



Barbato v. Khetarpal, 2005 Ohio 5219 (Ohio App. 2005)

Topics Covered: Professional Liability, Abusive Litigation Against Physicians

Outcome: Very Favorable

Issue

The issue in this case was the sustainability of an Ohio physician's \$6,000 judgment against a plaintiffs' attorney who had filed a frivolous medical malpractice lawsuit against him.

AMA Interest

The AMA opposes abusive litigation against physicians.

Case Summary

Dr. Sanjiv Khetarpal, a gastroenterologist, ordered a biopsy of Benjamin Barbato's liver, based on liver problems Mr. Barbato had experienced. Dr. Gerald Hulvat performed the biopsy, during which (unknown to Dr. Hulvat at the time) he perforated Mr. Barbato's colon and gallbladder. Following the biopsy, and before leaving for vacation, Dr. Khetarpal had Mr. Barbato admitted to the hospital for observation. As the night progressed, Mr. Barbato's condition worsened. The next morning, Mr. Barbato's wife telephoned the on-call physician, Dr. Maycon, to advise him that Mr. Barbato was in critical condition. In response, Dr. Maycon ordered tests which disclosed the perforations and probably saved Mr. Barbato's life.

Mr. and Mrs. Barbato filed suit against the hospital and Mr. Barbato's various physicians, including Dr. Maycon. The plaintiffs hired a medical expert, but he refused to opine that Dr. Maycon had made any mistakes in his medical care. Dr. Maycon's counsel then e-mailed the Barbatos' attorney, Catherine Little, requesting that Dr. Maycon be dismissed from the case. Ms. Little responded with a request for a monetary offer from Dr. Maycon in exchange for dismissing him from the case. Subsequently, Dr. Maycon and his gastroenterology group moved for sanctions. Approximately eight months later, another (additional) counsel for the plaintiffs voluntarily dismissed Dr. Maycon from the case.

The case proceeded to a jury trial that resulted in a verdict for the remaining defendants. Dr. Maycon and his gastroenterology group then moved for an order on the sanctions motion. After a hearing, the trial court ordered sanctions against Ms. Little in the amount of \$6,000, which was the amount Dr. Maycon claimed as compensation for the time he had spent in deposition preparation and attendance and trial preparation.

The trial court's award to Dr. Maycon was appealed. Prior to oral argument on that appeal, however, Ms. Little advised the appellate court that she would not participate in that argument because she had allegedly received threatening mail and phone calls from people claiming to be members of the Ohio medical community. She claimed to be in fear for her own safety. Oral

argument was heard without Ms. Little's presence, and the appellate court affirmed the award of damages against Ms. Little for filing a frivolous lawsuit.

Litigation Center Involvement

The Litigation Center, along with the Ohio State Medical Association, filed an amicus curiae brief in support of Dr. Maycon and the judgment awarded him.

Ohio Court of Appeals brief