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Delgado v. Manor Care of Tucson

Supreme Court of the State of Arizona, June 20, 2017

Arizona Supreme Court Revises Test for APSA Claim

The Supreme Court has revised the test for determining if an actionable violation of the Adult Protective Services Act has occurred. A.R.S. § 46-451. The court overturned the previous four-part test set forth in *Estate of McGill* (2002).

Sandra Shaw arrived at Manor Care in March 2012 in poor health. Within a month her condition deteriorated. Tests showed she had an early septic condition which was left untreated, and she died. Her daughter sued for violation of APSA, among other things. The trial court granted defendants summary judgment, applying the four-part test set forth in *Estate of McGill*: the claim (1) must arise from the relationship of caregiver and recipient, (2) must be closely connected to that relationship, (3) must be linked to the service the caregiver undertook because of the recipient's incapacity, and (4) must be related to the problem or problems that caused the incapacity. The court concluded that the case did not meet the fourth condition because Shaw's death, which was "attributable to sepsis," was "not related [to the condition(s)] that [] caused [her] incapacity. The court of appeals reversed, finding a triable issue as to whether Defendants' alleged abuse "was related to the problems that caused Shaw's incapacity."

The Supreme Court granted review to address the interpretation and application of the APSA statute. The Court said the *McGill* test was "problematic" and "difficult to apply," especially in the context of individuals like Shaw who suffer from multiple medical conditions. Identifying which specific medical conditions render a person vulnerable, and then relating subsequent treatment and injuries to those specific "vulnerable" conditions, is no easy task. The court noted that when navigating their way through the McGill test, courts have made fine distinctions which, at times, seem to be at odds with the broad protective provisions of APSA. This prompted the Court to adopt a more straightforward test. Now the claim requires proof that: (1) a vulnerable adult, (2) has suffered an injury, (3) caused by abuse, (4) from a caregiver. A.R.S. §§ 46-451.

The Court rejected Defendants' arguments that without the *McGill* test, "APSA will apply to virtually all medical malpractice cases arising from care provided to adults in inpatient healthcare institutions," including care of "acute conditions." The Court recognized that "the broad language of APSA creates considerable overlap between medical malpractice claims arising under the MMA and abuse claims under APSA. However, we will not engage in a 'narrow construction' of APSA that 'thwart[s] the legislature's goal of protecting vulnerable adults.'"

The Court remanded for further proceedings, holding that on the record before it, Ms. Shaw's daughter presented a triable issue of whether Defendants committed abuse under APSA.