

TEXAS LAWYER

APPLICATION OF JOINT ENTERPRISE LIABILITY

by EARNEST W. WOTRING

The Texas Supreme Court recently handed down the decision in *St. Joseph Hospital v. Wolff*, a medical malpractice case. Justice Jim Moseley of the 5th Court of Appeals in Dallas, sitting by designation, issued an opinion on behalf of the majority that clarified the application of joint enterprise liability and other theories of vicarious liability to health care providers. On Nov. 5, the high court reversed the jury's verdict in favor of the plaintiffs and rendered a take-nothing judgment in favor of the defendant hospital.

In the opinion, the court sets out the following: The case arose out of an accident involving Stacy Wolff, who was injured when the automobile she was riding in collided with a truck. She was transferred to Austin's Brackenridge Hospital. At the hospital, her attending physician, Dr. David Harshaw, and a third-year resident, Dr. Mario Villafani, performed a tracheostomy on Wolff, inserting a breathing tube into her trachea. Several days later, Wolff began to experience complications with the tracheostomy that eventually caused her severe and permanent brain damage.

The court goes on to note that at the time he provided treatment to Wolff, Villafani was enrolled in a general surgery residency program operated by St. Joseph Hospital in Houston, which sponsored the program, and the Central Texas Medical Foundation, a physician-operated organization that participated in the residency program. Wolff's family sued St. Joseph and argued that Villafani was negligent for not notifying Harshaw about complications with the tracheostomy, according to the opinion. They also alleged that the hospital was liable for the negligence of Villafani because it employed him. Finally, the plaintiffs contended that St. Joseph was responsible for Villafani's conduct because the hospital operated the general surgery residency program as a joint venture and a joint enterprise with the foundation. They claimed that the joint venture and joint enterprise employed Villafani.

At trial, the jury found in favor of the plaintiffs against St. Joseph, the sole remaining defendant, and awarded \$9.5 million in damages, according to the opinion. The 3rd Court of Appeals in Austin affirmed the judgment, which had been reduced to \$6.75 million as a result of credits from settlements with other defendants.

The Texas Supreme Court held that before a joint enter-

prise can exist, the jury must find: 1. the parties agreed to a common purpose; 2. the parties had a community of pecuniary interest in that common purpose; and 3. the parties had an equal right of control over the enterprise or project. As for the second element, the court held that an essential element of a joint enterprise claim is a finding that the parties to the joint enterprise have a "community of pecuniary interest" not just a "common business or pecuniary interest," as the trial court instructed the jury. It explained that "[p]arties to an agreement may have a 'common business interest,' 'a common pecuniary interest,' or both, despite lacking a community of pecuniary interest in the purpose of their agreement." The court noted in the opinion that a franchisor and franchisee may have a common business and a common pecuniary interest without having "a community of pecuniary interest" because they do not hold their interests jointly. Because the trial court's instruction to the jury did not recognize this distinction, the Texas Supreme Court ruled that the jury charge was erroneous.

The court then reviewed the legal sufficiency of the evidence in support of the jury's finding of joint enterprise. While it determined that there was evidence that St. Joseph and the foundation had reached an agreement in a common purpose to establish a general surgery residency program, it held that there was legally insufficient evidence that the two parties had a "community of pecuniary interest" in that common purpose, according to the opinion. Central to the court's review of the evidence on this issue was the absence of evidence in the record that St. Joseph and the foundation agreed to share the money each received from operating the residency program. The court explicitly rejected the argument that the hospital and foundation had a community of pecuniary interest based upon their receiving individual monetary benefits flowing from the residency program.

After concluding its review of the evidence, the court reversed the trial court's verdict and rendered a take-nothing judgment on the plaintiffs' joint enterprise claim. It also reviewed the legal sufficiency of the evidence on the plaintiffs' joint venture claim and rendered judgment in favor of the hospital because it found no evidence that the hospital and foundation had shared profits from the residency program.

According to the opinion, at trial, St. Joseph argued that Villafani was the borrowed servant of the foundation when

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he provided services to Wolff and that it could not, therefore, be liable for his conduct. After rejecting the hospital's argument that the corporate-practice-of-medicine doctrine precludes a hospital from employing residents, the court stated in the opinion that the issue of "whether a wrongdoer stands in such a close relation to another that it is just to hold the other person liable under the common law for damages resulting from the wrongdoer's actions is a public policy question." The answer to that question, according to the court, depends upon the degree of control the defendant exercised over the alleged wrongdoer. The court then held that Villafani was the borrowed servant of the foundation and that St. Joseph was not responsible for his alleged conduct when he provided services to Wolff.

In the dissent, Justice Craig Enoch stated that the hospital was legally responsible for Villafani's care of Wolff

because it retained the contractual right to control the medical residents in the residency program. Enoch argued that the majority ignored "the reality of medical residency programs" and "because St. Joseph contractually retained and actually exercised the right of control over [the resident's] work," he could not have been the borrowed servant of the foundation. **TEL**

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