



Davis v. Armacost (Md. Ct.App.)

Topics Covered: Abusive Litigation Against Physicians

Issue

The issue in this case is whether a jury was correctly instructed in a medical negligence case.

AMA Interest

The AMA supports state medical associations' efforts to curtail lawsuit abuse.

Case Summary

After years of neck and shoulder pain, Mark Armacost consulted with Reginald Davis, MD, a neurosurgeon, about his surgical and nonsurgical treatment options. Following the consultation, Dr. Davis performed a four-level anterior cervical discectomy and fusion surgery to remove damaged discs from Armacost's spine. Unfortunately, the incision did not heal properly, and Armacost developed an abscess and a bacterial infection.

Armacost sued Dr. Davis (and others) for medical malpractice. After a five day trial and over his objection, the jury was instructed that negligence depended on what a "reasonable person" would do.

Dr. Davis argued that, rather than framing the applicable standard of care according to the conduct of a reasonable person, he should have been measured according to the expectations for a neurosurgeon. However, the court refused to modify these instructions. The jury returned a verdict for Armacost, and the judge entered judgment on the verdict.

Dr. Davis appealed from the trial court judgment to the Maryland Court of Special Appeals. The Court of Special Appeals held that these instructions could have led the jury to think that Dr. Davis's conduct should be weighed against the standards of a reasonable layman. Instead, the jurors should have been instructed that the standard of care was that articulated through expert testimony. The Court of Special Appeals reversed the trial court decision and remanded the case for a new trial.

Armacost has now appealed to the Maryland Court of Appeals.

Litigation Center Involvement

The Litigation Center and MedChi, the Maryland State Medical Society, filed an *amicus* brief to the Court of Appeals to support Dr. Davis.

Court of Appeals of Maryland brief