

Friday, December 4, 2009

Page 3

Court of Appeal Revives Fraud Claim Against Anaheim Dentist

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A jury should have been allowed to decide whether an Anaheim dentist committed fraud by holding herself out as a “USC Clinical Associate Professor” five years after she left an unpaid, part-time teaching position with the school, the Fourth District Court of Appeal has ruled.

Div. Three reversed Orange Superior Court Judge James P. Gray’s grant of nonsuit in favor of Mitra MacMillan and Dental Health-Anaheim Hills Inc. in an unpublished decision Wednesday.

Karen Kinses said she consulted MacMillan in 2005 and presented evidence that the front window of MacMillan’s dental office listed MacMillan’s name and specialty, followed by the words “USC Clinical Associate Professor.”

Based on the dentist’s claimed affiliation with USC, Kinses said she believed MacMillan was a professor at the USC School of Dentistry.

During her consultation, Kinses said she informed MacMillan of her various medical conditions, which included psychiatric problems, clinical depression and anxiety regarding doctors. MacMillan diagnosed Kinses with periodontal disease and recommended removal of 28 teeth and installation of dentures.

Kinses claimed that she felt MacMillan, as a professor, had to be reputable and knowledgeable in the most current procedures and techniques, and so she did not seek a second opinion.

MacMillan testified that she had worked as a part-time clinical associate professor at USC from 1998 to 2000, which was an unpaid position. She said she put the information on her window, and in a PennySaver advertisement, because she was “proud of...being a professor, so it’s just letting the patients know.”

After Kinses filed suit, MacMillan said she contacted the school to inquire whether she could advertise herself as a clinical professor and was told she could not.

The complaint also asserted causes of action for negligence and emotional distress, asserting that the dentures did not fit properly and that the dentist had grown increasingly hostile and abusive over time. Kinses claimed that the dentures caused her pain and left her chin protruding in an unflattering way, but when she complained, MacMillan told her, “you should be grateful you didn’t lose a limb,” and on another occasion: “You should be glad you don’t have cancer.”

MacMillan also allegedly suggested Kinses should get Botox if she was unhappy with the way her chin looked with the dentures.

Gray found there was no evidence that MacMillan’s representation of an affiliation with USC was false, or that MacMillan knew it was false, and granted nonsuit in the dentist’s favor on the fraud claim as well as the emotional distress claim. A jury returned a verdict for the defense on the negligence cause of action.

Writing for the appellate court, Justice William W. Bedsworth disagreed with the grant of nonsuit on the fraud claim, explaining that the question of whether MacMillan’s representation of an affiliation with USC was false or intended to deceive was for a jury to decide.

The justice reasoned that a jury could have found the dentist committed fraud since MacMillan was not a USC clinical professor at the time Kinses consulted her in 2005 and had not taught at the school since 2000.

“That was enough evidence for a fact finder to conclude the legend on MacMillan’s office door was false, and MacMillan knew it to be so,” Bedsworth wrote.

Considering the evidence and inferences most favorable to Kinses, Bedsworth said that the grant of nonsuit on the fraud claim was error, but not as to the emotional distress claim.

Although MacMillan's comments "may have been harsh and perhaps not the best way to build a professional practice," the justice said, "whether considered individually or as a whole, they were only insults and indignities the law does not redress."

He opined:

"That is not the way we expect medical professionals to act, but being rude and foolish does not rise to the level of outrageousness."

Even assuming that MacMillan knew Kinses was particularly susceptible to emotional distress and should have known her actions would result in emotional distress, Bedsworth said no authority supported the proposition that knowledge of emotional vulnerability alone is sufficient to show actionable conduct.

He also rejected Kinses' argument that testimony from expert witnesses as to whether proper dental treatment includes the way a dentist interacts with a patient was improperly excluded at trial because neither witness was shown to have personal knowledge of MacMillan's interaction with Kinses or to be an expert in dentist/patient interaction.

Justices Kathleen O'Leary and Eileen C. Moore joined Bedsworth in his decision.

The case is *Kinses v. MacMillan*, G041375.