Are Medical Malpractice Damages Caps Unconstitutional?

Monday, July 31, 2017

The Wisconsin Court of Appeals recently joined courts in Florida, Illinois, New Hampshire, and Washington in finding that caps on noneconomic medical malpractice damages are unconstitutional.

The appeals court found that Wisconsin's cap on noneconomic medical malpractice damages always reduces noneconomic damages only for the class of the most severely injured victims who have been awarded damages exceeding the cap. Yet, the cap always allows full damages to the less severely injured malpractice victims. The court therefore concluded that the cap denies equal protection to that class of malpractice victims whose noneconomic damages are determined by the factfinder to be in excess of the cap. The court therefore concluded the statutory cap is facially unconstitutional.

*Mayo v. Wisconsin Injured Patients And Families Compensation Fund* involved a catastrophic injury sustained by the plaintiff, stemming from an untreated septic infection that ultimately resulted in the amputation of all her extremities.

The plaintiff visited an emergency room for abdominal pain and a high fever. She was seen by doctor and a physician’s assistant. The physician’s assistant included infection in his differential diagnosis and later admitted at trial that plaintiff met the criteria for Systemic Inflammatory Response Syndrome. Neither medical professional informed plaintiff about the diagnosis or the availability of treatment with antibiotics. Instead, plaintiff was told to follow up with her personal gynecologist for her history of uterine fibroids. Plaintiff’s condition worsened and the next day she went to a different emergency room where she was diagnosed with a septic infection caused by the untreated infection. The sepsis caused plaintiff’s organs to fail and led to dry gangrene in all four of her extremities, necessitating amputation.

Plaintiff and her husband filed a complaint against the doctor, the physician’s assistant, Infinity Health Care, Inc., ProAssurance Wisconsin Insurance Co., and the Wisconsin Injured Patients and Families Compensation Fund, alleging medical malpractice and failure to provide proper informed consent.

Prior to trial, the circuit court held the statutory cap on noneconomic damages in *Wis. Stat. § 893.55(4)(d)* was not facially unconstitutional, but permitted plaintiff to proceed with her as-applied challenge.

Following trial, the jury found that neither the doctor nor the physician’s assistant was negligent, but that each failed to provide the plaintiff with the proper informed consent regarding her diagnosis and treatment options.

The jury awarded plaintiffs $15,000,000 in noneconomic damages and awarded $1,500,000 to plaintiff’s husband for his loss of the society and companionship of his wife.

The Fund moved to reduce the jury award to the $750,000 statutory cap on noneconomic damages. The plaintiffs moved for entry of judgment on the verdict, arguing that an application of the cap would violate their constitutional rights. The plaintiffs also renewed their facial challenge.

The circuit court determined that the cap was not facially unconstitutional, but that it was unconstitutional as applied to the plaintiffs because it violated their rights to equal protection and due process.
On appeal, the Wisconsin Court of Appeals agreed with the plaintiffs that the noneconomic medical malpractice damages cap is facially unconstitutional because it violates the equal protection rights of catastrophically injured patients. The cap violates equal protection principles because it always limits noneconomic damages for severely injured plaintiffs but never for less severely injured plaintiffs. The cap imposes an unfair and illogical burden only on catastrophically injured patients. Further, no rational basis exists linking the amount of the noneconomic damages cap to the legislature’s articulated purposes for enacting the cap.

COPYRIGHT © 2019, STARK & STARK

Source URL: https://www.natlawreview.com/article/are-medical-malpractice-damages-caps-unconstitutional