1979

Cora Millett v. Clark Clinic Corporation : Brief of Respondent

Utah Supreme Court

R. M. Child; Donovan C. Snyder; Attorneys for Defendant-Respondent;
Anthony M. Thurber; Attorney for Plaintiff-Appellant;

IN THE SUPREME COURT

OF THE STATE OF UTAH

CORA MILLETT, Plaintiff-Appellant, v. CLARK CLINIC CORPORATION, Defendant-Respondent	Case No. 16542

RESPONDENT'S BRIEF

APPEAL FROM THE JUDGMENT OF THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
HONORABLE ROBERT BULLOCK, PRESIDING

R. M. Child
Donovan C. Snyder
BAYLE, CHILD & RITCHIE
Attorneys for Defendant-Respondent
1300 Continental Bank Building
Salt Lake City, Utah 84101

Anthony M. Thurber
Attorney for Plaintiff-Appellant
211 East Broadway, #213
Salt Lake City, Utah 84111

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Attorney for Plaintiff-Appellant
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Salt Lake City, Utah 84111

TABLE OF CONTENTS

TABLE OF CONTENTS

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RESPONDENT'S BRIEF

NATURE OF THE CASE

This is an action brought by the plaintiff-appellant alleging medical malpractice on the part of the defendant-respondent, Clark Clinic Corporation.

DISPOSITION IN THE LOWER COURT

The Fourth Judicial District Court of Utah County, State of Utah, the Honorable David Sam, Judge, entered its Order dismissing plaintiff's Complaint with prejudice on June 11, 1979.

RELIEF SOUGHT ON APPEAL

Respondent Clark Clinic Corporation seeks an affirmance of the Order of Dismissal of June 11, 1979.

STATEMENT OF FACTS

Respondent agrees with the Statement of Facts presented by appellant in her Brief.

ARGUMENT

POINT I

APPELLANT'S COMPLAINT WAS NOT TIMELY FILED AND HENCE WAS PROPERLY DISMISSED BY THE LOWER COURT.

On August 17, 1978, appellant served a Notice of Int to Commence Action on respondent herein. This action arise out of an alleged malpractice occurring either on September 1976, or on November 2, 1976. The lower court in its rulin found that:

> the notice was given within 90 days of the expiration of the applicable two-year statute of limitations which in the case at hand had expired either on September 23, 1978 or November 2, 1978. (R.38)

The lower court went on to point out that the August 1978 Notice of Intent to Commence Action extended the time for filing the complaint to November 17, 1978 under the Uta Health Care Malpractice Act (Section 78-14-1, et seq.) as i was originally passed by the Utah Legislature in 1976, or t December 17, 1978 pursuant to the amendments to said Act found in H.B.164.

Appellant's complaint was filed on January 18, 1979 well after the applicable statute of limitations had expire The lower court was therefore correct in dismissing appella

complaint and said dismissal should be affirmed by this Honorable Court.

POINT II

SECTIONS 78-12-41 AND 78-14-8 ARE IN DISTINCT CHAPTERS OF THE UTAH CODE AND THEREFORE SHOULD NOT BE CONSTRUED TOGETHER.

Appellant argues that the provisions of Section 78-12-41 dictate that the 90-day waiting period provided for in Section 78-14-8 should not be counted in computing when the statute of limitations has expired.

Section 78-12-41 is in the chapter of Title 78 entitled "Limitation of Actions." Section 78-12-1 states:

> Civil actions can be commenced only within the periods prescribed in this chapter, after the cause of action shall have accrued, except where in special cases a different limitation is prescribed by statute. (Emphasis added.)

It is respectfully submitted that Section 78-14-1 et seq. is one of those "special cases" where a "different limitation is prescribed." Chapter 14 of Title 78 is a completely self-contained law relating to malpractice actions against health care providers. Said chapter has its own legislative findings and declarations, definitions of terms and mode of procedure. It is clear that the Legislature intended for this chapter to stand alone without reference to Chapter 12 on Limitation of Actions.

