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KOTIN'S VERDICT

Medical malpractice caps decision right thing to do

As a trial lawyer who has represented victims injured at the hands of negligent doctors and hospitals, I applaud the recent decision of the Illinois Supreme Court striking down caps on awards in medical malpractice cases. I am also bothered by the tone of the dissent offered by two of the justices.

The case before the Court was LeBron v. Gottlieb Memorial Hospital. The injured little girl is Abigail LeBron. At the time of her birth, allegedly as the result of negligence by the hospital and staff, Abigail suffered catastrophic brain damage resulting in cerebral palsy and physical disabilities including the inability to eat. She will always be fed with a gastronomy tube.

The 2005 law would have capped her noneconomic damages, including pain and suffering, to $500,000 against her doctors and $1 million against the hospital, regardless of how seriously injured she is.

Chief Justice Thomas Fitzgerald, joined by three other Justices, wrote that for the legislature to impose an arbitrary limit was a violation of the "separation of powers clause" of our state Constitution because determining proper compensation in a lawsuit is the role of our judiciary, not the legislature.

That means a jury of 12 citizens should decide what is proper compensation for another citizen, not politicians sitting in Springfield. Justice Fitzgerald said that proper procedures are in place for judges to reduce jury verdicts when they are out-of-line or not reasonable under the circumstances. For the legislature to attempt to impose caps without any consideration of the injured victim or the circumstances of the case violates our Constitution.

Justice Lloyd Karmeier offered a lengthy dissenting opinion focusing mainly on the political argument made by the insurance industry that rising health care costs are the result of large malpractice awards, and that as a result, good doctors were being forced to leave the state. Despite the fact that leaving the confines of Constitutional analysis and engaging in a right-wing political argument is inappropriate for a Supreme Court justice in the context of a legal opinion, the facts relied upon by Karmeier (and all others in his camp) are just plain wrong!

Justice Karmeier starts out by reminding us that President Obama recently addressed Congress about the health care crisis in America and suggested that medical malpractice reform might help reduce costs.

In response, I can say that all laws should constantly be analyzed and reformed -- including medical malpractice laws. But I will never agree that placing an arbitrary cap on damages, regardless of the injury, would be the right type of "reform." And, unless I missed part of his speech, President Obama never suggested caps.

In fact, the Congressional Budget Office concluded last September that capping damage awards in medical malpractice awards might lower our national health care bill by a whopping 0.5 percent. Obviously, caps will do nothing to solve our health care crisis.

Another right-wing argument to support limits on awards is that high jury verdicts over the previous decades were driving doctors out of Illinois, and that without the caps that were imposed in 2005, there would not be enough doctors remaining to treat us when we are sick or injured. This was likewise a baseless argument.

According to the American Medical Association, there were 32,782 doctors in Illinois in 1996. That number steadily grew each year to a total of 39,246 doctors in 2006, for the first year that caps were in place. So, how can anyone make a straight-faced argument that doctors were fleeing Illinois?

ISMIE, the largest medical malpractice insurer in this State, stated the imposition of caps in 2005 has resulted in a 10 percent decline in insurance premiums paid by doctors. But, even insurance industry officials recognize that this decline in malpractice insurance premiums was based solely upon "insurance market cycles," and not on damage caps. Maybe with the LeBron appeal finally resolved, we can now focus on the real "reform" needed for both patients and doctors alike -- insurance reform.

Before this Supreme Court opinion, Abigail's claim against the hospital for causing these injuries would have been limited to $1 million for perhaps 80+ years of pain and suffering, disfigurement and complete loss of a normal and independent life which she would have otherwise been entitled to lead. Now, thankfully, there is no artificial statutory cap on what Abigail's award can be.

What is her case worth? I have no idea. That is a question which will be properly decided by a jury of 12 citizens after hearing from dozens of witnesses who know more about Abigail and her needs than any room full of legislators sitting in Springfield.

And what if that jury gets it wrong? Well, there are three levels of judges -- a trial judge, an appellate court, and a supreme court -- waiting to review the jury's conclusion. You see, the work of our judicial system will be monitored by the judiciary -- not the legislature. That's the way it was always meant to be.