



American Radiology Services, LLC v. Reiss, 470 Md. 555 (Md. Ct. App. 2020)

Topics Covered: Abusive Litigation Against Physicians

Outcome: Unfavorable

Issue

The issue in this case was whether the lower court’s submission of a verdict sheet asking the jury to decide a question concerning non-party medical negligence was reversible error.

AMA Interest

The AMA supports efforts to curb lawsuit abuse against physicians.

Case Summary

Martin Reiss was diagnosed with renal cell carcinoma and an enlarged lymph node near a diseased kidney. Reiss’s surgeon removed the kidney but did not remove the enlarged lymph node due to its proximity to the inferior vena cava.

After the surgery, Reiss’s oncologist examined the lymph node. He found it to be cancerous but agreed it could not be removed without great risk to Reiss. The oncologist prescribed chemotherapy and ordered CT scans to track the node. In the ensuing years, a number of radiologists employed by American Radiology Services (ARS) reached the same conclusion as the oncologist. Later, a different radiologist not associated with ARS, concluded that the ARS radiologists had incorrectly failed to identify an enlarged “soft tissue density” in the vicinity of the lymph node that had “increased in size.”

Reiss then sued for medical malpractice, naming various physicians and physician practice groups as defendants. Reiss alleged that the cancerous lymph node could (and should) have been removed earlier, but it had become inoperable because of the defendants’ medical negligence. In the course of the trial, the defendants argued that they had met the relevant standard of care and that Reiss’s injuries resulted from the negligence of non-party physicians. They did not, however, present expert evidence on whether the non-party physicians had breached the standard of care.

The jurors found that the defendants had met the standard of care. Additionally, although they were not supposed to do so, the jury determined that “a negligent act or acts” by the non-party physicians had been a “substantial factor” in causing Reiss’s injuries. The jury ultimately

awarded Reiss over \$4.8 million in noneconomic damages, even though the defendants in the case had been found not liable.

The court then returned the case to the jury and informed them that they had reached an inconsistent verdict. It sent them to redeliberate. The jury again found that remaining physicians had satisfied the standard of care. The court entered judgment against Reiss, the plaintiff.

Reiss appealed to the Maryland Court of Special Appeals and then to the Maryland Court of Appeals. Both courts held that the trial court should be reversed for allowing the defendants to submit the issue of non-party negligence to the jury, because the record did not contain admissible evidence of non-party physician negligence.

Litigation Center Involvement

The Litigation Center, along with MedChi, the Maryland State Medical Society, filed an *amicus* brief in the Maryland Court of Appeals to support the defendants.

Maryland Court of Appeals Brief