300 Ga.App. 206
Court of Appeals of Georgia.

BANKS-JACKSON-COMMERCE HOSPITAL AND NURSING HOME AUTHORITY
v.
FLOYD et al.

No. A09A1368. | Aug. 20, 2009. | Reconsideration Denied Sept. 24, 2009. | Certiorari Denied March 29, 2010.

Synopsis

Background: Surgery patients filed a joint complaint against hospital and physician alleging the physician was negligent in his medical treatment of them and that he misrepresented their medical condition in order to obtain their consent to undergo surgery, and that the hospital negligently provided the physician with credentials to work at the hospital, that it negligently supervised the physician, and that its credentialing of the physician created a private nuisance. The State Court, Jackson County, Gray, J., denied the hospital's motion to sever, but an application for interlocutory appeal was granted.

[Holding:] The Court of Appeals, Johnson, P.J., held that patients were not entitled to permissive joinder of their actions.

Reversed.

West Headnotes (3)

[1] Action
Claims Arising Out of Same Transaction or Transactions Connected with Same Subject of Action

Permissive joinder statute does not authorize joinder of claims arising out of "similar" transactions; the fact that evidence of a similar transaction is admissible as evidence in separate trials does not authorize joinder of claims involving the similar transaction. West's Ga.Code Ann. § 9-11-20(a).

1 Cases that cite this headnote

[2] Action
Claims arising from wrongful or tortious acts

Surgery patients' claims against hospital and physician alleging the physician was negligent in his medical treatment of them and that he misrepresented their medical condition in order to obtain their consent to undergo surgery, and that the hospital negligently provided the physician with credentials to work at the hospital, that it negligently supervised the physician, and that its credentialing of the physician created a private nuisance, arose out of "similar" but not the "same" transactions or occurrences, and thus patients were not entitled to permissive joinder of their actions; each patient presented to the physician with different clinical indications, and they each alleged different damages arising out of different medical treatment provided by the physician on different dates. West's Ga.Code Ann. § 9-11-20(a).

1 Cases that cite this headnote

[3] Action
Consolidation of Actions

Consolidation of actions involving a common question of law or fact requires the consent of all parties. West's Ga.Code Ann. § 9-11-42(a).

Cases that cite this headnote

Attorneys and Law Firms

****274** Huff, Powell & Bailey, Jeffrey D. Braintwain, Anna B. Fretwell, Atlanta, for appellant.

Cook, Noell, Tolley & Bates, J. Vincent Cook, Robert C. Irwin III, Athens, McClure, Ramsay, Dickerson & Escoe, John A. Dickerson, Toccoa, for appellees.

Opinion

JOHNSON, Presiding Judge.

***206** On June 10, 2008, Stephanie Floyd, Karen Hunter, Billy Ray Hawkes, and Debra Kraft filed a joint complaint against the **Banks**-**Jackson**-**Commerce** Hospital and Nursing Home Authority, d/b/a BJC Medical Center (the " Hospital"), Dr. Douglas K. Ash, and ***207** Commerce Surgical Associates, LLC. The plaintiffs alleged that Dr. Ash was negligent in his medical treatment of them and that he misrepresented their medical condition in order to obtain their consent to undergo surgery. The plaintiffs alleged that the Hospital negligently provided Dr. Ash with credentials to work at the Hospital, that it negligently supervised Dr. Ash, and that its credentialing of Dr. Ash created a private nuisance. Finally, the plaintiffs alleged that each of the defendants engaged in concerted racketeering activities, through a pattern of making false statements and performing surgery without valid consent, in violation of OCGA § 16-14-1 et seq.

****275** **[1]** The Hospital filed a motion to sever the claims of each of the four plaintiffs, asserting that their claims did not "aris[e] out of the same transaction, occurrence, or series of transactions or occurrences" as required by OCGA § 9-11-20(a). The trial court denied the Hospital's motion to sever, and we granted an application for interlocutory appeal. Because the trial court erred in denying the Hospital's motion, we reverse.

> OCGA § 9-11-20(a) authorizes joinder of separate plaintiffs' claims if they arise out of the "*same* transaction, occurrence, or series of transactions or occurrences." (Emphasis supplied.) It does not authorize joinder of claims arising out of "similar" transactions. The fact that evidence of a similar transaction is admissible [as evidence in separate trials] does not authorize joinder of claims involving the similar transaction. [1]

[2] **[3]** Here, the appellees' claims arise out of "similar" but not the "same" transactions or occurrences. Each appellee presented to Dr. Ash with different clinical indications, and they each allege different damages arising out of different medical treatment provided by Dr. Ash on different dates throughout 2006 and 2007. Because the appellees' claims arise out of transactions or occurrences that are merely similar, they do not meet the requirements for joinder under OCGA § 9-11-20(a). While the claims involve common questions of law and fact and could have been consolidated in accordance with OCGA § 9-11-42(a), consolidation under that Code section requires the consent of all parties. [2]

In addition, joinder under OCGA § 9-11-20(a) is not authorized ***208** merely because the appellees included "unifying" causes of action in their complaint, such as the Hospital's allegedly negligent decision to provide Dr. Ash with credentials to work at the Hospital. For each of the appellees, the individualized medical treatment provided by Dr. Ash serves as the predicate event for the ability to recover against the Hospital, and their claims, therefore, "aris[e] out of" that treatment. [3] Given that the appellees' claims arise out of separate medical treatment by Dr. Ash that did not constitute "the same transaction, occurrence, or series of transactions or occurrences," joinder was improper under OCGA § 9-11-20(a), and the trial court erred in denying the Hospital's motion to sever.

Judgment reversed.

ELLINGTON and MIKELL, JJ., concur.

Parallel Citations

684 S.E.2d 274, 09 FCDR 2852

Footnotes

1 *Howard Motor Co. v. Swint*, 214 Ga.App. 682, 448 S.E.2d 713 (1994).

2 See *Lincoln Elec. Co. v. Gaither*, 286 Ga.App. 558, 560(2), 649 S.E.2d 823 (2007) (physical precedent only).

3 See *Ray v. Scottish Rite Children's Med. Ctr.*, 251 Ga.App. 798, 800, 555 S.E.2d 166 (2001) (although negligent retention claim was based on hospital's act of negligence, the claimed damages still "arose out of" the care rendered by the physician).