

Case Analysis:

Negligent Insertion of a Vena Cava Filter

BY THE *ENDOVASCULAR TODAY* STAFF

CASE: 2000 Ohio App. LEXIS 3456

JURISDICTION: Court of Appeals of Ohio, Tenth Appellate District, Franklin County

DATE OF DECISION: August 2000

DISPOSITIVE LEGAL ISSUES: Immunity for employees of state-owned hospital

FACTS

On April 6, 1997, Ronnye Hopper was involved in a motor vehicle accident resulting in numerous injuries, including liver laceration and severe pelvic and leg fractures. The trauma surgeon who was on call that day performed several surgeries on Hopper with the assistance of three residents. Due to the type and severity of Hopper's injuries, the trauma surgeon determined that Hopper was at risk for a pulmonary embolism, and he decided to install a Greenfield filter (Boston Scientific Corporation, Natick, MA) in the inferior vena cava (IVC) to trap blood clots and reduce the chances of Hopper suffering a pulmonary embolism. A scheduling conflict arose, and the trauma surgeon was unable to perform or supervise the procedure, so he asked his colleague to fill in for him; the fill-in trauma surgeon supervised and guided a surgical resident through the procedure.

Following that surgery, Hopper was x-rayed a number of times. On April 10, 1997, a staff radiologist (radiologist A) read Hopper's abdominal x-ray, along with a resident. The report stated in pertinent part: "There is a Greenfield filter in place as well. This is centered over the L4 region." On April 14, another resident read Hopper's pelvic x-ray. Another radiologist (radiologist B) reviewed and discussed the x-ray with the resident. Radiologist B verified the report on April 17, 1997. Under the section headed "Findings," the report stated, in pertinent part: "There has also been interval placement of an IVC filter, which is low in appearance, the feet projecting at the top of L5." Under

the section headed "Impression," the report stated, in pertinent part, "low IVC filter placement as described above, which may be placed within the right proximal common iliac vein." Radiologist B did not call this finding to the attention of the original trauma surgeon or the fill-in trauma surgeon, or any other surgeon.

Hopper died on May 4, 1997. The deputy coroner conducted an autopsy. The deputy coroner was of the opinion that the cause of death was pulmonary saddle thromboembolus due to multiple blunt force injuries to the torso and lower extremities. His report also noted there was a Greenfield filter in the right common iliac vein.

THE LAWSUIT

On June 24, 1998, Hooper's estate brought an action for wrongful death alleging that Hopper's death directly resulted from medical negligence committed by the physicians discussed previously. The complaint alleged negligence in the placement of the Greenfield filter in the right iliac vein instead of the IVC, resulting in a fatal pulmonary embolism. The complaint also alleged negligence in follow-up care and in failure to take corrective measures after it was discovered that the Greenfield filter was improperly placed.

The physician defendants claimed immunity from liability as employees of the State of Ohio, acting in the course and scope of their employment. Under Ohio law, "no officer or employee shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's

actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.”

The trial court determined that none of the four doctors were entitled to personal immunity pursuant to Ohio statute. Each of the four doctors received a small salary from the University, but received the major portion of his income from his respective practice group. The trial court also found that Hopper was treated as a private patient and billed by each practice group. In addition, Hopper was never advised that any of her doctors were claiming to be employees of the University. The trial court also expressed its opinion that it did not believe taxpayers should be responsible for the malpractice, if any, of the four doctors.

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ON APPEAL

The Defendant physicians argued that they were entitled to immunity under the statute as state employees acting in the course and scope of their duties.

OUTCOME

Judgment of the trial court reversed. The appellate court held that the defendants were acting as employees of the University (and thus the State of Ohio) because at all times, while the plaintiff was being treated by residents, the doctors were supervising the residents as employees of the University. It was not proper to analyze each discrete act of the doctors to determine if it was outside the scope of employment.

DISCUSSION

The issue of negligence in this case appears clear-cut, but the issue of liability and immunity is not. The individual defendants were ultimately found to be immune from liability for their actions. The decision is unclear as to whether other defendants were not covered by immunity and able to provide the plaintiff with compensation. While most states have some form of sovereign immunity that covers the acts of state employees, many provide for various exemptions, such as medical malpractice. Merely being a state employee is not a guarantee of immunity in every jurisdiction. ■