UNIVERSITY OF MIAMI, etc., Appellant, v. Patricia ECHARTE, etc., et al., Appellees.

Supreme Court of Florida

No. 78210

May 13, 1993

HARDING, Justice.

We have for review University of Miami v. Echarte, 585 So.2d 293 (Fla. 3d DCA 1991), in which the Third District Court of Appeal affirmed the trial court's ruling that sections 766.207 and 766.209, Florida Statutes (Supp.1988), violated the Florida Constitution. We have jurisdiction based on article V, section 3(b)(1) of the Florida Constitution.

The issue here is whether sections 766.207 and 766.209, which provide a monetary cap on noneconomic damages in medical malpractice claims when a party requests arbitration, violate a claimant's right of access to the courts. We find that the statutes at issue provide a commensurate benefit to the plaintiff in exchange for the monetary cap, and thus, we hold the statutes satisfy the right of access to the courts test set forward in Kluger v. White, 281 So.2d 1 (Fla.1973).

The University of Miami (University) treated Patricia Echarte, a minor, for a brain tumor. However, as a result of the University's alleged negligence, Patricia's right hand and forearm had to be amputated in order to save her life. Patricia and her parents (Echartes) gave the University notice of intent to initiate a malpractice action. In response, the University requested that the Echartes submit their damages to a medical negligence arbitration panel pursuant to section 766.207(2). The Echartes filed an action for a declaratory judgment questioning the constitutionality of sections 766.207 and 766.209.

The trial court ruled that the statutes violated the Echartes' constitutional right of access to the courts, right to trial by jury, equal protection guarantees, and procedural and substantive due process rights; violated the single subject requirement; constituted a taking without compensation; and involved an improper delegation of authority. On appeal the district court affirmed the trial court's holding, but limited its discussion to the right of access to the courts. Similarly, we limit our discussion to the validity of the statutes under the right of access to the courts. However, we have also considered the other constitutional claims and hold that the statutes do not violate the right to trial by jury, equal protection guarantees, substantive or procedural due process rights, the single subject requirement, the taking clause, or the non-delegation doctrine.

The Legislature enacted the statutory scheme at issue following the recommendations and study made by the Academic Task Force for Review of the

Insurance and Tort Systems (Task Force). In studying medical malpractice insurance costs, the Task Force found that the primary cause of increased malpractice premiums has been the substantial increase in loss payments to claimants and not excessive insurance company profits nor the insurance industry underwriting cycle. Further, the Task Force found that the dramatic increase in the size or amounts of paid claims was the major cause of the increase in total claims payments; the frequency of claims against physicians increased only slightly. In particular, the size and increasing frequency of the very large claims were found to be a problem. Finally, attorneys' fees and other litigations costs were found to represent approximately 40 percent of the total costs of insurance companies, while claimants received 43.1 percent of the insurers' total incurred costs. During the past eleven years, the average cost of defending a malpractice claim had increased at an annual compound rate of seventeen percent.

The Task Force recommended implementation of a medical malpractice plan designed to stabilize and reduce medical liability premiums. The recommended plan included that parties conduct a reasonable investigation preceding malpractice claims and defenses in order to eliminate frivolous claims and defenses, and incentives for parties to arbitrate medical malpractice claims in order to reduce litigation expenses. The Legislature adopted the Task Force's recommendations and findings in chapter 88-1, Laws of Florida, and section 766.201, Florida Statutes (Supp.1988). The statutes at issue are two components recommended by the Task Force to address the medical liability insurance crisis: 1) a presuit investigation process to eliminate frivolous claims and 2) a voluntary arbitration process to encourage settlement of claims.

Sections 766.203-.206 set out the presuit investigation procedure that both the claimant and defendant must follow before a medical negligence claim may be brought in court. The first step in the presuit investigation is for the claimant to determine whether reasonable grounds exist to believe that a defendant acted negligently in the claimant's care or treatment, and that this negligence caused the claimant's injury. Section 766.203(2) also requires that the medical negligence claim be corroborated by a "verified written medical expert opinion" before giving notice to a defendant. After the claimant has established the reasonable grounds to believe that negligence occurred, the defendant or defendant's insurer is required to conduct a presuit investigation.

