



Loudin v. Radiology & Imaging Services, Inc., 948 N.E.2d 944 (Ohio 2011)

Topics Covered: Professional Liability, Tort Reform

Outcome: Favorable

Issue

The issue in this case was whether a separate claim of negligent infliction of emotional distress could be asserted when the plaintiff's injury arose out of medical malpractice.

AMA Interest

The AMA strives to avoid the expansion of professional liability theories against physicians, which can lead to abusive malpractice litigation.

Case Summary

Lonna Loudin had a mammogram that her radiologist, Richard Patterson, M.D., interpreted as normal. One year later, she felt a lump in her breast, and she had another mammogram. The x-rays disclosed a "mass" that was diagnosed as "highly suggestive of malignancy." A subsequent pathology report and other medical tests indicated she had "invasive carcinoma," which had spread to two of her lymph nodes. As a result, she underwent surgery, chemotherapy, and hormonal drug treatments.

After reexamining Ms. Loudin's second mammogram x-rays, Dr. Patterson admitted that the mass found in the second set of x-rays could have been seen in earlier x-rays, and she had had breast cancer at that time. Ms. Loudin retained an oncologist, who opined that the cancer had grown since the first x-ray and that, had it been caught earlier, it would not have spread to her lymph nodes.

Ms. Loudin sued Dr. Patterson and Radiology & Imaging Services, Inc., his employer. She alleged claims of negligent infliction of emotional distress, medical malpractice, respondeat superior, and negligent supervision. She alleged that as a result of the delay in the diagnosis, she experienced "pain, suffering, mental anguish and emotional distress as a result of the loss of chance of a better outcome, including fear of an increased risk of recurrence of cancer."

The defendants asserted that Dr. Patterson had not violated the standard of care by failing to detect the tumor earlier and, even if he had done so, it would not have changed Ms. Loudin's diagnosis, treatment, or outcome. The trial court granted summary judgment for the defendants. Ms. Loudin then appealed to the Ohio Court of Appeals.

The Court of Appeals focused primarily on the claim of negligent infliction of emotional distress. It found Ms. Loudin's fear of cancer was a fear of a substantial life threatening peril due to the growth of the tumor. It reversed the summary judgment that had been entered against her. The case was then appealed to the Ohio Supreme Court.

The Ohio Supreme Court affirmed. In its decision, the court stated that Ms. Loudin would be entitled to seek recovery for her emotional distress as part of her claim for medical malpractice, but she could not add a separate count premised solely on negligent infliction of emotional distress.

Litigation Center Involvement

The Litigation Center, along with the Ohio State Medical Association, filed an *amicus* brief arguing that, if the negligent infliction of mental distress count were to stand, Ohio's tort reforms, intended to protect the medical profession in professional liability actions, would be undermined.

Ohio Supreme Court brief