

# **STANLEY V. MCCARVER: FORMAL DOCTOR-PATIENT RELATIONSHIP NOT REQUIRED FOR NEGLIGENCE LIABILITY**

Patrick I. Biggerstaff

## **I. FACTS AND PROCEDURAL HISTORY**

Nurse Christine Stanley submitted to a tuberculosis screening in the course of applying for employment with Mesa Christian Care (“MCC”).<sup>1</sup> MCC contracted the firm Osborn, Nelson & Carr Portable X-Ray, Inc. (“ONC”) to perform the requisite X-rays.<sup>2</sup> Dr. Robert R. McCarver, Jr., a radiologist independently contracted by ONC, examined Stanley’s chest X-ray for signs of tuberculosis.<sup>3</sup> Although he found no sign of tuberculosis, McCarver did observe abnormalities that he noted in a report he submitted to ONC, which in turn forwarded the report to MCC.<sup>4</sup> Neither McCarver nor ONC contacted Stanley about the findings from her X-ray.<sup>5</sup> Although MCC company policy required that it inform Stanley of the results of her X-ray within seventy-two hours, it failed to do so.<sup>6</sup>

Ten months after her X-ray, Stanley was diagnosed with lung cancer. She subsequently filed suit against MCC, ONC, and McCarver for failing to notify her of the abnormalities observed in her X-ray.<sup>7</sup> In her complaint she asserted that, but for the defendants’ negligence, her condition would have been diagnosed earlier and her chance for recovery would have been improved.<sup>8</sup>

The trial court dismissed ONC and MCC as defendants, and granted McCarver’s motion for summary judgment.<sup>9</sup> The court of appeals, however, held

---

1. Stanley v. McCarver, 92 P.3d 849, 850 (Ariz. 2004).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* at 851.

7. *Id.*

8. *Id.*

9. *Id.* In reaching its judgment, the trial court relied on *Hafner v. Beck*, 916 P.2d. 1105 (Ariz. Ct. App. 1995) (finding no doctor-patient relationship between plaintiff and defendant psychologist where defendant only performed independent medical analysis

that McCarver did owe Stanley a duty and reversed the grant of summary judgment while upholding the dismissal of the other two defendants.<sup>10</sup> McCarver subsequently petitioned for review to the Arizona Supreme Court.<sup>11</sup> In order to resolve this *de novo* question of law, the Arizona Supreme Court granted his petition.<sup>12</sup>

## II. LIABILITY AND THE EXISTENCE OF DUTY UNDER ARIZONA LAW

The court began its analysis by recognizing that, under current Arizona law, McCarver must have owed a duty to Stanley to protect her from harm in order for there to be any possibility of liability.<sup>13</sup> In determining if such a duty exists, a court examines the state's statutes and controlling cases.<sup>14</sup> The court was quick to note, however, that no Arizona statute addressed this issue and no Arizona case (other than the court of appeals' decision) has ever recognized that a physician owes a patient a duty outside of a formal doctor-patient relationship.<sup>15</sup> Yet in Arizona, a formal doctor-patient relationship has never been considered an absolutely necessary prerequisite to the finding of a duty.<sup>16</sup> Rather, Arizona courts have traditionally recognized a duty where a special relationship exists between the parties in question.<sup>17</sup> Such relationships have been found in contractual arrangements, family ties, and certain other undertakings.<sup>18</sup>

## III. EROSION OF THE FORMAL DOCTOR-PATIENT RELATIONSHIP REQUIREMENT

Because of the paucity of Arizona cases recognizing a duty outside of a formal doctor-patient relationship, the court first turned to cases from other jurisdictions for evidence of this burgeoning trend.<sup>19</sup> Next, the court considered the fact that the requirement of a formal relationship has been relaxed in other areas of Arizona tort law, such as real estate transactions and when public policy supports recognizing a legal duty.<sup>20</sup> Additionally, the court quoted *Diggs v. Arizona Cardiologists, Ltd.*,<sup>21</sup> a case in which the court of appeals stated that while a formal contractual relationship between a doctor and a patient clearly creates a

---

of plaintiff for workers' compensation claim and therefore granting defendant's motion for summary judgment).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* (citing *Markowitz v. Ariz. Parks Bd.*, 706 P.2d 364, 366 (Ariz. 1985)).

14. *Id.* (citing JEFFERSON L. LANKFORD & DOUGLAS A. BLAZE, *THE LAW OF NEGLIGENCE IN ARIZONA* § 1.02 at 1-2 to 1-3 (3d ed. 2003)).

15. *Id.*

16. *Id.* (citing *Harriott v. Plimpton*, 44 N.E. 992 (1896)).

17. *Id.*

18. *Id.* (citing *Hislop v. Salt River Project Agric. Improvement and Power Dist.*, 5 P.3d 267, 271 (Ariz. Ct. App. 2000)).

19. *Id.* at 851-53 (citing *Betesh v. United States*, 400 F. Supp. 238 (D.D.C. 1974); *Dyer v. Trachtman*, 679 N.W.2d 311 (Mich. 2004); *Reed v. Bojarski*, 764 A.2d 433 (N.J. 2001)).

20. *Id.* at 851-52 (citing *Lombardo v. Albu*, 14 P.3d 288 (Ariz. 2000)).

