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Florida Supreme Court Strikes Med Mal Damages Caps for Pain and Suffering

Florida's cap on noneconomic damages in medical malpractice injury cases is unconstitutional, the Florida Supreme Court ruled Thursday.

The 4-3 decision relied on the court's 2014 ruling that a similar cap in wrongful death cases violated the Florida Constitution's equal protection clause. Lawmakers put the caps in place in 2003 because they said a medical malpractice insurance crisis was pushing doctors to leave Florida.

"Because there is no evidence of a continuing medical malpractice insurance crisis justifying the arbitrary and invidious discrimination between medical malpractice victims, there is no rational relationship between the personal injury noneconomic damage caps in [Florida law] and alleviating this purported crisis," the unsigned opinion said.

Justices Ricky Polston, Charles Canady and C. Alan Lawson dissented in the decision erasing caps on damages for pain and suffering.

"The majority just discards and ignores all of the Legislature's work and factfinding," Polston wrote. "But under our constitutional system, it is the Legislature, not this court, that is entitled to make laws as a matter of policy based upon the facts it finds."

The case arose when Susan Kalitan sued the North Broward Hospital District and several people involved in her care at the public district after her esophagus was perforated during outpatient surgery for carpal tunnel syndrome. She was in a medically induced coma for six weeks and in intensive care for three months.

A jury awarded her $4.7 million, but Broward Circuit Judge Jack Tuter reduced the pain and suffering award to $1 million based on the statutory cap for cases involving catastrophic injuries. Awards in cases that did not involve catastrophic injuries were capped at $500,000. Different caps applied when a nonpractitioner's negligence was involved.

The Fourth District Court of Appeal found the caps unconstitutional in 2015, and the hospital appealed.

The Supreme Court's 30-page opinion concluded the sections of the law related to injured victims "impose equal caps on noneconomic damages in instances where a plaintiff suffers a permanent vegetative state, unquestionably a more serious injury, as in instances where a plaintiff suffers the amputation of a hand, if a court determines a manifest injustice would occur unless increased damages are awarded."

'Flabbergasted'

The decision was a close one, but one of Kalitan's original attorneys, Crane Johnstone said he and his co-counsel were confident the court would rule in their favor based on the precedent set in the 2014 decision on the wrongful death cap, Estate of McCall v. United States.

"We fully believed that it would be impossible to distinguish Kalitan from the logic the Supreme Court employed in the McCall case," Johnstone said.

The Fort Lauderdale attorney said the cap made it tough for plaintiffs like Kalitan to find lawyers. He said he spoke to Kalitan after the decision was released and she was "flabbergasted" because she thought the case would never end.

"A tremendous number of otherwise notorious cases were not pursued on behalf of injured patients because it was simply too expensive, and the time and effort and cost expended didn't make financial sense for many of the firms," said Johnstone of Johnstone Law.

He worked on the case with former Schlesinger Law Offices colleagues Jonathan Gdanski and Scott Schlesinger and appellate counsel Philip Burlington and Nichole Segal of Burlington & Rockenbach in West Palm Beach.

"This is a microcosm of the entire system," Gdanski said. "The proper adjudication of the claim through the system worked to serve justice."

Johnstone said doesn't think health care providers should fear an influx of meritless claims against them because of Thursday's decision. Medical malpractice cases carry a high burden of proof and a high level of complexity, and juries typically want to believe the best about doctors and hospitals, he said.

"Juries in courtrooms get it right most of the time, and they can tell the difference … between a meritless, frivolous case and one where somebody was truly hurt by medical negligence," Johnstone said. "This ruling by the Supreme Court in my view is not going to open, as the defense would say, the floodgates of litigation and lead to a lot of meritless cases getting to trial."

Medical malpractice defense attorney Jonathan Abel, a Hollywood partner at Conroy Simberg who was not involved in the Kalitan case, said the decision might make plaintiffs value certain cases more highly. For instance, a severe brain injury case might be more difficult for defendants to settle. But the number of filings will likely stay the same, as evidenced by the Fourth DCA decision's impact, he said.

"With Kalitan already having been in place since 2015, we haven't seen any type of tremendous increase in cases being filed," he said. "In general, the way it has always worked with caps … is the same cases get filed. A plaintiffs attorney is not going to turn down a case because the maximum he could recover would be $500,000 or $750,000."

The hospital district, anesthesiologist Robert Alexander, anesthesiology staffing company Anesco North Broward and nurse-anesthetist Edward Punzalan were represented on appeal by Mark Hicks and Dinah Stein of Hicks, Porter, Ebenfeld & Stein in Miami.

Barry University and nursing student Eleidy Miedes were represented by Jeffrey Creasman and Thomas Valdez of Quintairos, Prieto, Wood & Boyer in Tampa.

The defense attorneys did not respond to requests for comment by deadline.