



Mercado v. Rosado (Ill. App.)

Topics Covered: Abusive Litigation Against Physicians

Issue

The issue in this case is whether a physician, employed by Cook County, Illinois, was properly found liable for failing to diagnose child abuse.

AMA Interest

The AMA opposes lawsuit abuse against physicians and will work with state medical societies to curb such abuse.

Case Summary

In December 2012, the Circuit Court of Cook County, Illinois removed 8-year old Gizzell Ford from the custody of her mother, Sandra Mercado, and awarded custody to her father, Andre Ford. Andre lived with Gizzell's grandmother, Helen Ford. The court deemed both Andre and Helen to be safe caregivers.

After her custody was placed with Andre and Helen, Gizzell continued to visit with her mother, Sandra. Gizzell complained to the Illinois Department of Children and Family Services (DCFS) of sexual abuse by her mother's boyfriends during these visits. On June 17, 2013, DCFS sent her to Dr. Norrell Rosado, a pediatrician and a Cook County employee, who regularly examined children for suspected abuse.

Helen Ford, Gizzell's grandmother, accompanied her during Dr. Norrell's examination. This was standard procedure, as Helen was not under suspicion for abuse. Dr. Rosado discussed Gizzell's medical history with Gizzell and with Helen. He also examined Gizzell's body. Dr. Rosado found some faint scars on Gizzell's body, but he determined that they could have had any number of causes and were not substantial evidence of abuse. Dr. Rosado concluded that the allegations of sexual abuse were "unconfirmed," and he so reported to DCFS.

DCFS returned Gizzell to the Fords' custody. Two days later, on the last day of school, Gizzell's teacher observed Gizzell and found no signs of abuse.

Not quite four weeks later, though, on July 12, 2013, Gizzell was found dead from strangulation and torture. Andre and Helen were charged with murder. Andre died before trial, but Helen was convicted.

Juan Mercado was appointed administrator of Gizzell's estate. He sued DCFS, a DCFS caseworker and Dr. Rosado. DCFS and the caseworker were dismissed, and that left Dr. Rosado.

At trial, Mercado contended that Dr. Rosado's examination fell below the standard of care, and his negligence caused Gizzell's death. Dr. Rosado raised several defenses, including (i) he had no duty to protect Gizzell from the criminal act of a third party, (ii) there is no private right of

action for failure to report child abuse, (iii) he was entitled to statutory immunity under Illinois' Government Employees Tort Immunity Act and Abused and Neglected Child Reporting Act, (iv) there was no proximate cause, in that the Fords had never been accused of abuse and, in fact, had been specifically adjudged safe caregivers just a few months earlier. Thus, even if Dr. Rosado had found evidence of abuse, it was unlikely that actions would have been taken to protect Gizzell from the Fords, as opposed to Gizzell's mother's boyfriends, and (v) in any event, Dr. Rosado's actions met the standard of care and he was not negligent.

Notwithstanding these defenses, a jury found Dr. Rosado liable for medical negligence and awarded Mercado \$48 million in damages. The court entered judgment on the verdict.

Dr. Rosado appealed, and the case is now pending in the Illinois Appellate Court, First Judicial District.

Litigation Center Involvement

The Litigation Center joined the Illinois State Medical Society in filing an *amicus* brief before the court.

Illinois Court of Appeals brief