



Banfield v. Brodell, 862 N.E.2d 169 (Ohio App. 2006)

Topics Covered: Affidavit of Merit, Certificate of Merit and Tort Reform

Outcome: Very Unfavorable

Issue

The issue in this case was whether an Ohio judicial rule requiring that an affidavit of merit accompany any new medical malpractice complaint should be strictly enforced.

AMA Interest

The AMA supports timely filing of affidavits of merit as conditions for the prosecution of legal actions against physicians.

Case Summary

Effective July 1, 2005, the Ohio Supreme Court amended Ohio Civil Rule 10(D) to require that complaints involving a "medical claim" include an affidavit of merit to establish the adequacy of the claim. In addition, the amended rule provided that a plaintiff may file a motion to extend the period of time to file the affidavit of merit, but such motion must be filed with the complaint and only for "good cause shown."

On July 26, 2005, the Plaintiff, Sandra Banfield, filed a complaint against Dr. James Brodell, an Ohio orthopedic surgeon, alleging that Dr. Brodell had provided negligent treatment during an artificial knee implant. She did not include the required affidavit of merit or a motion to extend the time to file one. Dr. Brodell moved to dismiss the complaint, based on this omission. In response, Plaintiff asserted that the Statute of Limitations had been about to bar her claim, and her attorneys had been unable to obtain an affidavit of merit prior to the expiration of the statute. Notwithstanding this excuse, however, the court granted Dr. Brodell's motion to dismiss and rejected the Plaintiff's motion.

The Plaintiff then moved to reconsider the judgment of dismissal, arguing that her failure to file an affidavit of merit had been due to the "excusable neglect" of her attorneys, which under the Ohio court rules justifies relief from a judgment. She argued that her attorneys had not been aware of the new procedural requirements. Had they known of the amended rule, an affidavit of merit could have been filed, since her attorneys had consulted an expert who had reviewed the case files and concluded that the claims against Dr. Brodell were meritorious prior to the filing of the complaint.

The court granted the Plaintiff's motion and reinstated the case, finding that her failure to file a timely affidavit of merit constituted "excusable neglect" by her attorneys. Dr. Brodell appealed this decision.

By a split decision, the Ohio Court of Appeals affirmed, holding that it was within the trial court's discretion to vacate the judgment that had been entered against the Plaintiff. The Ohio Supreme Court then declined Dr. Brodell's request to review the case.

Litigation Center Involvement

The AMA, along with the Ohio State Medical Association and the American Association of Orthopaedic Surgeons, filed an amicus brief in the Ohio Court of Appeals, supporting the defendants' appeal. The amicus brief argued that the Ohio Supreme Court had implemented Rule 10(D)(2) at the request of the Ohio Legislature, to ensure continued access to medical care by requiring due diligence before a plaintiff's filing of a lawsuit. Amici explained that the legislature had found that procedural safeguards were necessary to combat the costs of meritless medical malpractice claims. The amicus brief further explained that Rule 10(D)(2) allowed for additional time to file an affidavit of merit upon a showing of good cause, which should not be found, however, where timely filing was within the plaintiff's control. In this case, the requisite "good cause" was lacking because plaintiff's failure to file timely resulted from her attorneys' failure to research the law.

After the appellate court ruling, amici also submitted a brief to the Ohio Supreme Court, requesting (unsuccessfully) that it review the case.

Ohio Court of Appeals brief