If the claimant's reasonable grounds for the medical negligence claim are intact at the completion of the presuit investigation, either party may request that a medical arbitration panel determine the amount of damages. Section 766.207 provides that upon such request, the opposing party's agreement to participate in arbitration binds both parties to the arbitration panel's decision

and precludes other remedies by the claimant against the defendant.

Under section 766.207(7) a claimant can recover net economic damages of past and future medical expenses and eighty percent of lost wages and earning capacity. The claimant's noneconomic damages are "limited to a maximum of $250,000 per incident," and are "calculated on a percentage basis with respect to capacity to enjoy life." Finally, section 766.211, Florida Statutes (Supp.1988), provides for prompt payment of the award to the claimant, including interest at the legal rate and a penalty rate if the defendant fails to pay within ninety days of the award.

Section 766.207(7) holds the defendant responsible for the prompt payment of the arbitration award and interest on all accrued damages, payment of the claimant's reasonable attorney's fees and costs as determined by the arbitration panel up to fifteen percent of the award, and payment of all arbitration costs. In addition, section 766.207(7)(h) holds each defendant participating in the arbitration proceeding jointly and severally liable for all damages assessed by the panel. Section 766.207(7)(k) provides that if a defendant rejects a claimant's offer to arbitrate, then section 766.209(3), Florida Statutes (Supp.1988), applies; and if a claimant rejects a defendant's offer to arbitrate, then section 766.209(4), Florida Statutes (Supp.1988) applies.

Section 766.209(3) provides that if the defendant refuses arbitration, the claimant proceeds to trial without any limitation on damages and is entitled to receive reasonable attorney's fees up to twenty-five percent of the award. Section 766.209(4) provides that if a claimant refuses a defendant's offer to arbitrate, then a claimant proceeds to trial; however, noneconomic damages are capped at $350,000 per incident.

The seminal case in a constitutional challenge to the right of access to courts is Kluger v. White, 281 So.2d 1 (Fla.1973). In Kluger, this Court invalidated a statute requiring a minimum of $550 property damages arising from an automobile accident before bringing an action. This Court held that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla.Stat. section 2.01, the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown. Kluger, 281 So.2d at 4.

Based upon the Kluger test, this Court has also invalidated a portion of a tort reform statute that placed a cap on all noneconomic damages in Smith v. Department of Insurance, 507 So.2d 1080 (Fla.1987), because the statute did not provide claimants with a commensurate benefit. Thus, the law is clear that the Legislature cannot restrict damages by either enacting a minimum damage amount or a monetary damage cap without meeting the Kluger test.

The initial question in the instant case is whether the arbitration statutes, which include the non-economic damage caps found in sections 766.207 and 766.209, provide claimants with a "commensurate benefit" for the loss of the right to fully recover non-economic damages. Sections 766.207 and 766.209 only limit a claimant's right to recover non-economic damages after a defendant agrees to submit the claimant's action to arbitration. The defendant's offer to have damages determined by an arbitration panel provides the claimant with the opportunity to receive prompt recovery without the risk and uncertainty of litigation or having to prove fault in a civil trial. A defendant or the defendant's insurer is required to conduct an investigation to determine the defendant's liability within ninety days of receiving the claimant's notice to initiate a malpractice claim. Before the defendant may deny the claimant's reasonable grounds for finding medical negligence, the defendant must provide a verified written medical expert opinion corroborating a lack of reasonable grounds to show a negligent injury. The claimant benefits from the requirement that a defendant quickly determine the merit of any defenses and the extent of its liability. The claimant also saves the costs of attorney and expert witness fees which would be required to prove liability. Further, a claimant who accepts a defendant's offer to have damages determined by an arbitration panel receives the additional benefits of: 1) the relaxed evidentiary standard for arbitration proceedings as set out by section 120.58, Florida Statutes (1989); 2) joint and several liability of multiple defendants in arbitration; 3) prompt payment of damages after the determination by the arbitration panel; 4) interest penalties against the defendant for failure to promptly pay the arbitration award; and 5) limited appellate review of the arbitration award requiring a showing of "manifest injustice."

