

HAND v. TAVERA

Court of Appeal of Texas, San Antonio, 1993. 864 S.W.2d 678.

OPINION

In this medical malpractice case, plaintiff Lewis Hand appeals from a take-nothing summary judgment rendered on the sole ground that defendant Dr. Robert Tavera owed him no duty because the two never had a physician- patient relationship. We conclude that Tavera did not refute the existence of a physician-patient relationship as a matter of law, and therefore we reverse and remand for further proceedings.

* * * Hand went to the Humana Hospital (Village Oaks) emergency room complaining of a three-day headache. The emergency-room physician (Dr. Boyle) was told that Hand had a personal history of high blood pressure and that his father had died of an aneurysm. Boyle observed that Hand's symptoms rose and fell with his blood pressure, which Boyle was able to reduce periodically with medication. After two or three hours of observation, Boyle decided that Hand should be admitted to the hospital, a decision that required approval from another doctor. Hand had presented a Humana Health Care Plan card, and the front desk told Boyle that defendant Tavera was the doctor responsible that evening for authorizing such admissions. Boyle briefed Tavera by telephone and recommended hospitalization, but ultimately Tavera disagreed with Boyle and concluded that Hand could be treated as an outpatient. Boyle said Tavera told him that Hand's problems "should be controlled by outpatient medication and follow-up in the office" and he also "recommended something for pain." Hand was sent home, where he suffered a stroke a few hours later. He and his wife brought this lawsuit against the hospital, Tavera, and Boyle. Eventually Hand nonsuited Boyle and settled with the hospital.

Tavera moved for summary judgment on the sole ground that he and Hand never established a physician-patient relationship and therefore he owed Hand no duty. Thus this appeal does not present the question whether Tavera's conduct constituted negligence that proximately caused Hand's damages.

Hand argues first that as a member in the Humana Health Care Plan, Tavera owed him a duty of care. There is summary judgment evidence that Hand had Humana Health Care Plan coverage and that Tavera was designated as the doctor acting for the Humana plan that night. The following clauses in the contract between Humana and Southwest Medical Group (which employed Tavera) obligated its doctors to treat Humana enrollees as they would treat their other patients:

PHYSICIAN agrees to provide or arrange for covered health care services for ENROLLEES in accordance with Attachment B. [Attachment B specifies various physician responsibilities, including "emergency care of a covered ENROLLEE who has been assigned to PHYSICIAN."]

PHYSICIAN agrees to provide ENROLLEES with medical services which are within the normal scope of PHYSICIAN's medical practice. These services shall be made available to ENROLLEES without discrimination and in the same manner as provided to PHYSICIAN's other patients. PHYSICIAN agrees to provide medical services to ENROLLEES in accordance with the prevailing practices and standards of the profession and community.

Thus the contracts in the record show that the Humana plan brought Hand and Tavera together just as surely as though. They had met directly and entered the physician-patient relationship. Hand paid premiums to Humana to purchase medical care in advance of need; Humana met its obligation to Hand and its other enrollees by employing Tavera's group to treat them; and Tavera's medical group agreed to treat Humana enrollees in exchange for the fees received from Humana. In effect, Hand had paid in advance for the services of the Humana plan doctor on duty that night, who happened to be Tavera, and the physician-patient relationship existed. We hold that when the health-care plan's insured shows up at a participating hospital emergency room, and the plan's doctor on call is consulted about treatment or admission, there is a physician-patient relationship between the doctor and the insured.

* * *

Tavera also argues that Hand is a third party who cannot assert rights under the Tavera-Humana contract, which expressly provides that it creates no third-party beneficiaries. But Hand does not assert rights under the Humana- Tavera contract in isolation or seek to recover for breach of contract; instead he contends that the entire health-care plan arrangement establishes that Tavera had a physician-patient relationship with him and therefore owed him a duty of care. He argues in essence that when the Hand-Humana contract is read together with the Humana-Tavera contract, he has a right to care from the doctor on call when his medical condition falls within his coverage with Humana. We agree and hold that when a patient who has enrolled in a prepaid medical plan goes to a hospital emergency room and the plan's designated doctor is consulted, the physician-patient relationship exists and the doctor owes the patient a duty of care-

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We reverse the summary judgment and remand this cause for further proceedings on Hand's negligence action based on the physician-patient relationship created by the Humana Health Care Plan.