



Winn v. Pioneer Medical Group, 63 Cal. 4th 148 (Cal. 2016)

Topics Covered: Professional Liability, Tort Reform

Outcome: Very Favorable

Issue

The issue in this case was whether a claim based on medical negligence committed against an elderly patient can give rise to an action under the California Elder Abuse and Dependent Adult Civil Protection Act (the Elder Abuse Act) and thus avoid protections allowed in medical negligence cases under MICRA (the Medical Injury Compensation Reform Act).

AMA Interest

Tort reform is the AMA's highest legislative priority and this case, if affirmed, would erode that reform.

Case Summary

Elizabeth Cox, who was in her late 70's and early 80's at the time of the underlying events, suffered from peripheral vascular disease, particularly in her right leg. Pioneer Medical Group (PMG), a multi-specialty health care organization with eight offices in the Los Angeles area, provided various forms of treatment for her, always as an outpatient. Over a period of several years, her condition steadily worsened. PMG did not refer Cox to a vascular specialist. Eventually, Cox's right foot turned black on account of tissue death caused by her long term impaired vascular flow. Following two amputations, she died from blood poisoning.

Kathleen Winn and Karen Bredahl, Cox's daughters and heirs, sued PMG and three of its employees. The complaint alleged a violation of the Elder Abuse Act, claiming that, by not referring Cox to a vascular specialist, the defendants failed to provide her with proper care.

The defendants moved to dismiss the complaint for failure to state a cause of action for elder abuse, and the trial court granted that motion. The court noted that the defendants had not been responsible for Cox's custodial care. The claim, it held, was properly one of simple professional negligence and incompetence, which did not fall under the Elder Abuse Act.

Winn and Bredahl appealed to the California Court of Appeal, which, by a split decision, reinstated the case. The Court of Appeal majority found that custodial care is not a prerequisite for elder abuse. It acknowledged § 15657.2 of the Elder Abuse Act, which states as follows:

Notwithstanding this article, any cause of action for injury or damage against a health care provider ... based on the health care provider's alleged professional negligence,

shall be governed by those laws which specifically apply to those professional negligence causes of action. [*E.g.*, MICRA].

Despite § 15657.2, however, the majority held that if the conduct of a health care provider amounted to “reckless neglect” (conduct more egregious than ordinary or even gross negligence), then the Elder Abuse Act would apply. It would be for the jury to determine if the defendants’ conduct in this case amounted to reckless neglect, as opposed to negligence. The defendants appealed to the California Supreme Court.

On May 19, 2016, by unanimous decision, the California Supreme Court reversed the Court of Appeal. It held that a claim of abuse under the Elder Abuse Act requires a caretaking or custodial relationship between a health care provider and the elder or dependent adult. An allegation of substandard provision of medical treatment, on an outpatient basis, to an elder patient is insufficient.

Litigation Center Involvement

The Litigation Center joined the California Medical Association and other health care organizations in a letter *amicus* brief urging the California Supreme Court to accept jurisdiction. The Litigation Center also joined in a brief directed to the merits of the case.

California Supreme Court letter brief urging acceptance of jurisdiction

California Supreme Court brief on the merits