



Davis v. Frostburg Facility Operations, 117 A.3d 709 (Md. Ct.App. 2018)

Topics Covered: Professional Liability, Tort Reform

Outcome: Neutral

Issue

The issue in this case is whether a patient's fall in a nursing rehabilitation facility should be deemed an action founded on medical malpractice or whether it should be deemed an action founded on ordinary negligence (and thus outside the requirements of the Maryland tort reform laws).

AMA Interest

Medical liability reform is one of the AMA's highest legislative priorities. Further, the AMA supports state medical associations' efforts to curtail lawsuit abuse.

Case Summary

According to her original complaint, Sheila Davis was admitted to a nursing facility run by Frostberg Facility Operations for rehabilitation following her back surgery. While lying in her bed, her mattress came loose and she fell on the floor. After the fall, a nurse placed her in a mechanical lift, which was supposed to help her back into the bed. However, the nurse, who had never previously operated the lift, apparently mishandled the device. This caused Davis to fall on the floor again. An ambulance was then called, and one of the emergency medical team attendants helped Davis into her bed.

Davis sued Frostberg for her injuries. She alleged counts in negligence, breach of contract, and violation of the Maryland Consumer Protection Act. Frostberg moved to dismiss, asserting that Davis had failed to submit her claim to alternative dispute resolution (ADR), which was a necessary prerequisite to a medical malpractice suit.

Following the motion to dismiss, Davis filed an amended complaint and then a second amended complaint. The thrust of these amended pleadings was that Davis was proceeding under common law theories, particularly ordinary negligence, and under the Consumer Protection Act, but she was not suing for medical malpractice. She asserted, in her pleadings and in her argument, that "the injuries sustained while residing at [the Frostberg facility] were not attributable to [Frostberg's] rendering or failure to render healthcare."

Frostberg renewed its motion to dismiss, asserting that, no matter how Davis might craft her complaint, the suit, in essence, was for medical malpractice. Eventually, the trial court found that the case was based on medical malpractice and dismissed it for failure to submit the claim to pre-suit arbitration.

Davis appealed to the Maryland Court of Special Appeals, an intermediate level appellate court. She argued that the mere fact that she was within a facility that provided healthcare services did not automatically make her injuries attributable to medical malpractice.

The Court of Special Appeals agreed that Davis' presence in a healthcare facility at the time of her injury did not necessarily mean that her claim was based on medical malpractice. However, the Health Claims Act defined a "medical injury" as an "injury arising or resulting from the rendering or failure to render health care." Her claim fell within this standard.

Even if this were a borderline situation, the case should have been submitted to arbitration, so that the ADR Office could have decided whether, in its judgment this was a claim for medical malpractice. Also, it made no difference that Davis had raised other causes of action, such as the Consumer Protection Act claim, which were tangential to the underlying medical malpractice claim. To avoid piecemeal litigation, these all should have been submitted, at least in the first instance, to arbitration.

The Court of Special Appeals affirmed the dismissal in an unpublished opinion.

Davis has now appealed to the Maryland Court of Appeals, which is the highest court in Maryland.

On January 19, 2018, the Court of Appeals ruled that the trial court had properly dismissed those portions of the claims relating to the use of the lift, as proving these claims would require expert testimony. However, those claims relating to the initial fall from the bed should be allowed to stand. The claims based on the initial fall did not allege a medical injury because (1) the injury did not occur during treatment or examinations, (2) no medical professional was present at the time, and (3) an expert medical witness would not be helpful to explain why a mattress would detach from a bed frame. The suit was remanded for adjudication of the claims arising from the initial fall.

Litigation Center Involvement

The Litigation Center, joined with MedChi, the Maryland State Medical Society, in an *amicus* brief to support the nursing facility.

Court of Appeals of Maryland brief