

Peters v. United Community & Family Services, Inc. (AC 39559)

Brief Summary: Plaintiff filed a medical malpractice claim for injuries suffered following dental surgery by the defendant. The plaintiff attempted to cure a deficiency in the opinion letter by providing an affidavit after the statute of limitations period had expired. The court held that regardless of the type of procedure a plaintiff elects to employ to cure a defect in an opinion letter filed in accordance with § 52-190a, that procedure must be initiated prior to the running of the statute of limitations.

Facts and Procedure

The plaintiff, Steven V. Peters, Jr., sought monetary damages arising out of the alleged negligent performance of maxillofacial surgery by the defendant. On September 19, 2012, the plaintiff underwent a procedure known as a decompression of a maxillary cyst. The procedure was performed by the defendant or somebody under his supervision. The plaintiff continued to receive treatment related to the cyst through October 11, 2013, at which time the plaintiff “became aware that there may have been a breach of the standard of care.” The plaintiff commenced the action against the defendant on January 7, 2016, within the applicable limitation period. The complaint had a return date of February 9, 2016. The plaintiff alleged that the defendant had failed “to exercise that degree of care and skill ordinarily and customarily used by physicians and surgeons specializing in oral and maxillofacial surgery.” Attached to the complaint was the requisite good faith certificate signed by the plaintiff’s attorney and an opinion letter from a physician who asserts that he had reviewed the plaintiff’s medical records and had conducted a clinical exam of the plaintiff. However, the letter did not provide whether the author was certified as a specialist by any American board. The defendant filed a motion to dismiss all allegations in the complaint on the ground that the opinion letter attached to the

complaint did not fully comply with § 52-190a. The defendant argued that the letter was defective in two ways: (1) it failed to demonstrate that its author is a “similar health care provider” as that term is defined in General Statutes § 52-184c (c); and (2) the letter contained no opinion of medical negligence with respect to him (the defendant) because there was no express indication by the author that he provided any treatment in violation of the standard of care. On May 9, 2016, the plaintiff filed a memorandum of law in opposition of the motion to dismiss. The plaintiff stated that the author of the letter inadvertently left out the fact that he was board certified. He sought to account for the defect by submitting an affidavit from the letter’s author to clarify the original letter. In the affidavit the author stated “I am certified by the American Board of Oral and Maxillofacial Surgery...” The defendant argued that the court lacked the discretion to consider the affidavit because the plaintiff’s attempt to cure the defect in the opinion letter came more than thirty days after the return date of the original complaint and after the statute of limitations period expired. The court granted the defendant’s motion to dismiss on the grounds that the required opinion letter was deficient because it failed to state whether the author was board certified in the same specialty as the defendant. Furthermore, the court stated that because the statute of limitations had run, it did not have the authority to rely on the affidavit that the plaintiff submitted to cure the defect in the letter.

Issue

The sole issue on appeal was whether the trial court, in ruling on the motion to dismiss, correctly determined that the decision in *Gonzales v. Langdon*, supra, 161 Conn. App. 497, barred it from considering the affidavit that the plaintiff attached to his opposition to the motion to dismiss in an effort to cure the defect in the opinion letter attached to his complaint.

Holding

The court held that in accordance with *Gonzales v. Langdon*, a court is barred from considering an affidavit in a medical malpractice case, submitted to clear a defect in an opinion letter pursuant to § 52-190a, when the affidavit is provided after the statute of limitations period has expired. Furthermore, that the limitation period applies regardless of the type of procedure the plaintiff elects to cure the defect. Thus, affirming the trial court's granting of the defendant's motion to dismiss.

Discussion

Subsection (a) of § 52-190a provides: "No civil action or apportionment complaint shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action or apportionment complaint has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. . . . The claimant or the claimant's attorney shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion..." Simply, in a medical malpractice claim the plaintiff must provide an opinion letter from a similar health care provider stating that there appears to be evidence of medical negligence and the basis for that opinion.

In *Gonzales v. Langdon*, the court held that a plaintiff who filed a legally insufficient opinion letter, may cure the defect through an amendment of the pleadings, instead of filing a new action. The rule that emerged from *Gonzales*, is: the trial court (1) must permit such an amendment if the plaintiff seeks to amend within thirty days of the return day and the action was brought within the statute of limitations, and (2) has discretion to permit such an amendment if the plaintiff seeks to amend within the applicable statute of limitations but more than thirty days after the return day.

The court concluded based on the above rule that a plaintiff who fails to seek to correct a defective opinion letter within the statute of limitations period is limited to the remedy of seeking to file a new action pursuant to § 52-592, the accidental failure of suit statute. To support this conclusion, the court cited *Ugalde v. Saint Mary's Hospital, Inc.*, 182 Conn. App. 1, A.3d (2018). In *Ugalde*, the court held that an amendment filed after the limitations period had run did not comply with the *Gonzales* rule and could not be saved by the relation back doctrine. The plaintiff argued that *Gonzales* applies only to amendments of pleadings, and thus, he avoids its limits by submitting an affidavit. The court rejected this argument, stating that the plaintiff is attempting to avoid the statute of limitations period as the plaintiff in *Ugalde* did by invoking the relation back doctrine. Furthermore, the court stated that it would be illogical and an unwarranted circumvention of the *Gonzales* decision to conclude that a plaintiff could avoid dismissal by submitting an affidavit instead of an amendment. Therefore, the court held that regardless of the type of procedure a plaintiff elects to employ to cure a defect in an opinion letter filed in accordance with § 52-190a, that procedure must be initiated prior to the running of the statute of limitations. Otherwise the sole remedy available will be to initiate a new action, if possible, pursuant to § 52-592. Thus, concluding that the trial court properly granted the motion to dismiss

as the affidavit was submitted more than thirty days from the return date and passed the statute of limitations period.

This case elucidates that any attempt by a plaintiff to cure a defect in an opinion letter filed in accordance with § 52-190a for a medical malpractice claim must be done within the statute of limitations period. This is salient because it clearly identifies the procedure that must be followed by potential medical malpractice plaintiffs, thus, leading to more efficient litigation as the required procedures are not ambiguous.