The AMCNO Weighs in on Important Tort-Reform Issue before Ohio Supreme Court

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One of the many ways the Academy of Medicine of Cleveland & Northern Ohio (AMCNO) furthers the interests of its members is by making their voices known on important issues of tort reform that are before the Supreme Court of Ohio. One such tort-reform issue — caps on noneconomic or “pain and suffering” damages — is right there at the top. And right now before the Court is a case challenging the constitutionality of a damage-cap statute very similar to the statute that limits the same kind of damages in medical-malpractice cases.

The case is Simpkins v. Grace Brethren Church of Delaware, Ohio, and the AMCNO made its interests and positions known by filing an amicus “friend of the court” brief. The case involves the statute capping noneconomic damages for general torts, R.C. 2315.18. The general tort in Simpkins — negligence against a church for promoting a pastor who ultimately raped 15-year-old Jessica Simpkins during a church “counseling” session — is similar to the medical-malpractice statute capping noneconomic damages, R.C. 2323.43. Both statutes cap noneconomic damages at the greater of $250,000 or an amount equal to three times the economic loss to a maximum of $350,000 for each plaintiff or a maximum of $500,000 for each occurrence. The jury in Simpkins awarded the plaintiff $3.5 million in total noneconomic damages and $150,000 in economic damages. Although the plaintiff argued the damage-cap statute was unconstitutional “as applied” to her, the trial court disagreed and entered judgment for the capped amount: $500,000, which consisted of the $350,000 cap for noneconomic loss (based on three times the $150,000 noneconomic loss) and $150,000 for economic loss. The court found no reason for any different result based on its earlier decision in Arbino v. Johnson & Johnson, which upheld the constitutionality of the damage-cap statute “as applied” back in 2008. The Fifth District Court of Appeals agreed on that issue and affirmed that part of the trial court’s judgment. The Supreme Court of Ohio agreed to hear the issue of whether the damage-cap statute is unconstitutional “as applied” to minor victims of sexual assault.

The importance of this case is two-fold. The constitutionality of a statute is typically challenged in one of two ways: either “facially” or “as applied” to a certain set of facts. A successful “facial” challenge effectively invalidates the statute challenged for anyone under any set of facts. An “as applied” challenge, on the other hand, invalidates the statute only as that particular plaintiff under a particular set of facts. Recall that Arbino — the seminal case on the constitutionality of this statute and the basis upon which constitutionality is measured in Ohio — had already found the damage-cap statute constitutional “on its face.” Plaintiffs would have a hard time getting around that clear pronouncement of the law. Consequently, plaintiffs have been increasingly challenging the constitutionality of tort-reform statutes “as applied,” even though they appear to raise the very same arguments that would be raised in a facial challenge. Of course, the Supreme Court of the United States has not been entirely clear in its analyses of these kinds of challenges either, which has only furthered the confusion in the analyses there and in state courts. What the AMCNO did in its brief, however, was to offer the Court a clearer path to analyzing “as applied” challenges, especially when the Court has already determined the same statute is constitutional “on its face.” As an alternative, it urged a very narrow carve-out for victims of sexual assault that would limit Simpkins to its facts.

The analysis the Court ultimately adopts is also important for a second reason. Simpkins also argued that the “occurrence” language in the damage-cap statute should be read so that the caps apply to each act of rape — here, vaginal and oral — as they would be considered in the criminal context. Of concern to the medical community is that plaintiffs would use this same language from the medical-malpractice statute to say that each visit to a medical provider is an “occurrence” and thus each visit would be entitled to a separate damage cap. The AMCNO pointed out in its amicus brief the faulty reasoning for such a construction because that language speaks to multiple plaintiffs not multiple acts.

The AMCNO’s brief supporting the Church was only recently filed and Simpkins has the opportunity to respond with one more brief. The Court will likely hear arguments sometime in the first half of 2016 and a decision would be forthcoming sometime after.

As always, the AMCNO is working hard to protect its members’ interests in upholding commonsense interpretations of tort-reform law as that law is enacted by those we elect into the Ohio General Assembly. The AMCNO is happy to discuss this case in more detail with anyone interested. A link to the AMCNO’s brief can be found on their website www.amcno.org.