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Fla. Court Says Deadly Patient Transfer Suit Is Med Mal Case

By **Y. Peter Kang**


Law360 (May 29, 2020, 5:36 PM EDT) -- A Florida appellate court held Friday that a suit claiming a financial motive was behind health care providers' failure to transfer a patient, allegedly causing the patient's death, is essentially a medical malpractice claim that requires a medical expert's opinion.

A three-judge Court of Appeal panel for the Fifth District unanimously reversed a trial judge's decision to move forward a suit alleging Dr. Christopher Hill and Rockledge HMA LLC, doing business as Wuesthoff Medical Center Rockledge, failed to transfer patient Shannon Lawley from the hospital's emergency room to another facility's intensive care unit after the patient was diagnosed with several unspecified medical issues.

The suit filed by the patient's father, Michael Lawley, claims that his daughter was admitted to the ER by Hill and the hospital for "the sole purpose of generating hospital and/or physician revenue," according to the opinion. Shannon Lawley was placed in an ER hallway and died after more than seven hours, the opinion states.

On appeal, the hospital argued that the decision to admit or transfer a patient requires medical judgment, so the suit should be tossed for failure to adhere to presuit requirements for medical malpractice claims.

The panel agreed, saying the Brevard County judge erred by finding that the alleged wrongful acts were not directly related to medical services or the use of professional skill or judgment.

The appeals court said the circumstances of the case are analogous to a case decided by the Fourth District in 2011, [Palms West Hospital v. Burns](#) , in which doctors were accused of refusing to treat patients who didn't have health insurance.

"Here, the act from which [Lawley's] claim arises also concerns a lack of treatment: Dr. Hill's decision to admit the decedent to receive critical care management, as opposed to transferring her to another facility's ICU," the panel said.

Even though Hill's alleged failure to transfer the patient may have been financially motivated, the panel said Hill ultimately exercised medical judgment in choosing to admit the patient.

"Respondents allege that the reason for the improper decision was economic interest," it said. "Even so, the damages respondents seek are inescapably linked to the alleged failure to provide appropriate medical care. Consequently, the claim is one 'arising out of the rendering of, or failure to render, medical care or services.'"

The panel remanded the case to the trial court for further proceedings.

An attorney for the hospital, Michael D'Lugo, told Law360 on Friday that his side is satisfied with the outcome.

"Rockledge HMA LLC has always maintained that Mr. Lawley's claim is one that arises out of allegations of medical malpractice. Today's opinion confirms that belief," he said. "This lawsuit has

been a hard-fought battle over several years. We feel that the Fifth District Court of Appeal correctly applied the law of Florida to the facts alleged in Mr. Lawley's complaints, and arrived at the proper result."

Attorneys for the other parties did not immediately respond to requests for comment.

Judges Meredith L. Sasso, Brian D. Lambert and Dan Traver sat on the panel for the Fifth District.

Lawley is represented by Philip M. Burlington of Burlington & Rockenbach PA, Theodore Babbitt of Babbitt & Johnson PA and S. Sammy Cacciatore Jr. of Nance Cacciatore Hamilton Barger Nance & Cacciatore.

Hill is represented by Wilbert R. Vancol and Thomas E. Dukes III of McEwan Martinez Dukes & Hall PA.

The hospital is represented by Michael R. D'Lugo and Richards H. Ford of Wicker Smith O'Hara McCoy & Ford PA.

The consolidated case is Rockledge HMA LLC et al. v. Lawley et al., case numbers 5D19-1223, 5D19-1919, 5D19-1225 and 5D19-1957, in the District Court of Appeal of the State of Florida, Fifth District.

--Editing by Jack Karp.

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