52-184c (c) was inapplicable as the plaintiffs' failed to allege that the defendants acted outside the scope of internal medicine.

The plaintiffs, George Labissoniere and Helven Civale, coexecutors of the estate of Robert Labissoniere, filed a medical malpractice action against the defendants, physicians Moe Kyaw, Madhuri Gadiyaram, and Eileen Ramos and their employer, Gaylord Hospital, Inc. The decedent was admitted to the hospital for medical care and rehabilitation following hip replacement surgery performed at St. Francis hospital. The plaintiffs alleged that while under the care of the defendants, the decedent suffered from a retroperitoneal hematoma, a postoperative condition that resulted in irreversible nerve damage, as well as hemorrhagic shock and multiorgan failure, requiring the decedent to be transferred back to St. Francis Hospital. Attempting to comply with General Statutes § 521-90a (a), the plaintiffs submitted an opinion letter authored by David A. Mayer, a physician and general surgeon who was board certified in surgery. The defendants filed a motion to dismiss, arguing that because Mayer was board certified in surgery and not internal medicine, he was not a "similar health care provider," as defined in General Statutes § 52-184c, and, therefore, the court lacked personal jurisdiction over them. Included with the motion were affidavits, establishing that physicians are board certified in internal medicine and not surgeons, that surgeries are not performed at the hospital, and that

there are no surgeons on staff at the hospital. The court granted the defendants' motions to dismiss. It reasoned that neither the amended complaint nor Mayer's written opinion letter alleged or stated that the defendants were acting outside their specialty of internal medicine in treating the decedent or that they diagnosed and treated a condition outside of their specialty such that their conduct should be judged against the standards of care applicable to that specialty. Thus, concluding that since there was no allegation or expert opinion it does not fall within the exception contained in § 52-184c (c).

The issues on appeal were: whether (1) the court improperly considered the affidavits that the defendants attached to their motions because the issues did not involve factual issues concerning personal jurisdiction that are not determinable on the face of the record; (2) the opinion letter complied with § 52-190a; and (3) the exception under § 52-184c (c) applied.

The court held that: (1) the court properly considered the affidavits; (2) the opinion letter did not comply with § 52-190a; and (3) the exception under § 52-184c (c) was not applicable. Consequently, affirming the trial court's granting of the defendants' motion to dismiss.

First, the plaintiffs argued that the court improperly considered the affidavits of the defendants attached to their motion because the issues did not involve factual issues concerning personal jurisdiction that were not determinable on the face of the record.

Practice Book § 10-30 (a) states "A motion to dismiss shall be used to assert . . . (2) lack of jurisdiction over the person" A motion to dismiss "shall always be filed with a supporting memorandum of law and, where appropriate, with supporting affidavits as to facts not apparent on the record." Furthermore, if affidavits submitted in support of a defendant's motion

to dismiss establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with evidence, the trial court may dismiss the action without further proceedings.

Based on the above rules, the court rejected the plaintiffs' argument. It reasoned that it was not improper for the court to consider the affidavits because the affidavits provided independent evidence of the physician's medical specialty. The affidavits established that personal jurisdiction was lacking because the opinion letter submitted by the plaintiff was not authored by a "similar health care provider," as defined in General Statutes § 52-184c. Thus, the court properly considered the affidavits in granting the motions to dismiss for lack of personal jurisdiction. The court then addressed whether the opinion letter complied with § 52-190a.

Section 52-190a (a) provides that before filing a personal injury action against a health care provider, the attorney or party filing the action must make a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there was negligence in the care or treatment of the claimant. . . . To show a good faith belief, the complaint must be accompanied by a written and signed opinion of a similar health care provider, as defined in § 52-184c, stating that there appears to be evidence of medical negligence and including a basis for forming that opinion. A similar health care provider defined in § 52-184c is one who: (1) is trained and experienced in the same specialty; and (2) is certified by the appropriate American board in the same specialty.

The plaintiff was required to obtain a letter from an expert who was trained, experienced and board certified in internal medicine to comply with § 52-190a. The court concluded that the plaintiff did not comply with § 52-190a because Mayer is not certified in internal medicine.

The plaintiff argued that the matter falls within the exception in § 52-184c (c). The exception states “if the defendant health care provider is providing treatment or diagnosis for a condition which is not within his specialty, a specialist trained in the treatment or diagnosis for that condition shall be considered a similar health care provider.” Thus, the plaintiff had to allege that defendants were acting outside the scope of internal medicine and instead, acting within the scope of surgery for Mayer to be considered a similar health care provider. However, the plaintiffs submitted no evidence demonstrating this.

The plaintiffs argued that the exception applies because they alleged that the treatment and care the defendants rendered fell “within the specialty of surgery” and therefore, the defendants were acting outside their specialty of internal medicine. The court rejected this argument stating that a broad specialty like internal medicine often overlaps with other specialties. Thus, under the plaintiffs’ argument there would likely never be a situation where treatment falls within the specialty of internal medicine because physicians certified in internal medicine often diagnose and treat a variety of conditions that could fall within various specialties. Therefore, the court concluded that there was no basis for the claim that in treating the plaintiff in the emergency department of the hospital, the defendant was acting outside his specialty of emergency medicine.

Having concluded that the letter did not comply with § 52-190a and the exception in § 52-184c (c) was inapplicable, the court affirmed the judgment of the trial court.

The takeaway from this case is that in a medical malpractice case a plaintiff must provide a letter written by a doctor certified in the same specialty as the defendant or they must specifically allege that the defendant was acting outside their scope. This is salient because

failure to comply with the requirement deprives the court of personal jurisdiction, thus, requiring the court to dismiss the complaint regardless of how strong the evidence may be.