

SC92790, John Doe v. Quest Diagnostics, Inc., and Quest Diagnostics Clinical Laboratories, Inc., d/b/a Quest Diagnostics and LabOne, Inc.

Appeal from the St. Louis city Circuit Court

Argued and submitted Dec. 10, 2012; opinion issued Mar. 19, 2013

Attorneys: Doe was represented during arguments by Kenneth M. Chackes and Bridget L. Halquist of Chackes, Carlson & Halquist LLP in St. Louis, (314) 872-8420; and Quest was represented by Kenneth W. Bean and Teresa Bartosiak of Sandberg Phoenix & von Gontard PC in St. Louis, (314) 231-3332.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A laboratory faxed HIV test results to a man’s employer, a St. Louis church. He received anonymous telephone threats and the church terminated his employment approximately six months later. The man brought suit against the laboratory and the laboratory’s parent company, claiming that the laboratory violated the Missouri statute prohibiting disclosure of HIV test results without his written authorization. The trial court entered a directed verdict in favor of the parent company and the jury found in favor of the testing laboratory. The man appealed, arguing that the trial court erred in asking the jury to decide whether he gave written authorization for release of the test results, as there was no evidence he gave a written authorization. He also alleged the trial court erred in listing the elements the jury was required to find in considering his alternative claim of breach of fiduciary duty in disclosing the test results and that the trial court improperly granted a directed verdict in favor of the parent company because the company was directly liable for the disclosure or because the corporate veil should be pierced. The judgment as to the laboratory is reversed and the case is remanded. The judgment as to the parent company is affirmed.

Facts: In July, 2006, John Doe’s physician ordered certain HIV laboratory tests to be performed on his blood to check the state of his HIV infection. The doctor completed a “requisition” form for Mr. Doe to take to Quest Laboratories that set out what tests were to be performed as well as to whom, how and where the results were to be reported. Because Mr. Doe forgot the form, he asked the doctor to fax a copy to the church where he worked. The doctor’s assistant did so, recording her transmission by writing “Faxed to 3xx-xxx8” in a box on the form containing the names of the physicians in the office. Mr. Doe received the faxed form at the church and took it with him to Quest to have the blood work done.

Nowhere on the form was there authorization from Mr. Doe to send his test results to anyone other than him or his doctor. But, the Quest phlebotomist who entered Mr. Doe’s information and drew his blood incorrectly interpreted the notation on the requisition form, “Faxed to 3xx-xxx8,” as a directive to fax Mr. Doe’s test results to the number indicated, and did so. The two-page report contained three references to HIV. By the time Mr. Doe returned to the church, the report had been removed from the church facsimile machine and placed in his in-box. Over the next few months, he received a number of hateful anonymous telephone calls, and approximately six months after Quest

sent the fax to the church, Mr. Doe was terminated from his position as personal assistant to the pastor. The pastor told Mr. Doe that the termination decision was made for financial reasons.

Mr. Doe subsequently filed suit against Quest Diagnostics, Quest Laboratories, and LabOne, Inc., alleging wrongful disclosure of HIV test results in violation of section 191.656, RSMo, and breach of fiduciary duty. Mr. Doe later voluntarily dismissed LabOne, Inc., as a defendant.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

Court en banc holds: Section 191.656, RSMo, permits the disclosure of the results of any individual's HIV testing "pursuant to the written authorization of the subject of the test ... results." A plain reading of the phrase "written authorization of the subject" requires that Mr. Doe, as the subject of the test, must provide his authorization, in writing, for Quest to be authorized to disclose his HIV test results. Here, it was an assistant of Mr. Doe's doctor who wrote "Faxed to 3xx-xxx8" on the requisition form, and even that notation was placed in a box other than the box in which the form said a fax number for test results should be placed. There is no evidence that Mr. Doe wrote on the requisition form or signed any other forms authorizing the disclosure of his results. There was, therefore, no evidence to support the submission of the affirmative defense contained in Instruction No. 9 directing the jury to determine whether Mr. Doe provided written authorization for Quest to fax his HIV test results to 3xx-xxx8. Quest failed to show that Mr. Doe was not prejudiced as a result. Submission of the jury instruction was reversible error.

This Court need not reach the question whether the trial court erred in requiring Mr. Doe to prove negligence as an element of his claim against Quest Laboratories for breach of fiduciary duty despite the fact that no other claim for breach of fiduciary duty in Missouri requires proof of negligence. Mr. Doe acknowledges that Missouri has not previously recognized a fiduciary relationship between a laboratory and a patient, and has not cited to any other court recognizing such a relationship. Where an adequate remedy at law exists, this Court will not create an additional equitable duty. Because section 191.656 provides an adequate remedy at law for breach of confidentiality as to HIV test results, this Court will not consider creation of an additional equitable remedy by recognizing a separate fiduciary duty of confidentiality. Any error in the elements the trial court required Mr. Doe to submit could not, therefore, have been prejudicial.

The trial court did not err in granting Quest Diagnostics' motion for a directed verdict on both the wrongful disclosure and breach of fiduciary duty claims. Mr. Doe did not make a submissible case on his theory of direct liability against Quest Diagnostics and the facts are insufficient to show that Quest Diagnostics exerted control over Quest Laboratories sufficient to warrant piercing of the corporate veil.

Lastly, this Court rejects Quest Laboratories argument that Mr. Doe's claims should have been dismissed prior to trial because he failed to file an affidavit of merit. An affidavit of merit is not required for a section 191.656 wrongful disclosure claim as it is based on breach of the statutory duty of confidentiality, not on breach of a medical duty.