As a general rule:

> In construing a special statute of limitations the courts will not read

> another statute into it and thus incorporate exceptions not contained therein or give it any new or unusual interpretation. (51 AmJur 2d 709, Limitation of Actions, Section 138.) (Footnotes omitted.)

It is respectfully submitted that had the Utah Legislature intended that the Malpractice Act be construed al with the provisions of Chapter 12, Title 78, it could easily have expressed such an intent. Instead, the Legislature incl the following language as the last sentence of Section 78-14-

> If the notice is served less than ninety days prior to the expiration of the applicable time period, the time for commencing the malpractice action against the health care provider shall be extended to ninety days from the date of service of notice.

It is clear from this statement the Legislature inten that the ninety-day period after the service of a Notice of Intent to Commence Action was to be included within the two-year statute of limitations and was not intended to be exclud as appellant contends would be required by Section 78-12-41.

POINT III

THE CASE OF GOMEZ v. VALLEY VIEW SANITARIUM, CITED BY APPELLA IS INAPPLICABLE TO THE CASE AT BAR.

Appellant cites Gomez found at 151 Cal. Rptr. 97 (App.1978), as being applicable to the case at bar. A closer study of the California Code of Civil Procedure shows that th situation found in Gomez, supra, is distinguishable from that in the case at bar.

Section 364(d) of the California Code of Civil Procedure is found in Title 2 of said Code entitled "Time of Commencing Civil Actions." This section is similar to the last sentence of Section 78-14-8 in that it extends the statute of limitations to ninety days from the service of a notice when the notice is served less than ninety days before the expiration of the statute of limitations. However, Section 356 of the California Code, which is the equivalent of Utah's Section 78-12-41, is likewise found in Title 2 of the Code of Civil Procedure. It was therefore proper for the California Court to construe Section 364(d) together with Section 356. The analysis under Point II above, however, has shown that it would not be proper for this Court to construe Section 78-14-8 and Section 78-12-41 together. Therefore, Gomez is inapposite.

POINT IV

BECAUSE THE MALPRACTICE ACT CREATES A SPECIAL STATUTORY LIABILITY, SAID ACT IS NOT SUBJECT TO THE EXCEPTIONS CONTAINED IN THE GENERAL STATUTE OF LIMITATIONS.

Section 78-14-4(1) provides in pertinent part:

> No malpractice action against a health care provider may be brought unless it is commenced within two years...(Emphasis added.)

This language indicates that the Utah Legislature was in effect creating a special statutory cause of action. That being the case, the following language from 51 AmJur 2d 715, Limitations of Actions, Section 145, is directly applicable to the case at bar:

> A statute which creates a special statutory liability...and provides that no action shall be brought therefor, except within a designated period will not as a rule be subject to the exceptions contained in the general statute of limitations. (Emphasis added.) (Citing, inter alia, Ames v. Department of Labor and Industries, 30 P.2d 239, 91 ALR 1392. Wash.1934)

It is submitted that because of the special nature of a malpractice action against a health care provider under the Utah Health Care Malpractice Act, the provisions of that Act should not be construed as being subject to the exception contained in Section 78-12-41.

CONCLUSION

It is respectfully submitted that the foregoing analys has shown that the lower court correctly dismissed appellant's action as being barred by the applicable Statute of Limitation and furthermore that Section 78-12-41 is inapplicable to the case at bar. Therefore, this Honorable Court should affirm the decision of the lower court.

Respectfully submitted,

(s)
R. M. Child

This is to certify that two (2) copies of the foregoing Brief of Respondent was mailed, postage prepaid, to the following counsel of record this 9th day of October, 1979:

Anthony M. Thurber, Esq.
Attorney for Plaintiff-Appellant
211 East Broadway, No. 213
Salt Lake City, Utah 84111

/s/