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SUPREME COURT OF THE STATE OF WASHINGTON

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

COPIED TO THE CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
2014 OCT 30 PM 3:38
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Xusheng Chen,

Appellant,

vs.

Valley Medical Center, et al

Respondents

No. 71314-1-I

-PRV-
MOTION FOR
DISCRETIONARY REVIEW

FILED
NOV 25 2014
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
CPS

Dear Court Commissioner /Clerk Richard D. Johnson:

Thank you very much for your letter of September 30, 2014, in which you informed me that I could file a Motion for Discretionary Review. I am now submitting it to you.

This case is, firstly, for *civil rights violation*—all the defendants complained that they could not understand my mother’s language but none of them request one or contacted me and/or my wife. We came to the US for advanced studies in early 1980s and are capable of interpreting for my mother. The language barrier caused wrong diagnoses of my mother’s disease, hasty discharge against my request, and untimely and wrongful death of my mother. Secondly, my mother’s doctor Krevat and attending doctor Isola committed criminal negligence and attending doctor I-Jen Chen abandoned my mother. Details are given below which is an excerpt of my Brief of Appellant (July 30, 2014). I have been tortured by my mother’s tragic death and I hope that the honorable judges read my brief and cure my illness.

I. INTRODUCTION

I note at the outset that this case, in which my mother who had excellent health for her age and had never been hospitalized before, being hospitalized and treated for a flu at Valley Medical Center on December 8, 2003, acquired aspiration pneumonia, pulmonary edema, and acidosis, caused by monitored but unchecked fast IV, hasty and premature discharging on December 12, 2003, to a skilled nursing home by her doctors, has never been considered by the court on its merits. This case is much worse than the cases: *Boggs v. Camden Clark Memorial Hospital Corporation*, No.35223, 2010, West Virginia; *Rosenblit v. Zimmerman*, 166 N. J. 391, 2001, New Jersey; *Moskovitzs v. Mt. Sinai Medical Center*, 69 Ohio St.3d 638, 635 N.E.2d 331, 1994.OH.40972; *Chace et al. v. Curran et al.*, No. 2004-02290, Massachusetts; *Johnson v. Loyola Univ. Med. Ctr.*, 2008 IL-Iw080404185 (03/31/2008)—IL; *Koziel v. Changebridge Medical Associates*, A-4486-04T2; *Hoang v. Seattle Emergency Physicians and Dr. Grace Dy*, Case Number 05-2-36470-0, Superior Court, King County, Washington.

Falsification is a serious crime in most, if not all jurisdictions. Falsification erodes public respect for the judicial system: to the extent that the public believes falsification is common, it will

distrust the results reached by the judicial system and will lose faith in courts as reliable sources of justice.

The Court of Appeals decision for my 2006 lawsuit filed on November 10, 2008 is:

PER CURIAM. Failure to comply with the notice requirements of RCW 7.70.100(1) and RCW 4.96.020(4) requires dismissal of complaint. Because Xusheng Chen failed to comply with these statutes, and because he lacked both standing and the required expert testimony to pursue his claims, we conclude the trial court properly dismissed his complaint for the alleged wrongful death of his mother.

It is clear that my 2006 lawsuit was dismissed solely by technicality. Summary judgment should be granted only when a complaint is so legally deficient that recovery would be impossible even if all well-pleaded facts were true and construed in the light most favorable to the non-moving party.

II. STATEMENT OF THE CASE

Since more than 95% of the facts of this case are based on my mother--the late Pingfang Liu's medical records, there has been no any serious dispute on the fact. I filed a wrongful death lawsuit against the defendants. The complaints to each defendant are:

Hospitalist Green (Mr. Green): He was the only physician who cared for my mother at VMC. Incompetence, gross negligence, falsification of medical records, spoliation, inadequately monitored

my mother (Discontinued the telemetry and IV fluid over infusion caused pulmonary edema/aspiration pneumonia, heart ischemia, acidosis, and sudden death), premature and hasty discharge of my mother, criminal negligence, and civil rights violation.

Hospitalist Seth A. Krevat (Dr. Krevat = Mr. Green?): On December 11, 02:15 a.m. my mother was in critical condition and a nurse called Dr. Krevat. He ordered Lasix for my mother but did not follow up and hastily discharged her the next day. Patient abandonment. Two months ago, I found Dr. Krevat's full name and now am almost sure that hospitalist Green is Dr. Krevat. So this case becomes much egregious. Because VMC's concealment of information, it took me ten years to get the full name of Dr. Krevat. Dr. Krevat completed his residence in June 2003 at Northwestern Memorial Hospital in Illinois and joined VMC in September 2003, and my mother died under his care on December 13, 2003. He was inexperienced at the time and grossly and criminally negligent.

Attending physician (VMC) William Dell Isola (Dr. Isola): Falsification of my mother's medical records to cover up Dr. Krevat's and his own spoliation and criminal negligence. Fraudulently claimed that he personally diagnosed my mother. Dr. Isola was not incompetent. He just did not supervise Dr. Krevat.

