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SUMMARY OF *JARMIE V. TRONCALE*

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This report summarizes a recent state Supreme Court case in which the court ruled that a physician who fails to advise a patient about the potential driving risks associated with her underlying medical condition did not owe a duty to a victim of the patient's unsafe driving (*Jarmie v. Troncale*, 306 Conn. 578 (2012)).

SUMMARY

In this case, a woman suffered from a medical condition that impaired her driving ability. Her doctor did not warn her that she should not drive. The woman struck another person while driving, causing him serious injuries. The injured person sued the doctor and his employer for damages; the trial court granted the defendants' motion to strike the complaint.

In a 5-2 decision, a majority of the state Supreme Court upheld the trial court's decision. The majority opinion (written by Justice Zarella) concluded that the complaint, if viewed as a medical malpractice action, was legally insufficient because the victim was not the doctor's patient, but an injured third party. The majority also concluded that the complaint was legally insufficient if viewed as a negligence action, because under the facts presented, the physician did not owe a duty to the injured third party.

Justice Eveleigh dissented, joined by Justice Harper. The dissent concluded that under the facts presented, the doctor's breach of his duty to warn his patient about the effects of her condition constituted a breach of a duty to the injured third party, which could support a negligence action.

Below, we briefly summarize the majority opinion.

FACTS AND PROCEDURAL HISTORY

Dr. Frank Troncale, a physician and gastroenterology specialist, treated a patient for liver and kidney problems, including hepatic encephalopathy (which causes confusion or other reduced brain function due to the liver's inability to remove toxic substances from the blood). Dr. Troncale did not warn the patient that hepatic encephalopathy could impair her ability to drive. After the patient left Dr. Troncale's office, she blacked out while driving and struck John Jarmie, the plaintiff, who suffered severe injuries.

Jarmie filed a negligence complaint against Dr. Troncale and his employer. The trial court granted the defendants' motion to strike the second amended complaint, on the grounds that (1) the plaintiff failed to allege a physician-patient relationship, as required by state medical malpractice law and (2) there was no Connecticut precedent establishing a common law duty for physicians to protect third parties from injuries caused by patients. The plaintiff appealed and the state Supreme Court transferred the appeal to itself from the Appellate Court.

ISSUE

The primary issue the court considered was whether a physician who fails to advise a patient of the potential driving risks associated with her underlying medical condition breaches a duty to a third party injured by the patient's unsafe driving.

ANALYSIS AND HOLDING

On appeal, the plaintiff argued that the trial court erred by ruling that (1) a third party was barred from bringing a medical malpractice action and (2) Dr. Troncale did not owe a common law duty to the plaintiff to warn the patient of the driving risks associated with hepatic encephalopathy.

The Supreme Court found that it was ambiguous whether the complaint was grounded in medical malpractice or common law negligence. Thus, the court considered whether the plaintiff's claims were legally sufficient under either theory.

Medical Malpractice

The opinion noted that the state's medical malpractice statute (CGS § [52-190a](#)) specifically provides that the alleged negligence must have occurred "in the care or treatment of the claimant." Accordingly, the court held that if the plaintiff's complaint is characterized as a medical malpractice action, the trial court was correct to strike it, because there was no allegation of a physician-patient relationship between the defendant and the plaintiff (who was an injured third party).

Common Law Negligence

The court next considered whether the complaint was legally sufficient under principles of common law negligence. It found that under the common law, Dr. Troncale did not owe a duty to the plaintiff, and thus could not be liable for negligence. (Negligence actions generally require the plaintiff to prove four overarching elements: duty, breach of duty, causation, and damages.)

The court based its conclusion on four considerations: prior state precedent; foreseeability (i.e., whether the plaintiff was an identifiable victim); public policy; and lack of consensus among other states.

Connecticut Precedent. The court concluded that prior Connecticut case law does not generally support extending a physician's duty to the plaintiff's case. The court analyzed the common law on health care providers' duty in conjunction with the medical malpractice statute, as the relevant case law followed the enactment of the statute. The court noted that "a principal goal of § [52-190a](#), and of tort reform generally, was to limit the potential liability of health care providers" (*Jarmie*, 306 Conn. at 592).

The court further noted that the common law disfavors imposing liability on health care providers and quoted an earlier case for the proposition that "absent a special relationship of custody or control, there is no duty to protect a third person from the conduct of another" (*Id.*) (quoting *Kaminski v. Fairfield*, 216 Conn. 29, 33 (1990)).

