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CAPS ON 'PAIN AND SUFFERING' DAMAGES IN MEDICAL MALPRACTICE DEATH CASES RULED UNCONSTITUTIONAL

On Wednesday, March 13, 2014, the Florida Supreme Court issued its long-awaited ruling in the McCall vs. United States medical malpractice case.[1] In it, the Court[2] found that, in wrongful death cases, the caps on non-economic damages enacted in 2003 violate the equal protection provision of the Florida Constitution. The caps remain in place in cases involving non-lethal injury. The ruling will affect wrongful death cases currently in litigation as well as those yet to be filed.

Procedural Background

Michelle McCall died while in the care of military medical personnel shortly after the birth of her son. A wrongful death lawsuit alleging medical malpractice was filed in which the woman's parents and her newborn son were the only claimants. The non-economic award of $2 million was reduced to $1 million when the caps described in §766.118, Florida Statutes were applied. On appeal, the U.S. 11th Circuit, federal constitutional arguments were rejected, but four questions regarding state constitutional claims were certified to the Florida Supreme Court. The Court found the caps unconstitutional because its disparate impact on claimants in wrongful death cases was arbitrary and because it lacked a rational relationship to a legitimate state interest.

Disparate Impact on Multiple Claimants

In Florida, when separate classifications for individuals are devised, they must have a reasonable relationship to the statute and must not be arbitrary. As the caps apply "regardless of the number of claimants," one surviving widow would be allowed to recover significantly more than six surviving children would each recover. The McCall decision pointed out that if the newborn son had been the sole claimant, he would have received the entire $500,000 awarded to him by the trial court. He received only half of that amount simply because Ms. McCall's parents asserted claims. This arbitrary and "unfair and illogical burden" on multiple claimants "offend[ed] the fundamental notion of equal justice under the law," the Court concluded.

No Rational Relationship to Legitimate State Interest

Every statute must address a "legitimate state interest" and, in 2003, the legislature cited the malpractice insurance crisis as that state interest. The Court in McCall flatly rejected the idea that there was ever a malpractice insurance crisis at all. The opinion derided claims of a crisis as "dubious and questionable at the very best." The legislature's conclusion that jury awards were a primary cause of the insurance crisis was described as "most questionable." The Court also pointed to the current profitability of malpractice insurers and stated that the cap now "serves no purpose other than to arbitrarily punish the most grievously injured or their surviving family members."

Practitioners vs. Non-Practitioners

§766.118 imposes different monetary caps depending on whether the defendant is a practitioner or a non-practitioner. Generally speaking, practitioners are individual physicians while non-practitioners are hospitals or other healthcare facilities. The malpractice allegations in the McCall lawsuit implicated only individual doctors and the Court clearly stated that only the caps applicable to practitioners were addressed in their opinion. However, unlike the distinction made for wrongful death cases, no difference in legal rationale was set forth to separate the practitioner caps from those applicable to non-practitioners. Therefore, a logical argument that non-practitioner caps are also unconstitutional can be

made.

Moving Forward

The Court's drastic attitude toward the idea of an insurance crisis specifically and dim view of the effectiveness of the caps in general may signal the impending doom of these caps in non-death cases as well. In fact, a non-death medical malpractice case challenging the caps on identical grounds as McCall has been accepted by the Court and will be argued this Summer. Given the current 5-justice majority, a similar outcome seems likely.

[1] The Court's full opinion has not yet been published but can be viewed and downloaded here: http://www.floridasupremecourt.org/decisions/2014/sc11-1148.pdf.

[2] The plurality opinion authored by Justice Lewis was joined by Justice Labarga. A separate concurring opinion, in result only, was authored by Justice Pariente and joined by Justices Quice and Perry. Justices Canady and Polston dissented.

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