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DEHN v. EDGECOMBE:

Absent the Doctor-Patient Relationship, a Patient's Spouse Does Not Possess an Independent Medical Malpractice Cause of Action

By: Mark Patrick Johnson

The Court of Appeals of Maryland held that absent a doctor-patient relationship, a patient's spouse does not possess an independent medical malpractice cause of action. *Dehn v. Edgcombe*, 384 Md. 606, 865 A.2d 603 (2005). In so holding, the court affirmed the trial court's dismissal of a medical malpractice claim.

Corinne and James Dehn ("Dehns") decided not to have any more children in 1994. Mr. Dehn discussed a vasectomy with his family physician, Dr. Glenn Edgcombe ("Dr. Edgcombe"). Dr. Edgcombe referred the Dehns to Dr. Mazella, who performed the vasectomy in October 1995. During the post-operative phase, Dr. Mazella warned Mr. Dehn about the procedure's effectiveness, instructing him, among other things, to have three semen analyses conducted during the six months post-operation.

Mr. Dehn did not obey the post-operative care instructions; notably, he failed to follow the prescriptions for semen analysis. Mr. Dehn visited Dr. Edgcombe on unrelated matters on at least one occasion after the operation, and mentioned semen analysis. Dr. Edgcombe snubbed Mr. Dehn, stating that although semen analysis was appropriate, Mr. Dehn did not need to have one performed. Subsequently, in 1996, the Dehns conceived a child.

The Dehns filed suit against Dr. Edgcombe in the Circuit Court for Prince George's County alleging negligence when Dr. Edgcombe failed to provide a referral for semen analysis, and they sought to recover the cost of raising the unwanted child. At the close of the Dehns' case, Dr. Edgcombe moved for judgment as a matter of law, which was granted for Mrs. Dehn's claim. The jury found that although Dr. Edgcombe was negligent by failing to provide adequate post-operative care, Mr. Dehn was contributory negligent in not abiding by Dr. Mazella's instructions. Judgment was entered on behalf of Dr. Edgcombe. The Dehns appealed and the Court of Special Appeals affirmed the dismissal of Mrs. Dehn's claims. The

Court of Appeals granted the Dehns' petition for writ of certiorari, which presented three questions.

The first issue was whether the doctor-patient relationship gives rise to a duty owed by a doctor to a patient's spouse in negligent sterilization cases. *Id.* at 616, 865 A.2d at 609. If the Court agreed that the patient's spouse was entitled to a duty, the issue becomes whether the spouse's cause of action would be independent or derivative of the patient's. *Id.* The second question was whether the trial court properly ruled that evidence relating to Mr. Dehn's artery disease, other referrals from Dr. Edgecombe to Mr. Dehn, and Dr. Edgecombe's doubt about the paternity of the child was inadmissible. *Id.* The third question was whether the trial judge erred in ruling that nonpecuniary damages were not recoverable in this case. *Id.*

The Court immediately addressed the first question by recounting the main arguments. *Id.* Relying on *Jones v. Malinowski*, the Dehns argued that because of the negligent sterilization, each parent suffered the damages of child rearing costs, thus, each parent should have an independent cause of action in negligence. *Id.* at 616-17, 865 A.2d at 609 (citing *Jones*, 299 Md. 257, 270 (1984)). Alternatively, the Dehns argued that it was foreseeable that the doctor's negligent post-operative advice could have severe effects on the wife. *Id.* at 617, 865 A.2d at 609. Dr. Edgecombe contended that negligence actions require a duty of care, therefore, there must be a relationship between the parties, which was not established in this case. *Id.*, 865 A.2d at 609-10.

