

OREGON CASE UPDATE

Defendant's Constructive Knowledge of Abuse Sufficient to Overcome Summary Judgment

case in point...

From the desk of Ryan McLellan: In 1995, Oregon passed a statute to protect “vulnerable” people from abuse, which, under certain circumstances, authorizes a lawsuit against the person who “knowingly” acts in such a way as to permit the physical or financial abuse of a vulnerable person. There has remained a question, however, as to what the defendant must “know” about the circumstances to be found liable. Read on to find out how the Oregon Supreme Court ruled on this issue.

Claims Pointer: In this case arising out of a paramedic’s sexual abuse of patients being transported by ambulance, the Oregon Supreme Court held that a claim could be maintained against an employer of an abuser if the employer “should have known” of the abuse, even if the employer did not have actual knowledge of it. The case may expand liability for the abuse of the vulnerable, including elderly, incapacitated, and in certain instances, disabled people, and it establishes a rule of which employers, their insurers, and their attorneys should be aware.

Wyers v. American Medical Response Northwest, Inc., 360 Or 211 (August 11, 2016)

Over a span of several years, a paramedic, Lannie Haszard (“Haszard”), who was employed by American Medical Response Northwest, Inc. (“AMR”), sexually abused patients while they were being transported in AMR ambulances. Haszard was eventually charged for his actions and, after pleading no contest, sentenced to several years in prison.

Six different plaintiffs brought civil actions against AMR under ORS 124.100(5), which authorizes a “vulnerable person” to bring an action against a person who “permit[s]” another person to engage in physical or financial abuse “if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known” of the abuse. The cases were consolidated, and AMR moved for summary judgment against all plaintiffs on the ground that there was no evidence that it actually knew of its paramedic’s abuse against plaintiffs and then acted in a way that permitted that abuse to occur. The trial court agreed and granted the motion. Plaintiffs appealed, and the Court of Appeals reversed, concluding that the statute does not require actual knowledge of a plaintiff’s abuse. AMR appealed.

Because the parties did not dispute that each of the plaintiffs was properly considered a “vulnerable person” at the time of the alleged assault—the statute defines a “vulnerable person” as a person who is elderly, financially incapable, incapacitated, or, in certain instances, has a disability—the Supreme Court focused its analysis on the knowledge requirements of the statute. As the Court noted, the statute requires both that the defendant “knowingly” act (or fail to act) in such a way as to permit the abuse, and that the defendant do so under circumstances in which a reasonable person “should have known” of the abuse. AMR focused on the requirement that the defendant knowingly act or fail to act, arguing that the statute required proof that the defendant engaged in knowing and intentional misconduct. Plaintiffs, however, focused on what a defendant “should have known,” arguing that liability depended on whether a reasonable person “should have known” of the abuse.

The Supreme Court first addressed the statutory requirement that a defendant “knowingly” act or fail to act. Taking the statute as written, the Court noted that the statute simply requires that a defendant knowingly act or fail to act. According to the Court, the defendant’s knowledge is therefore



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about the defendant's own conduct. In other words, what a defendant must know is the character or nature of the defendant's act or failure to act. While that act or failure to act must also have the effect of permitting abuse to occur, the Court concluded that the statute does not require actual knowledge of the result of acting or failing to act.

The Supreme Court next addressed the statutory requirement that the defendant have acted or failed to act "under circumstances in which a reasonable person should have known of the physical or financial abuse." After reviewing the legislative history behind the statute, which revealed that the statute's purpose was to protect elders and incapacitated adults from physical and financial abuse, the Court determined that the wording of the statute could be read to apply when, in light of information known or available to a reasonable person, that person should have known of the kind of abuse that in fact occurred. In short, the Court held that the statute provides that there must be evidence that a defendant knowingly acted or failed to act under circumstances in which a reasonable person should have known that the same sort of abuse of a vulnerable person that occurred would, in fact, occur. Thus, the statute would permit a cause of action where an employer such as AMR "knowingly" scheduled an employee to work on an ambulance run under circumstances in which a reasonable person "should have known" that the sort of abuse inflicted on the plaintiffs would occur.

Having determined the meaning of the statute, the Court then turned to the specific facts of each plaintiff's allegations against AMR to determine whether the statute permitted the law suit. As mentioned earlier, the incidents involved instances of abuse inflicted on six different vulnerable persons by Haszard. Because the case was dismissed on summary judgment, the question before the Court was whether AMR assigned its employee under

circumstances in which a reasonable person would should have known that the same type of abuse that occurred would in fact occur.

The appellate record showed that at the time of the first plaintiff's abuse, AMR had already received two complaints regarding Haszard's sexual misconduct. At least one of those complaints resulted in an internal report, which described the complaint and concluded that it had been substantiated. The Court thus concluded that there was evidence that, at the time of the first plaintiff's abuse, AMR had already received at least two complaints of sexually inappropriate conduct on the part of Haszard. While AMR disputed the facts of the prior incidents, its dispute established only that there was a genuine issue of material fact about whether AMR should have known of the sort of abuse that the first plaintiff suffered. The trial court therefore erred in granting summary judgment against the first plaintiff.

The Court analyzed the claims of the next five plaintiffs similarly. Because the evidence showed that AMR had received additional reports of Haszard's misconduct prior to the alleged incidents and had even warned Haszard not to engage in such conduct in the future, there was a genuine issue of material fact regarding whether a reasonable person in AMR's position should have known about the sort of abuse that each of the six plaintiffs would occur. Summary judgment against any of the plaintiffs was therefore inappropriate, and the case was remanded to the trial court for further proceedings.

View full opinion at: <http://www.publications.ojd.state.or.us/docs/S063000.pdf>

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