



Glenn v. Plante, 676 N.W.2d 413 (Wis. 2004)

Topics Covered: Expert Witnesses

Outcome: Very Favorable

Issue

The issue in this case was whether a court could require a physician to testify as an expert witness, against the physician's wishes.

AMA Interest

Although the AMA encourages its members to serve as impartial expert witnesses, it supports the right of physicians to choose not to testify as expert witnesses.

Case Summary

Dr. Michael Plante was an obstetrician/gynecologist for patient Sinora Glenn. His medical services for her included a hysterectomy. Following the hysterectomy, Mrs. Glenn went to a new physician, Dr. Charles H. Koh.

Mrs. Glenn and her husband, Christopher Glenn, sued Dr. Plante for medical malpractice. Dr. Koh wrote a letter to the court on the Glenns' behalf, stating that Dr. Plante's medical procedures, including the hysterectomy, had been inappropriate and unwarranted. In that same letter, he stated that he did not want to testify in court against another physician. Subsequently, he wrote a letter to the Glenns' attorney, indicating that Dr. Plante's treatment of Mrs. Glenn had been "unusual and may not meet the standard of care." The second letter reiterated that he "would not be an expert witness."

The court entered a scheduling order, which set a date by which the Glenns were to name their expert witnesses. Subsequently, the Glenns asked the court for an amendment to the scheduling order to give them additional time to locate an expert witness willing to testify. Simultaneously, Dr. Plante moved to dismiss, because of the Glenns' failure to name an expert witness within the court imposed deadline.

The court denied the Glenns' motion, finding that they did not have a justifiable excuse for extending the expert witness deadline. However, the court also determined that "Dr. Koh is a treating physician whose opinions/testimony concerning his treatment of Ms. Glenn is unique and therefore should be compelled." Dr. Plante's motion to dismiss was denied, and he appealed that ruling to the Wisconsin Court of Appeals. The Glenns did not appeal from the denial of their motion to amend the scheduling order.

The Court of Appeals noted that, under Wisconsin law, an expert witness can be required to testify only under compelling circumstances. It further noted that the trial judge had grounds to

deny the motion to amend the scheduling order, that Dr. Koh's expert testimony was being required on matters that could be derived from the medical record and therefore would be evident to any obstetrician/gynecologist, and that the failure to comply with the scheduling order arose from the neglect of the Glenns' counsel. However, it also found that the determination of compelling circumstances was inherently a fact-sensitive decision, largely within the trial court's discretion. It observed that "if Dr. Koh's testimony were disallowed in this case, he still could be called to testify regarding Dr. Plante's treatment of Ms. Glenn in the 'suit within a suit' that, in all likelihood, would be litigated in the course of a legal malpractice action." Finally, it opined that, were the Glenns prohibited from calling Dr. Koh, their case would "inevitably" be dismissed, a "particularly harsh sanction."

The Court of Appeals affirmed, holding that the trial court was within its discretion in finding compelling circumstances to require Dr. Koh's testimony. One appellate judge dissented.

Dr. Plante appealed to the Wisconsin Supreme Court, which then reversed the Court of Appeals and the trial court. It held that the Glenns had not shown compelling circumstances to force Dr. Koh to appear as an involuntary expert witness. The case was remanded to the trial court.

Litigation Center Involvement

The Litigation Center, through the AMA and the Wisconsin Medical Society, filed an amicus curiae brief, in the Wisconsin Supreme Court. The brief argued that Dr. Koh had an inherent right to withhold his services as an expert witness and that the circumstances of this case were not sufficiently compelling to require him to testify against his will.

Wisconsin Supreme Court brief