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Jacobson v. Shresta

Supreme Court of Nebraska - July 25, 2014 - N.W.2d - 288 Neb. 615

Patient's estate filed suit against physicians for wrongful death premised on medical malpractice. Physicians' motion for summary judgment was granted, and estate appealed. The Court of Appeals reversed and remanded for determination of whether physicians were "employees" of political subdivision hospital for purposes of one-year limitations period of Political Subdivisions Tort Claims Act (PSTCA). On remand, the District Court, Sheridan County, Randall L. Lippstreu, J., granted physicians' motion to bifurcate employment issue, determined after a bench trial that physicians were employees, and dismissed complaint on limitations grounds. Estate appealed.

The Supreme Court of Nebraska held that:

- Merely failing to object, before trial, to a defendant's request for a bench trial on a bifurcated affirmative defense does not amount to oral consent in open court to waive a jury trial; but
- Because a jury trial is not one of the terms of the waiver of governmental immunity under PSTCA, estate was not entitled to a jury trial on its claim that physicians were not a political subdivision employees.