We reject the district court's conclusion that the medical malpractice arbitration statutes do not provide a claimant with commensurate benefits. The district court found that because the medical malpractice arbitration statutes do not provide a no-fault basis for recovery or mandatory insurance coverage to assure recovery, like workers' compensation laws, the arbitration statutes did not provide a commensurate benefit. The district court's conclusion fails to recognize that medical malpractice arbitration statutes are less restrictive than the workers' compensation statutes, and that the Task Force specifically considered and rejected both a no-fault alternative system of compensation and a mandatory

insurance pool as means to control increases in the medical malpractice insurance rates.

We find that a claimant's rights are restricted less by the medical malpractice arbitration statutes than by the workers' compensation statutes. Unlike a claimant under the workers' compensation statute, a claimant under the medical malpractice arbitration statutes may recover some non-economic damages. The Task Force's recommendations to the Legislature not to adopt a no-fault system or mandatory insurance program are based on an extensive study of the complex causes of the increases in medical malpractice insurance rates. According to the Task Force's report the solutions the Legislature implemented to meet the workers' compensation problem are not effective to answer the medical malpractice insurance liability crisis. The unique facts surrounding medical malpractice required the Legislature to tailor a different solution to solve the crisis. Thus, the district court erred in holding that the medical arbitration statutes did not provide a commensurate benefit because the arbitration statutes did not provide the same benefits as the workers' compensation statutes.

Even if the medical malpractice arbitration statutes at issue did not provide a commensurate benefit, we would find that the statutes satisfy the second prong of Kluger which requires a legislative finding that an "overpowering public necessity" exists, and further that "no alternative method of meeting such public necessity can be shown." Kluger, 281 So.2d at 4. The determination of whether the Legislature made a showing of an "overpowering public necessity" must be interpreted in light of our previous line of cases addressing the Legislature's attempts to abolish other causes of action.

In Kluger, the Court discussed an earlier decision, Rotwein v. Gersten, 160 Fla. 736, 36 So.2d 419 (1948), which upheld the Legislature's abolishment of the common law rights that provided for causes of action for alienation of affections, criminal conversation, seduction, and breach of contract to marry. The Court in Rotwein found that the preface to the Florida Statute abolishing these causes of action stated that they had "been subject to grave abuses, causing extreme annoyance, embarrassment, humiliation and pecuniary damages to many persons wholly innocent and free from wrongdoing." The Court stated that these causes of actions had "become an instrument of extortion and blackmail" and therefore the Legislature could abolish them. This Court in Kluger interpreted the language from Rotwein as the legislative showing that a "public necessity" existed for the abolishment of the right to sue. Kluger, 281 So.2d at 4.

The Court in Kluger held that the Legislature had not shown an "overpowering public necessity" to abolish the right to sue an automobile tortfeasor for property damage. In fact, chapter 71-252, Laws of Florida, which enacted the challenged statute in Kluger, did not contain any factual or policy

determinations to support the existence of an "overpowering public necessity." Recently in Psychiatric Associates v. Siegel, 610 So.2d 419 (Fla.1992), this Court found that the Legislature showed an "overpowering public necessity" in the preamble to the challenged statutes.

In the instant case, the Legislature set out its factual findings in the preamble of chapter 88-1, which initially enacted the Task Force's recommendations. This preamble clearly states the Legislature's conclusion that the current medical malpractice insurance crisis constitutes an "overpowering public necessity." Moreover, the Legislature made a specific factual finding that medical malpractice liability insurance premiums have increased dramatically in recent years, resulting in increased unavailability of malpractice insurance for some physicians.

The Legislature's factual and policy findings are supported by the Task Force's findings in its report. Among its many findings, the Task Force found that: 1) a family physician who performs no surgery and practiced outside Dade and Broward Counties saw a 229% increase in medical malpractice insurance premiums for the period of 1983 to July 1, 1987; and 2) a family physician who performs no surgery and practices in Dade or Broward County saw a 300% increase in medical malpractice insurance premiums for the same period. Furthermore, the Task Force found that rates for specialties also increased sharply. For example, the rates for obstetricians increased by 444% in Dade and Broward Counties, as compared to 304% in the rest of the state. These facts support the Legislature's conclusion that increased costs in medical malpractice insurance premiums have resulted in increased health care costs and made liability insurance "functionally unavailable" for some physicians.

