

CSA splits wins in back-to-back stent cases

St. Joseph loses discovery dispute; Midei loses appeal

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St. Joseph Medical Center cannot appeal an order that required it to disclose the names and addresses of hundreds of former patients who were notified they might have received unnecessary stents, the Court of Special Appeals held Monday.

First, the ruling was a discovery order that cannot be appealed, the court said; also, the case was moot since the plaintiff no longer needed the information and had withdrawn the request. Finally, St. Joseph had no privacy interest in the information it was seeking to protect.

"For all these reasons, whatever privacy interests of the Hospital's patients that may have been at stake when the August 29, 2011 Order was issued, and that the Hospital noted this appeal in an effort to protect, are no longer at stake,"

Judge Deborah S. Eyler wrote for the court in an unreported opinion.

The opinion came one business day after the appellate court affirmed a ruling in favor of St. Joseph's former owner, Catholic Health Initiatives Inc., in an action by former cardiologist Mark Midei.

Friday's opinion upheld the dismissal of Midei's 2010 fraud and false-light lawsuit against Catholic Health, which he filed after the letters were sent to patients.

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Discovery

The discovery dispute stemmed from a lawsuit filed by Theresa Fallows, who received a cardiac stent from Midei in 2008. Fallows was one of more than 500 patients who received letters from the hospital informing them that they may have received an unnecessary heart stent from Midei.

Fallows filed suit in 2010 on behalf of herself and those in similar circumstances in Baltimore County Circuit Court. Discovery in the case was bifurcated, with discovery on the class action certification scheduled first.

The circuit court ordered the hospital in August 2011 to disclose the names and addresses of the patients to whom the hospital had sent the stent letters.

St. Joseph appealed the ruling that September, and the Court of Special Appeals heard argument in November 2012.

Meanwhile, the action continued in circuit court. This January, the circuit court held a hearing on class certification and granted the motion in April.

Fallows then withdrew the motion that St. Joseph had appealed, over St. Joseph's objection. St. Joseph asked the court to decide the case anyway.

On Monday, the Court of Special Appeals held that it did not have jurisdiction over the appeal because the court can only review final judgments and the lower court's order on a discovery issue was not a final judgment.

"This was a classic discovery order that cannot be appealed until the end of the case," said Fallows' appellate

attorney, Andrew H. Baida of Rosenberg Martin Greenberg LLP in Baltimore. (The circuit court action is being handled by The Murphy Firm in Baltimore.)

An attorney for the hospital, Andy Levy of Brown Goldstein Levy LLP



in Baltimore, declined to comment on the case.

The case also called into question whether the hospital could represent the privacy interests of the non-party patients.

"Ms. Fallows adds that it would be absurd to allow the Hospital, as the defendant in the malpractice and fraud case, to assert on appeal the rights of the patients it is alleged to have harmed," Eyler wrote for the court.

However, the hospital argued that, as custodian of records, it was the only entity that could stand up on behalf of the non-party patients whose

names and addresses would be disclosed. It cited two earlier cases that gave a party the right to represent the interests of a nonparty in exceptional circumstances.

Given all that had occurred since the order was issued, including the certification of the class and Fallows' withdrawal of her motion, the court rejected that argument.

"This case is no longer in a posture in which any reasonable analogy to [those cases] might be drawn," Eyler wrote.

Fraud suit

In the case decided Friday, the court rejected Midei's claims that his action was not covered by the general release he signed when his employment at the hospital ended in 2009.

Midei began working at St. Joseph in January 2008. The hospital began an investigation into Midei's practices in 2009 and let him go that November.

The hospital, however, continued its investigation and sent more than 500 letters to affected patients in 2010.

Midei filed suit in October 2010 against Catholic Health Initiatives claiming fraud, invasion of privacy — false light, interference with economic relations, negligence and intentional infliction of emotional distress. The case was originally filed in Baltimore City Circuit Court, but was later moved to Baltimore County Circuit Court.

Neither Midei's attorney, Madeline L. Houston of Houston & Totaro, Attorneys-at-Law in West Caldwell, N.J., nor Catholic Health Initiative's attorney, William D. Blakely of Polsinelli

P.C. in Washington, responded to requests for comment on Monday.

Midei claimed the hospital tried to make him the focus of a federal investigation and distorted peer reviews done on Midei's former patients.

The hospital argued that the release signed by Midei precluded his lawsuit.

The lower court ruled in favor of Catholic Health Initiatives, and the Court of Special Appeals affirmed.

"The patient letters briefly and clearly inform the patients and their primary cardiologists of the clinical review and the revised catheterization report," the Court of Special Appeals wrote in its opinion. "Absent evidence of fraud in the reviews or the patient letters — and there is none — we find no reason to invalidate the [release agreement] as 'patently offensive.'"

Catholic Health Initiatives issued a statement by email, saying it was "pleased to learn about the decision of the Court of Special Appeals."

"The ruling by the appeals court is a strong statement in support of the position of Catholic Health Initiatives and St. Joseph Medical Center," the statement said.

In the wake of the stent controversy, Midei lost his medical license in 2011 and Catholic Health Initiatives sold the hospital to University of Maryland Medical System last fall. The hospital is now called University of Maryland St. Joseph Medical Center.

Catholic Health Initiatives, however, is still responsible for all pending legal actions against the hospital.