

Kopp v. Physician Grp. of Ariz., Inc.

Citation: Kopp v. Physician Grp. of Ariz., Inc., 421 P.3d 149 (Ariz. 2018).

Date Filed: July 9, 2018

Opinion's Author: Chief Justice Bales

Joined By: Vice Chief Justice Brutinel and Justices Pelander, Timmer, Bolick, Gould, and Lopez.

Practitioners: For quick reference, please see the "Issue" and "Holding" sections.

Facts: Three plaintiffs experienced complications after undergoing surgery performed by Dr. Eric Schlesinger. Plaintiffs filed medical malpractice actions against the Hospital and Dr. Schlesinger. Plaintiffs then entered into a settlement agreement with Dr. Schlesinger. The decision to enter into a settlement agreement did not suggest wrongdoing on the part of the doctor. The agreement required Plaintiffs to dismiss with prejudice the pending claims against the doctor. Additionally, Plaintiffs agreed not to pursue claims against the Hospital on theories of vicarious liability or respondeat superior. However, Plaintiffs reserved the right to raise independent claims against the Hospital.

Procedural History: This case is currently before the Arizona Supreme Court. The Hospital moved to dismiss most of the remaining claims because the claims were derivative of Dr. Schlesinger's negligence. The trial court agreed with the Hospital and dismissed with prejudice Plaintiffs' negligent credentialing, hiring, and supervision claims as a derivative of Dr. Schlesinger's negligence. However, the trial court recognized that the Plaintiffs could raise an independent negligence claim against the Hospital.

The court of appeals affirmed the trial court's decision.¹ The court explained that the settlement agreement and case law (*see* discussion *infra* note 12) supported the dismissal of Plaintiffs' negligence claims against Dr. Schlesinger.² Moreover, Plaintiffs were precluded from raising claims against the Hospital because the Hospital's liability derived from the alleged negligence of Dr. Schlesinger.³

The Arizona Supreme Court granted review de novo.

Issues:

1. Plaintiffs used a doctor's alleged negligence to bring a negligence claim against a hospital. Are Plaintiffs' negligence claims against the Hospital properly characterized as vicarious or independent?
2. Plaintiffs may enter into a settlement agreement that dismisses with prejudice claims against a doctor and hospital based on vicarious liability. The agreement

¹ Kopp v. Physician Grp. of Ariz., Inc., Nos. 1 CA-CV 16-0227, 1 CA-CV 16-0228, 1 CA-CV 0232, 2017 WL 2470826, at *3 (Ariz. Ct. App. June 8, 2017) (mem. decision).

² *Id.*

³ *Id.*

may preserve the right to bring an independent claim against a hospital. Even if the Plaintiffs' negligence claims are based on the Hospital's independent negligence, are those claims still barred because a dismissal with prejudice is an adjudication on the merits?

Holdings:

1. Plaintiff's negligence claims against the Hospital are based on the Hospital's independent negligence.
2. No, the Plaintiffs are not barred from bringing the independent negligence claims against the Hospital.

Disposition: The court of appeals' memorandum decision was vacated, the trial court's Rule 54(b) judgment dismissing Plaintiffs' independent negligence claims against the Hospital was reversed, and the case was remanded to the trial court for further proceedings.

Rule: A stipulated dismissal with prejudice of an agent-surgeon does not preclude a party from asserting a claim against the surgeon's principal for its own independent negligence.

Reasoning:

- **Vicarious or Independent:** The court began its discussion by assessing the theory of various/derivative liability.⁴ The court disagreed with the lower court's contention⁵ that a "[A] verdict in favor of the [agent] and holding the [principal] guilty of negligence relieves not only the [agent] but the [principal] from liability."⁶ The court further disagreed that a principal's liability is derivative if a claim requires a showing of the agent's wrongful act.⁷ Instead, the court explained that a principal may be independently negligent despite using an agent's acts to establish the causation and damage elements of a principal's negligence.⁸ The court used *Fridena* and *Misevch* to illustrate that the court has recognized that a hospital can breach its independent duty to monitor medical care by using a medical staff's negligence as proof.⁹ Here, the Plaintiffs allege that the Hospital was independently negligent in their credentialing, hiring, and supervising practices.¹⁰
- **Case law relied on by the lower courts.** The lower courts and Defendants relied primarily on *Torres*¹¹ which relied on *De Graff*.¹² In *Torres*, the doctor's negligence was

⁴ Kopp v. Physician Grp. of Ariz., Inc., 421 P.3d 149, 151 (Ariz. 2018).

⁵ *Id.* (quoting *De Graff v. Smith*, 157 P.2d 342, 343 (Ariz. 1945)).

⁶ *Id.* (quoting *De Graff v. Smith*, 157 P.2d 342, 343 (Ariz. 1945)).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* (citing *Fridena v. Evans*, 622 P.2d 463, 466 (Ariz. 1980); and then citing *Tucson Med. Ctr. v. Misevch*, 545 P.2d 958, 960 (Ariz. 1976)).

¹⁰ *Id.* at 152.

¹¹ *Id.* (citing *Torres v. Kennecott Copper Corp.*, 488 P.2d 477, 478 (Ariz. Ct. App. 1971); and then citing *De Graff*, 157 P.2d at 345).

¹² *Id.* (citing *Torres v. Kennecott Copper Corp.*, 488 P.2d 477, 478 (Ariz. Ct. App. 1971); and then citing *De Graff*, 157 P.2d at 345).

an essential element to the hospital's liability.¹³ However, the doctor's negligence had already been adjudicated in favor of dismissal.¹⁴ Therefore, the plaintiff was barred from bringing a claim against the hospital.¹⁵ The court found that the reasoning in *Torres* conflicts with its issue preclusion jurisprudence.¹⁶

- ***Chaney Building Co. as the authority.*** The court held *Chaney Building Co.* abrogated *Torres* and *Degraff* to the extent of defining when issue preclusion is triggered.¹⁷ *Chaney Building Co.* established that issue preclusion is valid when the issue or fact to be litigated was *actually litigated in a previous suit*.¹⁸ Here, the court found that the Plaintiffs' claim against the doctor was not actually litigated.¹⁹ Instead, Dr. Schlesinger and Plaintiffs entered a settlement agreement that did not conclusively establish the guilt of Dr. Schlesinger.²⁰ Also, the agreement expressly allowed Plaintiffs to raise an independent negligence claim against the Hospital.²¹ Therefore, Plaintiffs could raise their claims for negligent hiring, credentialing, and supervision against the Hospital.²²

¹³ *Id.* (citing *Torres*, 488 P.2d at 480).

¹⁴ *Id.* (citing *Torres*, 488 P.2d at 480).

¹⁵ *Id.* (citing *Torres*, 488 P.2d at 480).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* (quoting *Chaney Bldg. Co., v. City of Tucson*, 716 P.2d 28, 30 (Ariz. 1986)).

¹⁹ *Id.*

²⁰ *Id.* at 152–53.

²¹ *Id.* at 152.

²² *Id.* at 153.