The court noted that it “has exercised restraint when presented with opportunities to extend the duty of health care providers to persons who are not their patients” (*Jarmie*, 306 Conn. at 592). It cited several examples where it declined to find such a duty, contrasted to the only example where the court considered extending a provider’s duty to include someone who was not a patient (*Fraser v. U.S.*, 236 Conn 625, 634 (1996) (assessing duty of a psychotherapist to third parties and determining that no duty exists absent “showing that the victim was either individually identifiable or, possibly, was either a member of a class of identifiable victims or within the zone of risk to an identifiable victim”)).

Foreseeability. The court next considered the extent to which the harm was foreseeable. It concluded that the plaintiff’s claims were insufficient to support a finding that his injuries were a reasonably foreseeable consequence of the doctor’s failure to warn the patient about her driving.

The court noted that unlike the present case, most negligence cases in which the court considered health care providers’ duty involved identifiable victims. In previous cases, the court “deemed the effect of a physician’s conduct on third parties as too attenuated to extend liability beyond the patient” (*Jarmie*, 306 Conn. at 596).

The court concluded that even if it were foreseeable that the patient’s impairment would cause an accident, the plaintiff was not an identifiable victim and did not belong to an identifiable class of victims. According to the court, the potential victims of the patient’s unsafe driving could be anyone who might “come in close proximity to a motor vehicle operated by [the patient] following her diagnosis . . . [and] ‘any’ person cannot be construed to mean an ‘identifiable’ victim or ‘class’ of identifiable victims” for purposes of imposing a duty (*Jarmie*, 306 Conn. at 597-98).

Public Policy. The court considered several public policy arguments for and against extending health care providers’ duty to third persons in this context. On balance, it found the policy arguments favored the defendants’ position.

The court concluded that extending liability here would not support the purposes of tort compensation. Failing to extend liability would not necessarily leave an injured person without redress (e.g., insurance may provide coverage). In terms of fairly distributing loss among responsible parties, the court concluded that “it would not be fair to hold an allegedly negligent health care provider responsible for injuries caused by a

patient's unsafe driving without knowing whether the patient would have heeded a prior warning" (*Jarmie*, 306 Conn. at 601). The court also found that extending the duty would not necessarily deter future accidents.

The court focused on four additional factors in its public policy analysis. First, the court found that the parties' expectations would not support an extension of liability here. Prior cases, as well as state statutes and regulations, would not lead someone injured in this way to expect to be compensated by the driver's health care provider. The court discussed CGS § [14-46](#), which allows, but does not require, health care providers to report to the Department of Motor Vehicles someone with a medical condition that could significantly impact the person's ability to drive.

Second, the court concluded that the proposed extension of a provider's duty to third parties would impermissibly interfere with the physician-patient relationship because:

it would be inconsistent with the physician's duty of loyalty to the patient, would threaten the inherent confidentiality of the physician-patient relationship and would impermissibly intrude on the physician's professional judgment regarding treatment and care of the patient (*Jarmie*, 306 Conn. at 606).

For example, the court noted that imposing such a duty might lead a physician, in an attempt to limit his or her own liability from potential lawsuits, to give more restrictive advice than necessary for the patient. The court also found that lawsuits themselves could interfere with the physician-patient relationship, as "the question of whether a physician reasonably failed to warn a patient would then be placed in the hands of jurors and medical experts who have no knowledge of the physician, the patient or their ongoing relationship" (*Jarmie*, 306 Conn. at 613).

Third, the court concluded that extending the duty would lead to increased lawsuits, which would in turn increase health care costs and increase the burden on the court system.

As part of its public policy analysis, the court also considered the law in other states. It found that most of the cases the plaintiff relied upon involved situations where a health care provider failed to warn a patient about the effects that a prescribed medication, rather than the underlying medical condition, could have on the patient's driving ability. The court concluded that cases assessing a duty where the provider makes the affirmative act of prescribing medication could not be relied upon to determine the duty in the present situation.

The court also found that cases more factually similar to the present case did not show a clear trend in support or opposition to imposing a duty.

Conclusion. After assessing the various factors noted above, the court declined to extend health care providers' duty to unidentifiable third parties for public policy reasons. The court also noted that the legislature, rather than the courts, was the proper forum for resolving the question of whether the duty should be extended in this manner.

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