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ARTICLES

Out with the New and in With the Old: Why the Illinois Supreme Court went too far in *Kirk v. Michael Reese Hospital* and not far enough in *Renslow v. Mennonite Hospital* on the issue of duties owed to third-party non-patients in medical malpractice cases

Andrea MacIver 1

When the Illinois Supreme Court decided Renslow v. Mennonite Hospital in 1977 and Kirk v. Michael Reese Hospital in 1987, it was presented with unique facts where a third-party, non-patient was allegedly harmed by a physician's negligence. In its attempt to determine where the line for liability should be drawn in each case and whether a duty of care should be imposed, the court did not issue rulings that were limited to the facts of each case. Instead, the court created an exception in Renslow and a bright-line rule in Kirk. Unfortunately, not only do such rigid, legal rules not translate well to the field of medicine and science, which is always changing and developing, but they conflict with the notion that judges are to determine the issue of duty as a matter of law on a case-by-case basis. As a result, litigants and judges have struggled with applying the holdings of Renslow and Kirk in unique, real-life cases, often to the detriment of plaintiffs whose claims are dismissed prematurely.

This Article argues, in essence, that the Illinois Supreme Court went too far in Kirk when it created a bright-line rule on the issue of duty in cases involving third-party non-patients, but not far enough in Renslow when it created an exception to the general duty principles. In conjunction, the rulings in Renslow and Kirk have resulted in some cases being dismissed prematurely based on a lack of a legal duty. In order to avoid dismissing cases prematurely, while still ensuring that duties are imposed in appropriate cases, the Illinois supreme court needs to limit the rulings it handed down in Renslow and Kirk to the facts of each case and go back to allowing judges to determine the issue of duty on a case-by-case basis based on the reasonable foreseeability of the harm. Not only would such an approach be fair and just, it would also be more in line with legal principles that have been recognized in Illinois for decades and would give courts more flexibility in adapting to new scientific and medical developments as they arise.

Dogging Darwin: America's Revolt Against the Teaching of Evolution

Ruth C. Stern & J. Herbie DiFonzo 33

More than four in ten Americans believe that God created humans in their present form 10,000 years ago. American antagonism toward the teaching

of evolution is deeply rooted in fundamentalist tradition and an aversion to intellectualism. These forces have combined to demonize Charles Darwin to such an extent that sectarian-based legal and political attacks on evolution show no signs of abating. Darwin's day in court began in 1925 with the famous Scopes Monkey Trial. It continued into the 21st century with Kitzmiller v. Dover Area Schools. Throughout, the core creationist agenda has remained the same, although an evolution in labeling has produced such variants as "creation science," "intelligent design," "teach the controversy," and, more recently, "sudden emergence theory."

Along the way, anti-evolutionists invoked the First Amendment's Free Exercise Clause to argue that religious freedom trumps the church-state divide. They also claimed, pursuant to the Establishment Clause, that maintaining a secular state imposes a decree of non-belief on Christian citizenry. Bracketed by the events in Dayton, Tennessee and Dover, Pennsylvania, this article explores the anti-evolutionist crusade and concludes that creationist interpretations of the First Amendment are untenable. Current law continues to uphold limitations on expressions of religion in state action. Our legal traditions, as well as reputable science education standards, support the teaching of evolution in America's public schools unencumbered by religious doctrine.

NOTE AND COMMENT

Suesz v. Med-1 Solutions, LLC: Definition of a Judicial District in the Venue Requirement of the Fair Debt Collection Practices Act

Daniel Mark 83

When a debt collector sues a debtor, the Fair Debt Collection Practices Act (FDCPA) requires the debt collector to file the suit in the same "judicial district" in which the debtor resides or where the contract giving rise to the suit was signed. This applies to state law actions filed in state courts. Normally this restriction is not an issue because state venue rules generally require a defendant to be sued in the county in which the defendant lives. And normally the courts in one county will not be construed as being more than one judicial district. However, the Seventh Circuit, sitting en banc, held that the municipal department districts in Cook County, Illinois and the township small claims courts in Marion County, Indiana constitute separate judicial districts within their respective counties for the purposes of the FDCPA venue rule. This venue rule, as interpreted by the Seventh Circuit goes against the commonly understood meaning of "judicial district" as it has been used by Congress. Further, this interpretation of the Act functionally operates to impose federal venue rules on state law actions in state courts—where venue rules are generally left to state discretion.

Condo-ning Eviction: Questioning the Illinois Approach to Forcible Entry and Detainer Actions With Regard to Condominium Unit Owners

Jeffrey M. Reed 109

Illinois is currently the only state that allows the forcible eviction of a condominium unit owner for failing to pay his monthly association dues. In Spanish Court Two Condominium Association v. Carlson, the Illinois Supreme Court was asked to determine whether the Illinois Condominium Property Act and the Forcible Entry and Detainer Act allow a unit owner to affirmatively defend against a forcible eviction by asserting that the condominium association was negligent in maintaining the condominium common areas. In a 4-3 decision, the Illinois Supreme Court held that such an affirmative defense is not "germane to the distinct purpose of the proceeding" as is required by the Forcible Entry and Detainer Act.

This Comment explores and questions the legal and policy justifications

for allowing the forcible eviction of a condominium unit owner but not providing him with the same affirmative defenses available to others. Within the context of the Forcible Entry and Detainer Act, the Illinois Condominium Property Act, and the holding in Spanish Court, this Comment analyzes the complex nature of the condominium association-unit owner relationship and the inconsistent application of forcible eviction. The Comment concludes with suggestions on how forcible eviction in Illinois can be applied with more consistency and clarity, thus ensuring the rights of Illinois condominium property owners are not overlooked.