Third District Court of Appeal

State of Florida

Opinion filed October 28, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-597
Lower Tribunal No. 17-11031

Maria Joanna Lazzari, etc.,
Appellant,

vs.

Pablo Guzman, M.D., etc., et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Daryl E. Trawick, Judge.

Liberman Cabrera Thompson & Reitman, PLLC, and Scott S. Liberman, Ivan F. Cabrera and Sean F. Thompson (Fort Lauderdale); Joel S. Perwin, P.A., and Joel S. Perwin, for appellant.

White & Case LLP, and Raoul G. Cantero, David P. Draigh and Ryan A. Ulloa; Fowler White Burnett, P.A., and Marc J. Schleier, Christopher E. Knight and Erin Gaskin, for appellee University of Miami.

Before EMAS, C.J., and HENDON and GORDO, JJ.

PER CURIAM.

Maria Lazzari, as Plenary Guardian of the Person and Property of Morela Lazzari, appeals the trial court's denial of her motion for summary judgment, its grant of the University of Miami d/b/a Miller School of Medicine's (the "University") cross-motion for final summary judgment, and its entry of final judgment in favor of the University based on its finding that the University was entitled to sovereign immunity pursuant to section 768.28, Florida Statutes (2019). We have jurisdiction. See Fla. R. App. P. 9.030(b)(1)(A).

The specific issue presented in this appeal is whether the University is entitled to sovereign immunity for services rendered by its employee, Dr. Thomas Salerno, at Public Health Trust d/b/a Jackson Memorial Hospital ("Jackson"), a teaching hospital where the University provides healthcare services. The University argues that pursuant to the terms of its agreement with Jackson, it was Jackson's agent at the time that Dr. Salerno treated Morela Lazzari and was entitled to immunity. We agree and affirm.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The underlying case is a medical malpractice suit filed by Ms. Lazzari against several parties including Jackson, the University, and Dr. Salerno. Since 1952, the University has provided healthcare services at Jackson's teaching hospitals. In 2004, Jackson and the University executed a Basic Affiliation Agreement (the "2004

BAA"). The 2004 BAA governed the relationship between the parties at that time, as it pertained to indigent patients being treated at Jackson.

In 2006, Dr. Salerno was a faculty member and employee of the University. He executed a Memorandum of Understanding with Jackson (the "Memorandum") and agreed to provide care to "Hospital Patients."[1] The Memorandum refers to the Basic Affiliation Agreement between Jackson and the University to describe the relationship between Dr. Salerno and Jackson when he was treating Jackson's indigent patients. It renewed automatically on a yearly basis.

In 2011, the Florida Legislature amended section 768.28, Florida Statutes. The same year, Jackson and the University amended the Basic Affiliation Agreement to incorporate the amended sovereign immunity statute (the "2011 BAA"). The 2011 BAA expressly terminated and replaced the 2004 BAA, making it the operative agreement governing the University's faculty and employees while treating patients at Jackson. It covers the care of all patients, indigent or not, and provides that all faculty and employees of the University acting pursuant to the agreement do so as an agent of Jackson.

[1] The Memorandum incorporated the definition of "Hospital Patient" contained in the 2004 Basic Affiliation Agreement, which was "medically indigent patients."

In 2013, Morela Lazzari sought treatment, as a private patient, from Dr. Salerno at his office in Jackson.[2] Throughout her treatment by Dr. Salerno and other Jackson physicians, Lazzari alleges that they failed to prescribe anti-coagulants to Morela Lazzari, which resulted in disabilities. As a result of that alleged negligence, Lazzari contends that both Jackson and the University are vicariously liable for Dr. Salerno's actions.

In defense to the underlying suit, the University pleaded that it was entitled to immunity from liability and suit under sections 768.28(9)(a) and (10)(f), Florida Statutes. It later filed a motion for final summary judgment on those grounds. The trial court granted that motion, finding the terms of the 2011 BAA controlled and the University had sovereign immunity from Lazzari's suit.

STANDARD OF REVIEW

An order granting summary judgment is reviewed de novo. See, e.g., Fuentes v. Sandel, Inc., 189 So. 3d 928, 932 (Fla. 3d DCA 2016). "The interpretation of a contract involves a pure question of law for which this court applies a de novo standard of review." Dirico v. Redland Estates, Inc., 154 So. 3d 355, 357 (Fla. 3d DCA 2014) (quoting Muniz v. Crystal Lake Project, LLC, 947 So. 2d 464, 469 (Fla.

[2] Lazzari does not dispute that at the time Dr. Salerno treated Morela Lazzari he was a faculty member and employee of the University or that the operative agreement between Jackson and the University was the 2011 BAA. It is also undisputed that the 2011 BAA includes the terms required by section 768.28, Florida Statutes.

3d DCA 2006)). The interpretation of a statute also presents a de novo issue of law. See, e.g., Rupp v. Dep't of Health, 963 So. 2d 790, 793 (Fla. 3d DCA 2007) (citation omitted).

LEGAL ANALYSIS

Agents acting on behalf of the State cannot "be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function." § 768.28(9)(a), Fla. Stat. (2019). Pursuant to section 768.28(10)(f), Florida Statutes, a private medical school and its physicians are agents[3] of the State when the institution is a "nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, . . . and . . . has agreed in an affiliation agreement or other contract to provide, or permit its employees or agents to provide, patient services as agents of a teaching hospital" and is "acting within the scope of and pursuant to guidelines established in the affiliation agreement or other contract." Id.

As such, we next look to the language of the 2011 BAA. When a contract "is clear and unambiguous, it must be construed to mean 'just what the language therein

[3] Section 768.28(9)(b)(2), Florida Statutes, defines "agent" to include "any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f)."

implies and nothing more.'" Dezer Intracoastal Mall, LLC v. Seahorse Grill, LLC, 277 So. 3d 187, 190 (Fla. 3d DCA 2019) (quoting Walgreen Co. v. Habitat Dev. Corp., 655 So. 2d 164, 165 (Fla. 3d DCA 1995)). The 2011 BAA clearly conferred sovereign immunity upon the University for its services in treating patients at Jackson, pursuant to the 2011 version of section 768.28, Florida Statutes.[4] The 2011 BAA states that the "University and any faculty member . . . or other employee or agent of the University while acting pursuant to this Agreement does so as an agent of the Trust." Under the terms of the 2011 BAA and section 768.28, Florida Statutes, the University is immune from suit here because Dr. Salerno treated Morela Lazzari while acting as Jackson's statutory agent. Accordingly, the trial court properly denied Lazzari's motion for summary judgment, granted the University's motion and entered final judgment in favor of the University based on its sovereign immunity defense.

Affirmed.

[4] This Court previously upheld the 2011 amended statute as constitutional. Bean v. University of Miami, 252 So. 3d 810 (Fla. 3d DCA 2018).