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Analysis

As of: Jan 31, 2009

Helen Marianne SAMSON, Plaintiff v. The GREENVILLE HOSPITAL SYSTEM and The Carolina-Georgia Blood Center, Inc., Defendants. Russell Joseph SAMSON, Plaintiff v. The GREENVILLE HOSPITAL SYSTEM and The Carolina-Georgia Blood Center, Inc., Defendants, and Russell Joseph SAMSON, as Guardian ad Litem for Camaron Joseph Samson, a minor under the age of fourteen (14) years, Plaintiff v. The GREENVILLE HOSPITAL SYSTEM and The Carolina-Georgia Blood Center, Inc., Defendants

No. 22970

Supreme Court of South Carolina

297 S.C. 409; 377 S.E.2d 311; 1989 S.C. LEXIS 28; CCH Prod. Liab. Rep. P12,084

**October 25, 1988, Submitted
February 21, 1989, Decided**

PRIOR HISTORY: [***1] ON CERTIFICATION FROM THE UNITED STATES DISTRICT COURT, CERTIFIED QUESTION ANSWERED Joe F. Anderson, Jr., United District Judge

DISPOSITION: CERTIFIED QUESTION ANSWERED.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiffs, a patient and her family members, brought an action against defendants, a hospital and a blood center, alleging that the blood center was liable under the theory of strict liability in tort. The United States District Court for the District of South Carolina certified the question of whether blood was a product for purposes of strict liability in light of *S.C. Code Ann. § 44-43-10* (1985), South Carolina's "blood shield" statute.

OVERVIEW: The blood center collected, stored, and distributed blood received from donors. Plaintiffs alleged that the patient contracted an AIDS-related virus from a blood transfusion given to her while at the hospital and the blood center supplied the blood. Pursuant to S.C.

Sup. Ct. R. 46, the court agreed to answer the certified question and held that blood was not a "product" for purposes of strict liability in tort. *S.C. Code Ann. § 15-73-10* (1976) imposed strict liability in tort upon the suppliers of defective products. The plain language of § 15-73-10 did not indicate whether blood was intended as a product. Thus, the court examined the language of the blood shield statute, *S.C. Code Ann. § 44-43-10*, and its underlying purpose of facilitating a readily available supply of blood by limiting liability to defects resulting from negligence. Based on language of the blood shield statute, the court concluded that the legislature clearly did not intend for blood to be classified as a product within the context of strict tort liability. The court noted that such a construction of *S.C. Code Ann. § 15-73-10* was consistent with the underlying purpose of the blood shield statute.

OUTCOME: The court answered the certified question by holding that blood was not a "product" for purposes of strict liability in tort.

CORE TERMS: blood, strict liability, blood plasma, blood products, strict liability, transfusion, derivatives, shield, tissues

LexisNexis(R) Headnotes

Healthcare Law > Treatment > Blood & Organ Donations > General Overview**Torts > Products Liability > Strict Liability**

[HN1] *S.C. Code Ann. § 15-73-10* (1976) imposes strict liability in tort upon the suppliers of defective products. *Section 15-73-10* applies only to products and not to services. The plain language of *§ 15-73-10* does not indicate whether blood is a product for purposes of strict liability.

Commercial Law (UCC) > Sales (Article 2) > Warranties > Fitness**Contracts Law > Contract Conditions & Provisions > Implied Warranties > Fitness****Healthcare Law > Treatment > General Overview**

[HN2] *S.C. Code Ann. § 44-43-10* reads as follows: The implied warranties of merchantability and fitness shall not be applicable to a contract for the sale, procurement, processing, distribution or use of human tissues such as corneas, bones or organs, whole blood, plasma, blood products or blood derivatives. Such human tissues, whole blood, plasma, blood products or blood derivatives shall not be considered commodities subject to sale or barter and the transplanting, injection, transfusion or other transfer of such substances into the human body shall be considered a medical service. The underlying purpose of the blood shield statute is to facilitate a readily available supply of blood by limiting liability to defects resulting from negligence.