In the instant case, the district court held that "the legislature has not demonstrated the requisite overpowering public necessity for restricting claimant's noneconomic damages." Echarte, 585 So.2d at 301. We disagree. The Legislature has the final word on declarations on public policy, and the courts are bound to give great weight to legislative determinations of facts. See American Liberty Ins. Co. v. West & Conyers Architects & Engineers, 491 So.2d 573 (Fla. 2d DCA 1986). Further, legislative determinations of public purpose and facts are presumed correct and entitled to deference, unless clearly erroneous. See State v. Division of Bond Fin., 495 So.2d 183 (Fla.1986), and Miami Home Milk Producers Ass'n v. Milk Control Bd., 124 Fla. 797, 169 So. 541 (1936). Because the Legislature's factual and policy findings are presumed correct and there has been no showing that the findings in the instant case are clearly erroneous, we hold that the Legislature has shown that an "overpowering public necessity" exists.

The next question is whether "no alternative method" for meeting the public necessity can be shown. Kluger, 281 So.2d at 4. The district court held that the Legislature did not satisfy the second prong of the Kluger test because the "legislature did not expressly find that no alternative method existed." Echarte, 585 So.2d at 301. We disagree and find that the record supports the conclusion that no alternative or less onerous method exists.

The Task Force's recommendations to the Legislature concerning solutions to the medical malpractice insurance crisis included civil justice reforms, strengthened regulation of the medical profession and a proposal to provide immediate relief for physicians who experience genuine financial difficulty as a result of high premiums. The Task Force stated that it believed that reforms of the civil justice system, of the medical regulatory system, and of the insurance system complement each other and that all are necessary to address the complex problems with multiple causes analyzed in the Preliminary Fact-Finding Report on Medical Malpractice. The conclusion that no alternative or less onerous method of meeting the public necessity is supported by the Legislature's actions in adopting both the Task Force's recommendations to enact the arbitration statutes and strengthen regulation of the medical profession. Therefore, in determining whether no alternative means exists to meet the public necessity of ending the medical malpractice crisis, the plan as a whole, rather than focusing on one specific part of the plan, must be considered.

The Echartes dispute the conclusion that the arbitration statutes are the only alternative means to reduce the medical malpractice insurance rates. They point out that the Task Force's findings show that from 1975 to 1986, approximately 4% of all practicing physicians had two or more claims, but were responsible for 42.2% of the total amount of paid claims. Thus, the Echartes conclude that an alternative method to reducing claims would be to strengthen professional discipline of physicians with numerous claims.

The reduction of the frequency and severity of malpractice would certainly diminish the amount of loss payments and subsequently medical malpractice rates. However, the Echartes' conclusion that professional discipline alone is an alternative method to meet the public necessity of controlling medical malpractice insurance premiums is erroneous. The Task Force specifically stated that even though a small percentage of the physicians were responsible for 42.2% of the total claims paid out, the facts did not support the conclusion that these doctors were incompetent. Moreover, the Task Force specifically found that strengthened regulation of medical care providers is not a substitute for tort and insurance reform, but does complement other reforms. Thus, it is clear that both the arbitration statute, with its conditional limits on recovery of noneconomic damages, and the strengthened regulation of the medical

profession are necessary to meet the medical malpractice insurance crisis. Further, no alternative or less onerous method of meeting the crisis has been shown. Therefore, we hold that the second prong of Kluger is satisfied.

Accordingly, we hold that sections 766.207 and 766.209 are constitutional. The district court's decision is reversed and the case is remanded for proceedings consistent with this opinion.

It is so ordered.

OVERTON, McDONALD and GRIMES, JJ., concur.

BARKETT, C.J., dissents with an opinion, in which SHAW, J., concurs.

SHAW, J., dissents with an opinion, in which BARKETT, C.J., concurs.

KOGAN, J., recused.

BARKETT, Chief Justice, dissenting.

I agree with Justice Shaw that the statutes in question violate article I, section 21 of the Florida Constitution. I also believe the statutes violate the right to trial by jury and the equal protection clauses of the Florida and United States Constitutions.