21. 8 P.3d 386 (Ariz. Ct. App. 2000).

duty to the patient, the lack of such a relationship does not necessarily preclude such a duty.<sup>22</sup> The *Stanley* court explicitly adopted this position.<sup>23</sup>

The court went on to state that its previous holdings have established that the proper inquiry in a case such as this is not if there was a formal doctor-patient relationship, but if there was a *sufficient relationship* between the parties such that it would be reasonable public policy to impose a duty.<sup>24</sup>

#### IV. THE PROPER STANDARD

After deciding that a formal doctor-patient relationship is not a necessary prerequisite for determining liability, the court turned to the issue of the proper inquiry for determining whether the defendant McCarver owed the plaintiff a duty.<sup>25</sup> The court held that the establishment of a formal doctor-patient relationship is just one of many factors that should be considered when determining if the relationship between the parties was sufficient to create a duty.<sup>26</sup> The court also listed additional factors that courts should look at when determining whether a duty exists: whether the doctor was in a unique position to prevent harm, the burden of preventing harm, whether the patient relied upon the doctor's diagnosis, the proximity of the doctor's conduct and the harm, the degree of certainty that the patient has or will suffer harm, the skill and reputation of the parties, and public policy.<sup>27</sup> Without explicitly stating that it was creating a totality of the circumstances test, this is essentially what the court did, leading one to believe that this test is the standard under which doctors' potential duties will be analyzed in Arizona.<sup>28</sup>

#### V. DID MCCARVER OWE A DUTY TO STANLEY, AND IF SO, WHAT DID THAT DUTY REQUIRE MCCARVER DO UNDER THE CIRCUMSTANCES?

The *Stanley* court next applied the new totality of the circumstances test to determine if McCarver owed Stanley a duty of care, and consequently if the court of appeals was correct in its judgment. The court identified several facts in *Stanley* that, under the totality of the circumstances test, supported the imposition of a duty on McCarver to Stanley.<sup>29</sup> First, McCarver agreed, for consideration, to examine Stanley's X-ray.<sup>30</sup> Second, his special skills and training allowed him to observe abnormalities in her lungs that a layperson could not detect.<sup>31</sup> In addition, he knew that such abnormalities could have indicated a reasonable risk of harm to Stanley of which she was unaware.<sup>32</sup> McCarver could have also reasonably

---

22. *Stanley*, 92 P.3d at 852 (quoting *Diggs*, 198 Ariz. at 202).

23. *Id.*

24. *Id.* (citing *Markowitz v. Ariz. Parks Bd.*, 706 P.2d 364 (Ariz. 1985)).

25. *Id.* at 853.

26. *Id.*

27. *Id.* (citing *Parsons v. Crown Disposal Co.*, 936 P.2d 70 (Cal. 1997)).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

anticipated that Stanley would have wanted to know as early as possible about any potential life-threatening conditions.<sup>33</sup> Because he was the only one who reviewed Stanley's X-ray, he was in a unique position to prevent future harm to her.<sup>34</sup> Additionally, it is better public policy to encourage doctors to disclose such information instead of withholding it.<sup>35</sup> Furthermore, the Restatement (Second) of Torts supports the imposition of a duty in a situation such as this.<sup>36</sup> Because of these reasons, the court held that McCarver did owe Stanley a duty regardless of the lack of a formal doctor-client relationship.<sup>37</sup>

Having found that the circumstances in *Stanley* supported the imposition of a duty, the court then turned to the question of the proper scope of McCarver's duty to Stanley.<sup>38</sup> Here the court departed from the ruling of the court of appeals, holding that although McCarver had a duty to act as a reasonably prudent health care professional given the circumstances, he did not necessarily have a duty to report his findings directly to Stanley.<sup>39</sup> The court left for the jury to decide if McCarver adequately discharged his duty by informing ONC of his findings, or whether MCC's failure to follow its own policy by not notifying Stanley of the abnormalities comparatively reduced McCarver's possible negligence.<sup>40</sup>

All the Arizona Supreme Court ultimately held in *Stanley* is that a doctor who contracts to examine X-rays and subsequently observes abnormalities on an X-ray has a duty to act reasonably when interpreting the X-rays and reporting the results.<sup>41</sup> Whether McCarver breached this duty under the circumstances was left for a jury to decide.<sup>42</sup> It is important to note that the court did not hold that it is per se negligence for a radiologist to fail to report the detection of abnormalities in an X-ray to a patient with which he or she does not have a formal doctor-patient relationship.

## VI. CONCLUSION

While it may be tempting to see *Stanley v. McCarver* as a dramatic expansion of possible negligence liability for medical practitioners, a careful reading of the case reveals this not to be entirely so. It must be stressed that this case does not stand for the proposition that radiologists have, as a matter of law, a duty to report the discovery of potentially harmful abnormalities to individuals with whom they have not established a formal doctor-patient relationship. The case merely establishes that even though a medical professional does not have a formal doctor-patient relationship with an individual, the professional must still act reasonably when diagnosing, administering care to, or examining the records of

---

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 853–54. (citing RESTATEMENT (SECOND) OF TORTS § 324A (1965)); DAN B. DOBBS, THE LAW OF TORTS §§ 320–21 at 864–73 (2001 & Supp. 2003).

37. *Id.* at 854.

38. *Id.*

39. *Id.*

40. *Id.* at 855.

41. *Id.*

42. *Id.*

that individual. What constitutes reasonable conduct will vary with the circumstances of each case, and is a question for the jury to decide. It is better public policy to expect doctors to treat any individual with the same professionalism and diligence regardless of the presence of a formal doctor-patient relationship, and the court recognized this. The Arizona Supreme Court has taken the unremarkable position that the conduct expected of physicians should be determined by what is considered reasonable given the circumstances and not by the existence of a legal but otherwise fictitious relationship.

\* \* \*