

Auer v. Miller

Virginia Supreme Court

June 9, 2005

This is a medical practice case and the primary issue is the interpretation of 8.01-581.18, the statute involving immunity when physicians fail to read medical tests ordered by another doctor.

The plaintiff had a heart condition and it was decided that a heart valve replacement was the appropriate remedy. Consequently his native valve was removed and an artificial valve installed by Doctor Baker, a cardiovascular surgeon. After the surgery Dr. Baker ordered a culture test of the valve, which had been removed. The test showed staph and was posted to the chart, which Dr. Baker did not read. Dr. Miller, the plaintiff's cardiologist, who had seen the plaintiff several times in the hospital, also did not read the chart. No action was taken concerning the staph, the plaintiff worsened and a week later calls were made to Dr. Miller's office and also Dr. Baker's office, and the plaintiff was readmitted to the hospital several days later. He died from the infection.

Dr. Miller filed a special plea of immunity in which he stated that 8.01-581.18 gave him immunity. The statute reads as follows:

B. Any physician shall be immune from civil liability for any failure to review, or to take any action in response to the receipt of, any report of the results of any laboratory test or other examination of the physical or mental condition of any person, which test or examination such physician neither requested nor authorized in writing, unless such report is provided directly to the physician by the person so examined or tested with a request for consultation or by the State Department of Health.

Dr. Miller, of course, did not order the culture test, and claimed immunity under this statute. The plaintiff argued that the statute was meant to apply to outpatient circumstances only. The Virginia Supreme Court disagreed, upholding the trial court's ruling. The Supreme Court said that the statute needed to be read exactly as it was written. There was no exception for hospital cases in the statute, so it applied in all situations.

The jury did find against Dr. Baker, and also found against the group that Dr. Miller belonged to, but as to the group on the grounds that when the first phone calls were made a week after the surgery to that group that prompt action might have saved the plaintiff's life. The jury so found, but the trial court carefully reviewed the evidence and found that there was not sufficient proof that if proper action has been taken at that time the plaintiff would have had a substantial possibility of surviving. The Virginia Supreme Court agreed, and so the only verdict left standing was against Dr. Baker.