As the trial court noted, under the statutory scheme plaintiffs must elect between arbitration and their right to a trial by jury, which is guaranteed by article I, section 22 of the Florida Constitution. If seriously injured plaintiffs choose to go to trial, their noneconomic damages are arbitrarily capped at $350,000. In Smith v. Department of Insurance, 507 So.2d 1080 (Fla.1987), this Court stated that the constitutional guarantee of access to courts must be read in conjunction with the right to a jury trial. The reasoning in Smith is equally applicable to the arbitrary damage caps at issue in this case.

The statutes also violate equal protection guarantees by creating two classes of medical malpractice victims, those with serious injuries whose recovery is limited by the caps and those with minor injuries who receive full compensation. This Court has made clear that similarly situated persons are equal under the law and must be treated alike. Palm Harbor Special Fire Control Dist. v. Kelly, 516 So.2d 249, 251 (Fla.1987); Lasky v. State Farm Ins. Co., 296 So.2d 9, 18 (Fla.1974). Statutory classifications at a minimum must bear some reasonable relationship to a permissive legislative objective and not be discriminatory, arbitrary, or oppressive. Abdala v. World Omni Leasing, Inc., 583 So.2d 330, 333 (Fla.1991).

I fail to see how singling out the most seriously injured medical malpractice victims for less than full recovery bears any rational relationship to the

Legislature's stated goal of alleviating the financial crisis in the medical liability insurance industry. Such a classification offends the fundamental notion of equal justice under the law and can only be described as purely arbitrary and unrelated to any state interest. Vildibill v. Johnson, 492 So.2d 1047, 1050 (Fla.1986).

Moreover, the Task Force's Medical Malpractice Recommendations, which were relied on by the Legislature in enacting the noneconomic damage caps, do not establish an "overwhelming public necessity" for restricting the access to courts. Nor do the recommendations show that no reasonable alternative exists. Kluger v. White, 281 So.2d 1, 4 (Fla.1973). Indeed, the recommendations conclude that reducing medical negligence is the best way to resolve the medical malpractice insurance crisis and state that inadequate discipline of physicians contributes substantially to the problem. When the problems in the medical malpractice insurance industry arguably can be eased by means much less onerous than restricting the rights of victims of established medical malpractice to redress their injuries, I cannot find that "no alternative method" has been shown. Kluger, 281 So.2d at 4; Overland Const. Co. v. Sirmons, 369 So.2d 572, 574 (Fla.1979).

For the reasons stated above, I would find the statutes unconstitutional.

SHAW, J., concurs.

SHAW, Justice, dissenting.

I agree with the courts below that sections 766.207 and 766.209, Florida Statutes (Supp.1988), fail the test enunciated in Kluger v. White, 281 So.2d 1 (Fla.1973), and violate the claimant's right of access to the courts, guaranteed by article I, section 21 of the Florida Constitution. We have said repeatedly that before the constitutionally guaranteed right of access to courts can be taken away, a reasonable alternative must be provided, or the Legislature must show an overpowering public necessity for the abolishment of such right and no alternative method of meeting such public necessity. Kluger, 281 So.2d at 4.

In the instant case, all agree that the constitutional right of access to courts is being denied and therefore the Kluger test must be met. I disagree with the majority that the statutes provide a reasonable alternative remedy or commensurate benefit to Patricia Echarte in exchange for her common-law right to full "redress for injuries." Kluger, 281 So.2d at 4. Workers' compensation and no-fault automobile statutes were found to be constitutional because they require compulsory insurance coverage and relieve the claimant of the burden of proving fault. See Martinez v. Scanlan, 582 So.2d 1167 (Fla.1991); De Ayala v. Florida Farm Bureau Cas. Ins. Co., 543 So.2d 204 (Fla.1989); Smith; Lasky v. State Farm Ins. Co., 296 So.2d 9 (Fla.1974). The statutory scheme here differs in that it requires the claimant to conduct an investigation to ascertain that there are

reasonable grounds to believe that any named defendant in the litigation was negligent, and that such negligence resulted in injury to the claimant. Despite these additional statutory burdens placed upon the claimant, there is no quid pro quo such as requiring the defendant to secure compulsory insurance to assure the claimant a recovery in the event that medical negligence is proved. In other words, the statute makes it more burdensome to sue for medical negligence without providing an assured recovery. The quid pro quo that saved workers' compensation and no-fault automobile statutes from constitutional defect is absent here.