The Court initially examined the independent cause of action argument, concluding that medical malpractice and negligent sterilization cases follow traditional tort principles. *Id.* at 618-19, 865 A.2d at 610. Focusing on the first element of negligence, the court concluded that without a legally recognized duty between Mrs. Dehn and Dr. Edgecombe, there could be no negligence action. *Id.* at 619, 865 A.2d at 611. Considering the duty of care, the Court defined duty as an obligation to legally conform to a standard of conduct, which is generally established in malpractice cases with a doctor-patient relationship. *Id.* at 619-20, 865 A.2d at 611. The Court explained that the doctor-patient relationship is only confirmed when the physician takes action to treat the person, with several rare and limited exceptions. *Id.*

The Court discussed the Court of Special Appeals opinions contemplating these exceptions, which occur in such circumstances as when the patient has a communicable disease that puts another person

at risk. *Id.* at 621, 865 A.2d at 611-12. The Court of Special Appeals, however, ruled that a patient's relatives do not have a cause of action when the doctor failed to disclose to them that the patient was HIV-positive because there is an overriding policy of protecting the patient's privacy. *Id.* at 621, 865 A.2d at 612 (citing *Lemon v. Stewart*, 111 Md. App. 511, 521, 682 A.2d 1177, 1181 (1996)).

The Court of Appeals concluded that although extending a doctor's duty of care to a third party who never received treatment was not precluded under the common law, it would only happen under "extraordinary circumstances." *Id.* at 621, 865 A.2d at 612. This was not the case in *Dehn*. *Id.* at 622, 865 A.2d at 612.

The Court further declared that because the issue of whether a spouse had an independent cause of action in a negligent sterilization case was not raised in *Jones v. Malinowski*, "for the purposes of our present analysis, the question remained open." *Id.* at 623-24, 865 A.2d at 613 (quoting *Dehn v. Edgecombe*, 152 Md. App. 657, 686, 834 A.2d 146, 162-63 (2003)) (*Jones v. Malinowski*, 229 Md. 257, 270, 473 A.2d 429, 435 (1984) (holding that parents, as a single entity, could receive damages for child rearing costs for an unwanted child resulting from negligent sterilization)).

With respect to the foreseeability argument, the Court dispensed with the Dehns' reasoning. *Dehn*, 384 Md. at 624-26, 865 A.2d at 614. The Court affirmed that foreseeability, a factor when determining duty, should not be "confused with 'duty.'" *Id.* at 625, 865 A.2d at 614 (quoting *Ashburn v. Anne Arundel County*, 306 Md. 617, 510 A.2d 1078 (1986)). Agreeing that a "special relationship" may be sufficient to impose a duty of care, the Court stated this was not such a case. *Dehn*, 384 Md. at 625, 865 A.2d at 614. The Court did not extend the duty of care, contending as a practical matter that imposing a legal duty upon Dr. Edgecombe would "expand traditional tort concepts beyond manageable bounds . . . a possibility the law does not countenance." *Id.* at 627, 865 A.2d at 615.

The second question posed to the Court was whether the trial court should have admitted evidence relating to Mr. Dehn's artery disease, other referrals from Dr. Edgecombe to Mr. Dehn, and Dr. Edgecombe's doubt regarding the paternity of the child. *Id.* at 616, 865 A.2d at 609. Although Mr. Dehn argued this evidence was key to finding he was not contributory negligent, the Court examined the standard of review, concluding that evidentiary rulings are left to the discretion of the trial judge and will only be disturbed for an abuse of

discretion. *Id.* at 628, 865 A.2d at 616. The Court determined that there was no such abuse in this case. *Id.*

The Court's final question—whether nonpecuniary damages were recoverable in this case—was not addressed because the jury's finding of contributory negligence precluded Mr. Dehn's recovery of damages. *Id.* at 630, 865 A.2d at 617.

In *Dehn v. Edgcombe*, the Court of Appeals of Maryland held that Maryland law does not acknowledge an independent medical malpractice cause of action for a patient's spouse when the spouse had no relationship or direct interaction with the doctor. This result may appear to be a harsh reality for those outside of the legal profession, but this decision was based on a concept taught to first year law students; negligence consists of duty, breach, causation, and damages. The Court strictly reaffirmed the duty element of negligence, preserving patient privacy, further limiting the individuals entitled to the doctor-patient relationship, and asserted that not everyone who is affected by negligence, even personally, has an independent cause of action.