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Summary of Klasch v. Walgreen Co., 127 Nev. Adv. Op. 74

Cameron Daw
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Klasch v. Walgreen Co., 127 Nev. Adv. Op. 74 (November 23, 2011)¹
TORTS- NEGLIGENCE

Summary

An appeal from a district's grant of court summary judgment in a wrongful death action involving a pharmacist's duty of care.

Disposition/Outcome

The Court overturned the district court's grant of summary judgment, finding that pharmacists have a duty of care to warn the patient or the patient's physician when the pharmacist has a knowledge of a customer-specific risk regarding a prescribed medication. The Court remanded the case back to the district court for further findings of fact regarding whether the pharmacy breached its duty and caused the harm.

Factual and Procedural History

In July of 2006, Dr. Fredrick Tanenggee prescribed Helen Klasch ("Klasch") a sulfa based medication to treat her urinary tract infection. On a previous visit, Klasch informed Tanenggee that she might be allergic to sulfa-based drugs, but downplayed the allergy when Tanenggee questioned her further. Klasch asked Tanenggee to write the prescription and she dropped it off at Walgreens on her way home.

Klasch's caretaker went to pick up the prescription later that day, but a Walgreen's employee told the caretaker that the computer flagged the prescription because the patient profile indicated that Klasch was allergic to sulfa-based drugs. The employee spoke with Klasch over the phone and Klasch told the employee that she had taken the medication in the past without experiencing any adverse reaction. After the conversation, the employee manually overrode the computer and released the prescription.

After taking the medication, Klasch complained about feeling itchy. She called her doctor and told him she had been wrong about the sulfa allergy. Subsequently, Klasch was taken to the emergency room and put in the burn center. She lapsed into a coma and ultimately passed away.

Klasch's two children brought a wrongful death action, alleging that Walgreens breached its duty of care owed to their mother. Walgreens filed a motion for summary judgment, invoking the learned-intermediary doctrine. Further, Walgreens contended that since the pharmacist filed the medication correctly as prescribed, it fulfilled its duty as a matter of law. The district court agreed and granted Walgreens' motion for summary judgment. The plaintiffs filed an appeal to the Supreme Court of Nevada.

¹ By Cameron Daw

Discussion

Justice Parraguirre wrote for the unanimous Court sitting en banc. Consistent with Nevada case law, the Court reviewed the appeal from an order granting summary judgment de novo.² Accordingly, a court should grant summary judgment only “when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law.”³ At issue in this case was whether Walgreens had a duty to warn Klasch of the potential danger of the prescribed medication.

Having never considered the learned-intermediary doctrine, the Court first examined its applicability and scope. In some jurisdictions, the learned-intermediary doctrine insulates a pharmacist from tort liability. The rationale behind the insulation is that the patient’s doctor is in the best position to warn the patient of a medication’s generalized risks.⁴ Additionally, it prevents pharmacists from constantly second guessing the doctor’s decision just to protect themselves from potential liability.⁵ The Court adopted the learned-intermediary doctrine, holding that “Nevada pharmacists have no duty to warn their customers of the generalized risks inherent in the prescriptions they fill.”

With that determination, the Court then examined whether or not the learned-intermediary doctrine protects pharmacists from liability when they have knowledge of a risk specific to a given customer. The Court looked to *Happel v. Wal-Mart Stores, Inc.*,⁶ to guide its decision. The Illinois Supreme Court in *Happel* reasoned “that a narrow duty to warn exists where . . . a pharmacy has patient-specific information about drug allergies, and knows that the drug being prescribed is contraindicated for the individual patient.”⁷ They determined that in such circumstances the pharmacist does have a duty to warn the prescribing physician or the patient about the danger, despite the learned-intermediary doctrine.⁸ The Supreme Court of Nevada found the reasoning from *Happel* to be persuasive and determined that a pharmacist has a duty to warn the customer or notify the prescribing physician when they have knowledge of a customer-specific risk.

Finally, the Court applied the above determination to the facts of the case. It determined that a sulfa-based allergy is not the type of generalized risk that, under the learned-intermediary doctrine, protects a pharmacist from liability. Because Walgreens’ specific knew of Klasch’s sulfa allergy, it had a duty of warn Klasch or her physician. Therefore, the learned-intermediary doctrine did not protect Walgreens from liability.

Walgreens contended that even if it did have a duty to warn Klasch, it fulfilled that duty when one of its employees spoke with Klasch over the telephone about the contraindication in their computer system. Further, Walgreens argued that even if duty and breach of duty are

² Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

³ *Id.*

⁴ See Eldridge v. Eli Lilly & Co., 138 Ill. App.3d 124, 127, 485 N.E.2d 551, 553 (1985).

⁵ See McKee v. Am. Home Products, Corp., 113 Wash.2d 701, 716, 782 P.2d 1045, 1053 (1989).

⁶ 199 Ill.2d 179, 766 N.E.2d 1118 (2002).

⁷ *Id.* at 197, 1129.

⁸ *Id.*

assumed, it did not cause the injury because the prescribing physician knew she could have a sulfa allergy but prescribed the medication anyway. However, the Court found that additional fact finding was necessary and accordingly reversed the district court's grant of summary judgment in Walgreens favor and remanded the case to the district court.

Conclusion

The Court adopted the learned-intermediary doctrine, which insulates pharmacists from tort liability. Under the learned-intermediary doctrine, pharmacists do not have a duty to warn their customers of the generalized risks inherent in prescribed medication. However, pharmacists do have a duty to warn the patient or the patient's physician when the pharmacist knows of a customer-specific risk regarding a prescribed medication. Although the pharmacist here had knowledge of Klasch's sulfa allergy, the Court found that additional fact finding was necessary. Consequently, the Court reversed the grant summary judgment and remanded the case to district court.