CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Flores v Presbyterian Intercommunity Hospital 2/27/13

Ordinary vs. Professional Negligence; Statute of Limitations

In plaintiff's complaint for general negligence and premises liability, she pled that nearly two years earlier, she sustained injury while in the defendant's facility, "when the bed rail collapsed causing plaintiff to fall to the ground." The Hospital demurred contending the action sounded in professional negligence, and was therefore barred by the one year statute of limitations. It argued that since plaintiff was under the care of the Hospital, any injuries must involve medical negligence. The trial court sustained the demurrer without leave to amend, finding that ensuring the bed rails are properly lowered and properly latched is a duty that arises from the professional services being rendered. Plaintiff filed notice of appeal on a timely basis.

The Second Appellate District commenced its opinion by recalling that the "impetus for MICRA was the rapidly rising costs of medical malpractice insurance in the 1970's. The inability of doctors to obtain such insurance at reasonable rates is endangering the health of the people of this State, and threatens the closing of many hospitals." The response was to pass the various statutes that comprise MICRA to limit damages for lawsuits against a health care provider based on professional negligence. Section 340.5 is MICRA's limitations provision, providing for the commencement of suit within one year of plaintiff discovering the injury. It defines professional negligence as "a negligent act or omission to act by a health care provider in the rendering of professional services" which causes injury. Section 335.1, which is outside of MICRA, provides the limitations period for ordinary negligence within 2 years of the event.

The Court then undertook a survey of various cases involving patient falls from gurneys. *Gopaul v Herrick Memorial Hosp.* (1974) 38 Cal.App.3d 1002, was decided just before MICRA was enacted. Plaintiff was placed on a gurney to be wheeled into the X-ray room. She was not strapped down, and after the images were completed she was left unattended. She developed a coughing fit, and fell to the floor, causing injury. Affirming a judgment of nonsuit, the appellate court found the extended statute for medical negligence was not applicable. It stated the need to strap down the plaintiff was obvious to all, and since no professional skill, prudence or judgment was required, the longer statute of limitations (at that time) did not apply.

The *Gopaul* court concluded that not every tortious injury inflicted upon one's client or patient or fiducial beneficiary amounts to malpractice. "No reasonable person would suggest that professional malpractice was the cause of injury to a patient from a collapsing chair in a doctor's office, or to a client from his attorney's negligent driving en route to court, or to a hospital patient from a chandelier falling onto his bed." Such injuries were caused by ordinary negligent, not professional negligence.

In *Murillo v Good Samaritan Hospital* (1979) 99 Cal.App.3d 50, a patient fell out of bed and was injured. The hospital's summary judgment on the ground the alleged negligent conduct was ordinary negligence rather than professional, was granted, with the finding the action was barred by the one year statute of limitations. The appellate court reversed, disagreeing with the earlier opinion in *Gopaul*, finding the question involved the hospital's duties to take appropriate measures for patient safety, an issue of professional negligence. The *Murillo* court stated the test is whether the negligent act occurred in the rendering of services for which the health care provider is licensed. The conduct in the underlying case demonstrated a breach of the hospital's duty to provide appropriate care and a safe environment for its patients.

Evaluating the hypotheticals set forth in *Gopaul*, the court agreed that a patient injured by a collapsing chair in a waiting room, or a client injured by their attorney's negligent driving would not be victims of professional negligence. With respect to a hospital patient being injured by a chandelier falling onto his bed, however, the court stated the professional duty of the

hospital is to provide a safe environment within which diagnosis, treatment and recovery can be carried out. Thus if an unsafe condition of the hospital's premises causes injury, resulting from hospital negligence, there is a breach of the hospital's professional duty.

In *Flowers v Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, in which a patient fell off a gurney, the trial court granted summary judgment in favor of the hospital, based on the defense expert's declaration the prevailing standard of care did not require raising the siderails on the gurney given the patient's medical condition. The Court of Appeal reversed, determining the pleadings were broad enough to state a cause of action for ordinary negligence. The California Supreme Court then reversed, holding a plaintiff cannot, on the same facts, state causes of action for ordinary negligence as well as professional negligence, as a defendant has only one duty that can be measured by one standard of care under any given circumstances. Still, the Court declined to resolve the conflict between *Gopaul* and *Murillo*, as the case did not squarely present that question.

The final case in the survey is *Bellamy v Appellate Department* (1996) 50 Cal.App.4th 797. Plaintiff sued for general negligence and premises liability when she was injured, falling off a rolling X-ray table. The hospital demurred, claiming the action was barred by the one year statute of limitations. (CCP section 340.3) Plaintiff opposed, arguing she was subject to the notice requirement for professional negligence actions against health care providers, and that she served the required 90 day notice, thus extending her time for filing suit by 90 days after service of notice, making her action timely under section 364(d). The trial court sustained the demurrer and dismissed the action.

The Appellate Court reversed, concluding the complaint sufficiently alleged professional negligence, making the complaint timely. It found the hospital was rendering professional services to plaintiff in taking X-rays, and she would not have been injured by falling off the X-ray table but for receiving those services. It found the decision consistent with *Murillo*, under the test of whether the negligent act occurred in the rendering of services for which the health care provider was licensed. The Court added that its finding did not require an agreement with *Murillo*, stating that holding does not necessarily lead to the

conclusion that any negligent act or omission by a hospital causing a patient injury is professional negligence. The *Bellamy* court did agree with *Murillo* as it found section 340.5 focused on whether the negligence occurs in the rendering of professional services, rather than whether a high or low level of skill is required. (*Murillo*, at p. 57)

Based on this summary, the Justices of the Second DCA found the injury in this case is distinguished from the cases discussed above, involving falls from beds or gurneys. Those cases involve injury to the patient from failure to properly secure or supervise the patient while on a hospital bed or gurney. Here, in contrast, the patient was injured when the bed rail collapsed, causing plaintiff to fall and sustain injury. Plaintiff alleges she was injured by an equipment failure, meaning the Hospital's failure is to use reasonable care in maintaining its premises and failing to make reasonable inspection of its equipment. In the era of MICRA, the focus is on the rendering of professional services and whether the negligence occurred in the rendering of such services.

Here, the Court found the facts most closely analogous to *Gopaul*'s hypothetical examples of ordinary negligence involving a collapsed chair and a fallen chandelier. No reasonable person would agree that professional negligence was involved in either example. The Justices noted that the *Murillo* court had difficulty with the example of the fallen chandelier. That court stated that the professional duty of a hospital is primarily to provide a safe environment within which diagnosis, treatment and recovery can be carried out. Thus, if an unsafe condition of the hospital's premises causes injury to a patient, as a result of a hospital's negligence, there is a breach of the hospital's duty to the patient. (*Murillo*, at p. 56-57)

The Second Appellate District disagreed with this part of *Murillo*, suggesting maintenance of an unsafe hospital premises falls within professional negligence. The Second DCA reiterates, "not every tortuous injury inflicted upon one's client or patient or fiducial beneficiary amounts to professional malpractice." (*Bellamy*, at p. 805-806) **The critical inquiry is whether the negligence occurred in the rendering of professional services.** Here, plaintiff's injury did not occur in the rendering of professional services. The bed rail collapsed, pled in the complaint as negligent failure by the defendant Hospital to

use reasonable care in maintaining its premises and failing to make a reasonable inspection of its equipment. Thus, the action is governed by the two year statute of limitations for ordinary negligence (section 335.1), making the lawsuit timely.

The order of dismissal is reversed with directions to overrule the demurrer and to reinstate the original complaint. Plaintiff is to recover costs on appeal.

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