

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2004

ESTATE OF ERNESTO VAZQUEZ, et al.,

Appellants,

v.

Case No. 5D03-427

AVANTE GROUPS, INC.,

Appellees.

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Opinion Filed May 14, 2004

Appeal from the Circuit Court
for Lake County,
William G. Law, Jr., Judge.

Susan B. Morrison, Brian L. Thompson and Kimberly
M. Kohn of Wilkes & McHugh, P.A., Tampa, for
Appellants.

Scott A. Mager and Elaine J. LaFlamme of Mager
Law Group P.A., Fort Lauderdale, for Appellees.

PLEUS, J.

This is a nursing home case in which the Estate of Ernesto Vazquez appeals from a final judgment in favor of the defendants, Avante Groups, Inc. ("Avante") and Avante at Leesburg, Inc., ("Leesburg").

At the conclusion of the jury trial, Avante moved for a directed verdict which motion was granted. The court also granted Leesburg's motion for a directed verdict on the issue of punitive damages. The jury returned a verdict in favor of Leesburg on the counts for

negligence, wrongful death and a statutory claim under Chapter 400, Florida Statutes.¹

Of the various claims of error, only one merits discussion. The jury was instructed on the Chapter 400 claim that the alleged violations of Ernesto Vazquez's rights must have resulted in his death.

In *Beverly Enterprises-Florida, Inc. v. Knowles*, 766 So. 2d 335 (Fla. 4th DCA 2000), *rev. granted*, 789 So. 2d 346 (Fla. 2001), the Fourth District Court of Appeal, in a unanimous *en banc* decision, held that a personal representative of a deceased nursing home resident may bring an action against a nursing home for violation of the Patient's Bill of Rights **only** when the deprivation or infringement caused the resident's death. *Knowles* is presently pending in the Florida Supreme Court.

This Court recently, in *Estate of Youngblood v. Halifax Convalescent Center, Ltd.*, 29 Fla. L. Weekly D272 (Fla. 5th DCA Jan. 23, 2004), reversed a judgment in favor of the nursing home on the basis, among others, that a personal representative can sue under Chapter 400, even though the deprivation does not cause the resident's death. *Youngblood* certified conflict with *Knowles*.

The verdict on the negligence count is sustainable and accordingly is affirmed. We conclude that regardless of whether we apply *Knowles* or *Youngblood*, the allegations in the estate's complaint as to Chapter 400 are virtually identical to those contained in the negligence count, and hence, any error in the jury instruction was harmless error.

The judgment of the court below is affirmed.

¹ Patient's Bill of Rights.

AFFIRMED.

PALMER and TORPY, JJ., concur.