

State Supreme Court: Doctor not liable in informed consent case

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A state Supreme Court decision handed down Thursday in favor of a local doctor ended a three-year legal dispute over when patients can bring informed consent claims against physicians.

Lawyers for the local doctor, Mark Sauerwein of the Yakima Valley Farm Workers Clinic, hailed the court's majority opinion as a "landmark" decision.

"This case will be disseminated to medical providers throughout the state of Washington because it defines the contexts in which informed consent is applicable," David Thorner of Yakima, attorney for Sauerwein, said Thursday. "It's a good conclusion to a very difficult situation."

Informed consent means that before giving a course of treatment or doing a procedure, doctors must fully explain the risks and consequences to the patient, along with alternative options. State law says proof of injury on the part of the patient requires "that a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of such material fact or facts."

The case of Anaya Gomez v. Sauerwein, brought to trial in June 2011, was filed by the husband of Toppenish resident Christina Palma Anaya after she died of a yeast infection complicated by severe diabetes in 2006.

In August 2006, Anaya went to Toppenish Community Hospital complaining of a possible urinary tract infection. Samples were taken and she was sent home, only to return a few days later still feeling ill. The next day, lab tests showed that she did have a yeast infection, though they did not reveal what kind. The lab called the Farm Workers Clinic, where Anaya's regular doctor was away, and relayed the information to Dr. Mark Sauerwein, who was covering.

Concerned by the results, Sauerwein conferred with the doctor who had seen Anaya at the hospital, and the two agreed that if she was still feeling ill, she should get immediate treatment, but if she felt better, the test was likely a false positive, which occurs fairly regularly, according to later testimony by Sauerwein. When called by a clinic nurse, Anaya replied that she'd felt much better since her second hospital visit, and the doctors concluded that the test was a false positive.

Two days after that, more in-depth testing revealed that Anaya's samples were in fact positive for glabrata, a type of yeast that can cause a serious and potentially deadly infection in the blood. Lab microbiologists put this information in Anaya's medical record but did not tell Sauerwein, the clinic or anyone else about the result.

Anaya showed up at Yakima Valley Memorial Hospital three days later, where staff initially gave her an antifungal medication that works against most yeast infections, though not glabrata. Once the glabrata was identified — by the hospital, since the earlier lab findings were not shared — they switched to another drug, but that drug is toxic to the kidneys and Anaya's kidneys were already compromised by her uncontrolled diabetes. She died about a month and a half later at age 32, leaving behind her husband and two children.

Anaya's husband, Rodolfo Anaya Gomez, took Sauerwein to court in 2011, where his lawyers originally sought \$1.7 million in damages for claims of negligence for misdiagnosing Anaya and for violating informed consent laws by not sharing her glabrata diagnosis with her. Most medical claims of this sort would normally be settled out of court, legal experts said.

Anaya's lawyers said Sauerwein violated informed consent laws because he never told Christina Anaya of the positive glabrata test.

The jury sided with Sauerwein, saying he fully upheld the standard of care, and the judge dismissed the informed consent claim. Anaya's lawyers appealed that dismissal to the Court of Appeals, which upheld the dismissal. They then appealed to the state Supreme Court.

In the majority opinion released Thursday, state Supreme Court Justice James Johnson essentially said that informed consent and medical negligence are mutually exclusive complaints, and affirmed the lower court's dismissal of the informed consent claim.

"Simply put," the justice wrote, "a health care provider who believes the patient does not have a particular disease cannot be expected to inform the patient about the disease or possible treatments for it."

He also cited medical experts' testimony that Anaya's diabetes was so advanced that earlier treatment with the more aggressive antifungal medication would have been dangerous to her kidneys, and even if she had been treated with it as soon as the lab confirmed glabrata, it still would have been too late to save her life.

Thorner, the defense attorney, said that Sauerwein was "greatly relieved and pleased that this ordeal is over.

"This case significantly narrows the type of situations where informed consent claims can be asserted," Thorner said.

For Anaya's lawyer, Dick Johnson of Yakima, the result was disappointing.

"For the client, there's no recovery," he said Thursday. "It's an unfortunate end to the case."