Young v. Hartford Hospital (AC 41997)

Brief Summary: Plaintiff was injured when a robotic camera used during a robotic hysterectomy surgery performed at the defendant hospital fell on her left side. Motion to dismiss was granted because the plaintiff did not include a certificate of good faith in her complaint pursuant to § 52-190a. Court held that due to the lack of facts in the complaint regarding the third prong of the *Trimel* test and its duty to construe the allegations most favorable to the pleader it was constrained to remand the matter to the trial court.

The plaintiff, Wendy Young, received a robotic hysterectomy surgery at the defendant hospital. The following day she experienced extreme pain on her left side with a black and blue bruise. Approximately a month later, while she was still bruised, she was informed that during the surgery a robotic camera fell onto her left side. The plaintiff instituted an action against the defendant, alleging that its negligence created a dangerous condition by: (a) allowing defective robotic equipment to be used in assisting with a surgical procedure; (b) failing to inspect the robotic equipment prior to its use on the plaintiff; (c) failing to properly secure the camera so that it does not fall on patients; (d) failing to properly train its medical equipment personnel to recognize that the camera was not secure and could fall on patients; (e) operating the robot in such a manner to cause the camera to fall; (f) failing to notify the plaintiff that the camera fell on her; and (g) failing to warn the plaintiff that the camera could fall on her. The plaintiff did not attach a certificate of good faith to her complaint. The defendant filed a motion to dismiss arguing that the plaintiff had alleged a medical malpractice action, which pursuant to § 52-190a, required her to include with her complaint a certificate of good faith based on the opinion of a similar health care provider, and her failure to do so deprived the court of personal jurisdiction over it. The trial court agreed and granted the motion to dismiss. The issue on appeal was

whether the trial court correctly determined that, as pleaded, the plaintiff's complaint sounded only in medical practice.

Section 52-190a (a) states that no civil action shall be filed to recover damages resulting from personal injury in which it is alleged that the injury resulted from the negligence of a health care provider, unless the party filing the action has made a reasonable inquiry to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. To show the existence of good faith, the claimant must obtain a written and signed opinion of a similar health care provider that there appears to be medical malpractice. The provision applies only when two criteria are met: (1) the defendant must be a health care provider; and (2) the claim must be one of medical malpractice and not another type of claim, such as ordinary negligence. In *Trimel v. Lawrence & Memorial Hospital Rehabilitation Center*, the court established a three-part test to determine whether allegations sound in medical malpractice. The considerations are: whether (1) the defendants are sued in their capacities as medical professionals; (2) the alleged negligence is of a specialized medical nature that arises out of the medical professional-patient relationship; and (3) the alleged negligence is substantially related to medical diagnosis or treatment and involved the exercise of medical judgment.

Both parties agreed that the defendant is a health care provider as they are licensed by the state to provide health care. Thus, the court addressed the three elements of the *Trimel* test. The court concluded that the first element was satisfied because the plaintiff was under the care of the defendant as a medical provider (the surgery) and suffered injuries while under treatment. Thus, they are being sued in their capacities as medical professionals as the alleged negligence occurred during a medical procedure.

Next, the plaintiff argued that the second element is not satisfied because the alleged negligence is that the defendant failed to keep the premises safe, not negligence of a specialized medical nature that arises out of the professional-patient relationship. The defendant countered that the second element was met because the injury occurred during a surgery. The court agreed with the trial court that the second element was met because the injuries allegedly resulted from an occurrence during a surgery, and performing a surgery inherently involves establishing a medical professional-patient relationship.

Lastly, the court addressed whether the alleged negligence was substantially related to medical treatment and involved the exercise of medical judgment. The plaintiff argued that although the camera fell during a medical procedure, the medical judgment requirement is not met because malfunctioning equipment does not involve the medical judgment of a medical professional. The defendant argued that the injury was not caused by a mere object on the premises, but a medical device instrumental in providing medical treatment, thus, the alleged negligence was related to treatment and involved medical judgment. The defendant cited *Moll v. Intuitive Surgical Inc.*, a federal case in Louisiana, for the proposition that when an injury relates to a malfunction in a medical device, the associated negligence as medical malpractice becomes stronger. The court noted that it was not bound by *Moll* and that unlike *Moll* the present case does not contain sufficiently specific allegations regarding the operation of the device in question. Further, it stated that depending on the facts some of the allegations might support a conclusion of ordinary negligence (e.g., ‘‘failing to properly secure the camera so that it does not fall on patients’’) and some might support medical malpractice (e.g., ‘‘operating the robot in such a manner to cause the camera to fall’’). Thus, the court concluded that reading the complaint does not foreclose the possibility that the injury was caused by ordinary negligence.

When deciding a question raised by a pretrial motion to dismiss, the court must consider the allegations of the complaint and construe them in a manner most favorable to the pleader—the plaintiff here. Thus, the court essentially had to resolve the issue of some circumstances suggesting ordinary negligence and others suggesting medical malpractice in favor of the plaintiff. Considering this obligation, the court reversed the motion to dismiss and remanded the case back to the trial court.

The dissent argued that both Connecticut and out of state cases demonstrate that allegations like the ones in this case involve negligence of a specialized nature, related to medical treatment, necessarily involving the exercise of medical judgment. In *Nichols v. Milford Pediatric Group, P.C.*, the court held that allowing a medical assistant to collect blood samples clearly involves the exercise of medical knowledge. In *Levett v. Etkind*, the Connecticut Supreme court held that the determination of whether the plaintiff needed help disrobing called for the medical judgment of a physician. Further, the dissent noted that cases where the court supported the plaintiff's theory of ordinary negligence are clearly distinguishable—*Badrigian v. Elmcrest Psychiatric Institute* (patient receiving treatment was struck and killed by a car as he crossed the street); *Multari v. Yale-New Haven Hospital, Inc.*, (grandmother, who was ordered to take disruptive child and leave hospital, tripped and fell while carrying child). Thus, the dissent concluded that the defendant's alleged conduct fits squarely within the definition of medical negligence in *Trimel*.

The key takeaway from this case is that an injury occurring during a surgery is not necessarily medical malpractice, it may be ordinary negligence. This is significant because people who are injured under circumstances not involving medical judgment do not need to undergo the burden of acquiring a certificate of good faith to sue the tortfeasor.