VALLEY MEDICAL CENTER (VMC): Fraudulent concealment of the most critical evidence of the three X-ray images and the identity of hospitalist Green, vicarious responsibility for Drs. Isola and Krevat, and civil rights violation.

Attending physician (Keiro) I-Jen Chen (Dr. Chen): Incompetence, inadequate monitoring of my mother, refused to walk 15 meters to diagnose my mother when she was having heartache/ischemia or heart attack, gross negligence, patient abandonment, and civil rights violation. After my mother's death, he hurt M. Lynne and her father and Mr. John C. Lynne wrote on YELP (10/23/2009): "Dr. Chen's indifference and neglect resulted in five days of humiliation and agony for my father. For as long as I live, I'll never be able to erase from memory Dad's tormented final days on earth under the care of Dr. I-Jen Chen." John wrote (9/2/2013): "First of all, this guy has no tact whatsoever...He was also very rude when giving me instructions for the urine sample...Very unprofessional. There are many hateful words that I want to use to describe this man and seeing the other reviews really makes me angry that he can still practice."

Nurse Mildred Cabilas (Keiro): Inadequate care of my mother, did not report my mother's low O₂ saturation (<88%) and complaint of pain to Dr. Chen, and falsification of medical records.

Keiro Skilled Nursing Home: vicarious responsibility for the nurses and nursing assistant and civil rights violation.

The trial court granted summary judgment to all the defendants, even though Dr. Isola, "Mr. Green", and Dr. Krevat had not yet responded to the summons and complaints. This appeal follows.

III. ASSIGNMENT OF ERROR

A. The trial court erred in dismissing this case when I have showed strong evidences of fraud and criminal negligence committed by Drs. Krevat and Isola, and fraudulent concealment of the most important evidences of the three x-ray images and civil rights violation by VMC and its employee. And I have also showed new discoveries of medical malpractices of doctors Krevat, Isola, and I-Jen Chen.

B. The trial court erred in dismissing this case when my lawsuit contained several claims, such as fraud, fraudulent concealment of evidences, and civil rights violation, which were only contemporaneous to or related to the alleged act of medical professional liability and were not based on medical malpractice.

The discovery rule of RCW 4.16.350 is applicable to the case.

4.16.350 (3) ...based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his or her representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment...until the date the patient or the patient's representative has actual knowledge of the act of fraud or concealment...the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages.

Falsification is a serious crime in most, if not all, jurisdictions. And falsification can result in severe punishment for otherwise-criminal conduct.

C. The trial court erred in dismissing this case when I was appointed by the Superior Court for the State of Washington, County of King, as my mother's personal representative and could relate back on my 2006 wrongful death lawsuit which was dismissed solely on technicality -- Certificate of Merit (RCW 7.70.150), Notice of Intent to Sue (RCW 7.70.100 (1)), and Standing (RCW 4.20.010) -- and definitely not on merit. The former two statutes were eliminated by the Supreme Court when my case was still being reviewed by the Supreme Court. My case was pending the decision of the case of Waples vs. Yi. Waples and Cunningham's cases were

remanded for further procedures, but the Supreme Court finally rejected reviewing of my case. I am a first generation immigrant from mainland China. Because of cultural differences, I mistakenly thought “standing” means “qualification”, and thought that I was my mother's only legitimate heir and naturally had the standing to represent her.

IV. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

A. Is the discovery rule of RCW 4.16.350 applicable to my lawsuit?

B. Is it wrong of the trial court (Kent) to dismiss my 2006 lawsuit *with prejudice*?

C. Whether RCW 4.20.010 is unconstitutional when it violates the separation of powers doctrine?

D. As the personal representative of my mother, can I relate back to my 2006 lawsuit?

V. and VI. are in the BRIEF OF APPELLANT

VII. CONCLUSION

A. The discovery rule of RCW 4.16.350 is applicable to my lawsuit

I discovered: (1) VMC fraudulently concealed the most important evidence of the three x-ray images. This is an act of fraud on the

court; (2) a lung infiltrate is an abnormality on chest x-ray larger than a coin lesion or spot. X-Ray #2 and #3 show 60% and 75% white-out (infiltration or consolidation) of my mother's right lung, respectively, but Drs. Krevat and Isola dictated "no infiltration". **Outrageous lie!** Dr. Krevat lied to me about my mother's real sickness and prematurely discharged my mother against my request for keeping her at hospital for a few more days, and she died less than 24 hours at Keiro Skilled Nursing Home. (3) On my mother's medical records, Dr. Seth A. Krevat used the name and title of "Hospitalist Green" and only put the initials which was unrecognizable and definitely not SAK on the records. This is negligence per se. It was easy for VMC to find the true identity of "Hospitalist Green", but VMC chose not to reveal the information to me. I discovered some causes of my mother's wrongful death in 2007, because the defendants have been deceiving the court and the court had never considered the merit of my case.

