



Gerena v. Fogari (N.J.Sup.Ct., App. Div.)

Topics Covered: Americans with Disabilities Act

Outcome: Neutral

Issue

The issue in this case was whether a physician was required to provide a sign language interpreter under the Americans with Disabilities Act (ADA).

AMA Interest

The AMA opposes use of the ADA to subject physicians to undue burdens in their efforts to assure effective communication with hearing impaired patients. The AMA is also committed to reducing the incidence and costs of professional liability lawsuits.

Case Summary

Irma Gerena started seeing Robert A. Fogari, MD, a New Jersey rheumatologist, in May, 2004. Following a blood test, Dr. Fogari diagnosed her with lupus and prescribed steroids. She would then visit him monthly, at which times he would give her a new prescription. During these visits, Ms. Gerena asked Dr. Fogari to provide her with a sign language interpreter. He refused to do so, as the cost of providing such an interpreter would have exceeded his charge for his medical services. Therefore, they would communicate through gestures and in writing.

In June, 2005, Ms. Gerena consulted with an attorney who specializes in discrimination lawsuits for the hearing impaired. In August, 2005, she saw another physician for a second opinion as to her condition. During her September, 2005, visit to Dr. Fogari, she brought along her friend, Ms. Torres, and Ms. Torres' 12 year old daughter to help her interpret. During that visit, Ms. Gerena mentioned her meeting with the other physician. On hearing this, Dr. Fogari is alleged to have said "Don't blame me if she dies because you've changed doctors", a statement Dr. Fogari denied making.

Ms. Gerena claimed that she became nervous, upset, and sleepless as a result of her interactions with Dr. Fogari, particularly his comment about her possible death if she were to change doctors. She said that she did not understand the nature or seriousness of her condition or the reason for taking steroids. However, she did not seek medical treatment for the mental distress from her interactions with Dr. Fogari and she continued her monthly appointments with Dr. Fogari until March, 2006.

Notwithstanding that she continued to be Dr. Fogari's patient, Ms. Gerena sued Dr. Fogari for emotional damages. She contended that he had breached an obligation to provide a sign language interpreter to accommodate her disability. Dr. Fogari raised an affirmative defense that it would cause him an undue financial burden to provide an interpreter. However, the evidence showed that the income from his medical practice exceeded \$400,000 per year.

The trial court found that Dr. Fogari had indeed breached a duty to Ms. Gerena. It awarded a verdict against him for \$200,000 in compensatory damages and \$200,000 in punitive damages. The court entered judgment in this amount, plus \$202,514.71 in attorney's fees and costs and \$33,000 in prejudgment interest, for a total judgment of \$635,514.71.

Dr. Fogari appealed, but the case was settled before the Appellate Division ruled.

Litigation Center Involvement

The Litigation Center, along with the Medical Society of New Jersey was prepared to file an *amicus curiae* brief to support Dr. Fogari, had the case not settled.