COUNSEL: *Michael Parham of Parham and Smith, Greenville, for plaintiffs.*

G. Dewey Oxner, Jr., and Frances D. Ellison of Haynsworth, Marion, McKay & Guerard, Paul J. Foster, Jr., and Robert P. Foster of Foster, Gaddy and Foster, William M. Hagood, III of Love, Thornton, Arnold & Thomason, Greenville, and Steven J. Labensky of Lewis and Roca, Phoenix, Ariz., for defendants.

JUDGES: George T. Gregory, Jr., C.J., David W. Harwell, A.J., Ernest A. Finney Jr., A.J., Jean N. Toal, A.J., Bruce Littlejohn

OPINION BY: PER CURIAM

OPINION

[*409] [*311] Pursuant to Supreme Court Rule 46, we agreed to answer the question whether blood is a product for purposes of strict liability in light of *S.C.*

Code Ann. § 44-43-10 (1985), South Carolina's "blood shield" statute. We hold that it is not.

FACTS

Plaintiffs allege that Helen Samson contracted the AIDS-related virus from a blood transfusion given to her while she [*410] was a patient at a hospital operated by defendant Greenville Hospital System. Plaintiffs also allege that the blood was supplied by defendant Carolina-Georgia Blood Center, an organization [***2] which collects, stores and distributes blood it receives from donors. One of their causes of action alleges that defendant Carolina-Georgia Blood Center, Inc. is liable under the theory of strict liability in tort.¹

1 This case was previously before the Court in *Samson v. Greenville Hospital System*, 295 S.C. 359, 368 S.E. (2d) 665 (1988). A more complete statement of the facts is contained in that opinion. Since we accepted this certified question, defendant Greenville Hospital System has been voluntarily dismissed from this litigation.

DISCUSSION

South Carolina Code Ann. § 15-73-10 (1976), which is based on *Section 402A of the Restatement (Second) of Torts*, [HN1] imposes strict liability in tort upon the suppliers of defective products. This section applies only to products and not to services. *Deloach v. Whitney*, 275 S.C. 543, 273 S.E. (2d) 768 (1981).

Neither the plain language of *§ 15-73-10*, nor the Comments to the Restatement indicate whether blood is a product for purposes of strict liability. Therefore, this Court must determine whether the Legislature intended for blood to be treated as a product or a service under [**312] *§ 15-73-10*. To aid in this determination, we may [***3] properly consider earlier legislation dealing with blood. See *Arkwright Mills v. Murph*, 219 S.C. 438, 65 S.E. (2d) 665 (1951); *Cox v. Cox*, 262 S.C. 8, 202 S.E. (2d) 6 (1974).

Section 44-43-10 [HN2] reads as follows:

The implied warranties of merchantability and fitness shall not be applicable to a contract for the sale, procurement, processing, distribution or use of human tissues such as corneas, bones or organs, whole blood, plasma, blood products or blood derivatives. Such human tissues, whole blood, plasma, blood products or blood derivatives shall not be considered commodities subject to sale or barter and the transplanting, injection, transfusion or other transfer of such substances [*411]

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into the human body shall be considered a medical service.

This language clearly indicates that the Legislature did not intend for blood to be classified as a product. Furthermore, this construction is consistent with the underlying purpose of the blood shield statute, namely, to facilitate a readily available supply of blood by limiting liability to defects resulting from negligence.

CONCLUSION

Based on the foregoing analysis, we are of the opinion that blood is not a product for purposes of strict [***4] liability in tort.²

2 This result is consistent with that reached by the majority of jurisdictions that have considered the effect of statutes similar to § 44-43-10 on whether blood is a product for purposes of strict liability. See, e.g., *Sawyer v. Methodist Hospital*, 522 F. (2d) 1102 (6th Cir. 1975); *McDaniel v. Baptist Memorial Hospital*, 469 F. (2d) 230 (6th Cir. 1972); *McKee v. Miles Laboratories, Inc.*, 675 F. Supp. 1060 (E.D. Ky. 1987); *Cramer v. Queen of Angels Hospital*, 62 Cal. App. (3d) 812, 133 Cal. Rptr. 339 (1976); *McAllister v. American National Red Cross*, 240 Ga. 246, 240 S.E. (2d) 247 (1977); *Glass v. Ingalls Memorial Hospital*, 32 Ill. App. (3d) 237, 336 N.E. (2d) 495 (1975).

Certified question answered.