B. It is wrong of the trial court (Kent) to dismiss my 2006 lawsuit *with prejudice*

Because courts are to construe the Civil Rules to achieve a just result, Civ.R. 1(B), *LaNeve v. Atlas Recycling, Inc.*, 119 Ohio St.3d 324, 2008- Ohio-3921, 894 N.E.2d 25, ¶ 21, and for the reasons

outlined above, a dismissal for failure to comply with RCW 7.70.150, RCW 7.70.100(1), and RCW 4.20.010 is *without prejudice*, because it is an adjudication otherwise than on the merits.

C. RCW 4.20.010 is unconstitutional when it unduly burdens the right of access to courts and violates the separation of powers.

The Separation of Powers Analysis in Putman is controlling here.

D. As the personal representative of my mother, I hope that I can relate back to my 2006 lawsuit.

I hope that Washington State either has a similar statute or shall adopt Florida's Relation Back doctrine -- the "ancient doctrine" which validates the acts of a personal representative prior to his appointment and noting that "a wide variety of acts and conduct" have been validated by subsequent qualification of an administrator, including an advancement to a distribute.....the execution of a deed, **and the institution of a wrongful death action.**

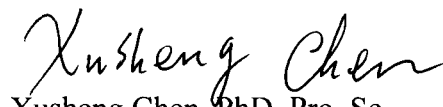
I have consulted several Chinese and US medical doctors. All of them said that my mother absolutely should not be discharged from the hospital and none of them said that my mother had acute bronchitis. An email from a board-certified pulmonologist who had only read the three x-ray images offered the following opinion:

It appears to me that between 12/8 and 12/10 your mother developed a new opacity in the right upper lobe that would be most consistent with pneumonia. By 12/13 this opacity is less dense, but she is now intubated and receiving positive pressure ventilation (which expands the lungs more). There also is some new infiltration of the left upper lung field on 12/13, although the process remains worse on the right. I think the series of films suggests the development of pneumonia in the right upper lobe, perhaps with some superimposed edema.

This is clearly not a frivolous lawsuit. In August 2001, my mother flew to China and flew back to Seattle with me. It was a 14-hour flight plus 4 hours of waiting and ground transportation for a single trip! My mother had no sickness, no back pains, no chronicle cough, no Alzheimer dementia, and did not take any medicine from February 2002 to December 6, 2003. She had never been hospitalized before December 8, 2003. Had she in and out the hospitals several times and ailing all the time, I definitely would not have started this wrongful death lawsuit. Drs. Isola and Krevat considered that my mother was safe to be discharged, VMC PTA set the progress toward goals as 96%, and Dr. I-Jen Chen recorded that my mother's Rehabilitation Potential was good. How come she died a sudden death in less than 24 hours after discharge from VMC, with no oxygen leads and with no nurses nearby and basically died on the stool at Keiro? It was me to start the rescue action. Like most of the American citizen of Chinese origin, I look up to you, the honorable judges to uphold justice.

Appellant respectfully requests the trial court's Order Granting Defendants' Motion for Summary Judgment and dismissing plaintiff's claims be reversed. I also respectfully request the court to order VMC and Keiro to disclose their internal investigation for my mother's sudden death. I never got a chance to do the discovery.

Respectfully submitted this 30th day of October, 2014


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NO. 71314-1-I

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XUSHENG CHEN

Petitioner

v.

VALLEY MEDICAL CENTER, LAWRENCE D. ISOLA, M.D., SETH
A. KREVAT, MD, I-JEN CHEN, M.D., AND
KEIRO SKILLED NURSING HOME

Respondents

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PETITION FOR DISCRETIONARY REVIEW

Xusheng Chen
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Respectfully submitted this 29th day of October, 2014

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CPB

PETITION FOR DISCRETIONARY REVIEW

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THE REST OF THE PETITION ARE IN THE BRIEF OF
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I. IDENTITY OF PETITIONER

Xusheng Chen asks this court to accept review of the Court of Appeals decision terminating review designated in Part II of this petition.

II. COURT OF APPEALS DECISION

Appellant Xusheng Chen has moved to modify the commissioner's June 27, 2014 ruling denying extension of time to file the opening brief and dismissing review. Respondent Valley Medical Center has filed a response. We have considered the motion under RAP 17.7 and have determined that it should be denied. Now, therefore, it is hereby ordered that the motion ORDER DENYING MOTION TO MODIFY.

I am teaching at Seattle University on power systems. In recent years, my students from 5 to 8 to 42, 33, and 27 etc., increased many times and my actual teaching load has been more than 50% overload last and this year. That was why I could not submit the opening brief on time. **In fact, I submitted the evidence part of the brief, all together 45 plus pages, on time.**

This case is, firstly, for **civil rights violation**—all the defendants complained that they could not understand my mother's language but none of them request one or contacted me and/or my wife. We came to the US for advanced studies in mid 1980s and were capable of interpreting for my mother. The language barrier caused wrong diagnoses of my mother's disease; ravish discharge against my request,

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