The majority opines that the legislative advantages fall evenly, or at least fairly, upon the injured child and the tortfeasor in this case. I strongly disagree. No amount of bootstrapping or divining legislative intent can obscure reality. To recite that the Legislature had its reasons for failing to provide for compulsory insurance simply begs the question of whether a quid pro quo has been provided. In the absence of compulsory insurance, to assert that prompt payment of damages is ensured is simply fictive.

Equally fictive is the claim that a "relaxed evidentiary standard" is a benefit to the claimant. The majority has confused a relaxed standard of proof, an advantage to the one who must bear the burden of proof, with a relaxed standard of admitting evidence, an advantage enjoyed equally by all parties. Our courts have made clear that regardless of a relaxed standard of admitting evidence, conclusions must be supported by competent, substantial evidence. See State, Dep't of Admin. v. Porter, 591 So.2d 1108, 1109 (Fla. 2d DCA 1992); McDonald v. Department of Banking & Fin., 346 So.2d 569, 585 (Fla. 1st DCA 1977). Thus a relaxed standard of admitting evidence is irrelevant to the quid pro quo evaluation.

The negligent party can unilaterally limit the claimant's noneconomic damages, whether the claimant accepts arbitration or goes to trial. The instant statute presents the classic case of "heads I win, tails you lose." The district court correctly observed that the benefits of the statutes are not balanced between the patient-claimant and the tortfeasor: a medical patient obtains no particular benefit from a cap placed on noneconomic damages. The benefit of the damage cap inures only to the negligent defendant. Again this is in contrast to the no-fault automobile reparations statutes, where benefits are balanced among all auto owners because an auto owner is as likely to be negligent as to be the victim of another's negligence.

Convinced that no reasonable alternative is provided in exchange for the right taken away, I turn my attention to whether the alternative prong of the Kluger test has been satisfied. Here the Legislature has shown neither an overpowering public necessity to cap noneconomic damages nor the absence of an alternative

method. The Legislature failed to make such showing despite numerous "whereas" clauses in the adopting legislation. Significantly, the final report of the Task Force, the document on which the Legislature bases its findings, does not posit a cap on noneconomic damages as the sole solution to the crisis in the medical insurance industry. In fact, it expressly cautions against unwarranted conclusions. There is thus an absence of competent, substantial evidence showing that no alternative method of meeting an overpowering public necessity exists. Indeed the task force points to other methods of meeting the alleged public necessity, i.e., vigilant management of medical malpractice.

The majority engrafts a new "no less onerous method" test onto the established "no alternative method" test. This is a departure from the Kluger test, which is an admittedly burdensome test. It also departs from our recent decision in Psychiatric Associates v. Siegel, 610 So.2d 419 (Fla.1992), where we held a statute unconstitutional because although an overpowering public necessity was shown, the record failed to show that the solution adopted by the Legislature was the only method meeting the medical malpractice crisis and encouraging peer review. The majority offers no authority for its departure from the holding of Siegel and Kluger.

The majority also erroneously implies that it is the Echartes' burden to show that no alternative method of meeting a public necessity exists. We have held however that the Legislature bears this burden.

The law requires that when a statutory benefit is being given in lieu of a constitutionally protected right the statutory benefit must accrue to the particular claimant, not to the public at large. We held in Smith that a general assertion of benefits will not pass constitutional muster. A benefit enjoyed by the general public at the expense of a particular claimant is a taking of the claimant's property without compensation, in violation of the state and federal constitutions. See Dade County v. Still, 377 So.2d 689 (Fla.1979).

Finally, the statutes deny equal protection, for the reasons ably set out by Chief Justice Barkett in her dissent, and draw an arbitrary line between recovery and nonrecovery without regard to the actual damages caused by a defendant's malpractice. By allowing the less seriously injured to recover full damages while denying full compensation to the more seriously injured, the statutes operate with increasing capriciousness as the severity of the injury increases-the greater the injury the greater the deprivation of recovery.

For these many reasons I would approve the decisions of the trial and district courts.

BARKETT, C.J., concurs.