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Court Upholds \$5 Million Malpractice Verdict

Doctor failed to inform plaintiff of ovarian cancer risks

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Allison Downs et al. v. Orlito A. Trias, M.D. et al.: The state Supreme Court has upheld a \$5 million jury verdict for a terminal cancer patient who claimed that her doctor failed to warn her that she had an increased risk of developing ovarian cancer.

Defense lawyers appealed a 2010 jury verdict on a host of grounds, one of them being that the lawsuit was not a medical malpractice case but rather an “informed consent” case.

The state’s highest court opted to review the case instead of the state Appellate Court. A lawyer for the plaintiffs suggested that time may have played a role in the Supreme Court’s decision to review the case. The woman’s doctor opined that she will succumb to her cancer this year or next year.

Allison Downs, of New Milford, underwent a hysterectomy in June 2005 after tests found large uterine fibroids, which are typically benign tumors. She was 46 years old at the time. Her doctor was Orlito A. Trias, a board certified obstetrician/gynecologist who was also from New Milford.

During the initial procedure to remove her uterus, Downs opted not to have her ovaries removed. But in August 2006, they had to be taken out after she developed full-blown ovarian cancer that had also spread to her pelvic cavity, bowel and lymph nodes.

Downs had a family history of cancer. Her mother died at age 48, her cousin at age 29, and her grandmother at age 52, all from breast cancer. Several aunts also had breast cancer.

In a medical malpractice lawsuit, Downs, and her husband Michael Downs, claimed Dr. Trias failed to inform Allison Downs that she was at an increased risk of ovarian cancer because of her family’s history of breast cancer.

Further, according to the lawsuit, the doctor was negligent in not recommending that his patient have her ovaries removed during the planned hysterectomy in 2005. Allison Downs maintains that if she had been made aware of the cancer risk, she would have had them re-

moved, preventing the cancer. She did not have them removed at that time because it would have hastened the onset of menopause.

Dr. Trias acknowledged that he never told Downs she was at a higher risk of developing ovarian cancer because of her family’s breast cancer history. He also never told her that ovarian cancer is undetectable in its early stages.

As a defense, Trias argued that he had told Downs prior to the hysterectomy to get pre-genetic testing to see if she had a certain gene mutation that leaves a woman with increased risk of ovarian and breast cancer. Downs’ lawyers argued that Dr. Trias knew his patient was not going to get the pre-genetic screening and at that point should have informed her of the risks of not removing her ovaries.

Trias, a native of the Philippines, came to the U.S. in 1974 and started his New Milford practice in 1978. He was represented at trial by Madonna Sacco, of Danaher, Lagnese & Sacco in Hartford.

The case was on the complex litigation docket in Waterbury and the trial took eight weeks in early 2010. The jury deliberated for five days before awarding Allison Downs \$4 million and her husband, Michael, \$1 million for his loss of consortium claim.

Trias’ lawyers appealed, claiming, in part, that the judge should have instructed the jury that this was an informed consent case as opposed to a medical malpractice case. In its majority opinion, the state Supreme Court explained that in an informed consent case, the plaintiff must prove both that there was a failure to disclose a known risk of a proposed medical procedure and that such failure was a proximate cause of the injury.

By contrast, to find for the plaintiff in a medical negligence claim, the jury must determine that the defendant’s conduct fell short of the prevailing professional standard of care, which is not a necessary requirement in an informed consent case. The Supreme Court, however, found that Dr. Trias’ failure to fully inform his patient rose to the level of malpractice.

“Specifically, may a physician, in failing to



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Attorneys Richard A. Silver and Peter M. Dreyer represented a New Milford woman who claimed she would have had her ovaries removed if her doctor had informed her that she had an increased risk of developing ovarian cancer.

provide a patient with information, incur liability for falling short of the professional standard of care,” wrote Justice Lubbie Harper Jr. “The answer to this question plainly is yes.”

Justice Peter T. Zarella, joined by C. Ian McLachlan, penned a separate concurring opinion.

Attorney David J. Robertson, of Heidell, Pittoni, Murphy & Bach in Bridgeport, handled the appeal for Dr. Trias. Robertson was away on vacation last week and unavailable for comment.

Attorneys **Richard A. Silver** and **Peter M. Dreyer**, of **Silver Golub & Teitell** in Stamford, represented the plaintiffs. Dreyer said the clients were happy to put the litigation behind them.

“My client is extremely happy that the Connecticut Supreme Court has at least ended this part of a terrible chapter in her life,” said Dreyer. “She’s had yet another recurrence of her ovarian cancer but she’s a fighter and she has, so far, lived as long as any of the experts have thought and we hope she lives a long, long time.” ■

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