IN THE SUPREME COURT OF THE STATE OF DELAWARE

BLOOD BANK OF DELAWARE, INC.,	§	
	§	
Defendant Below,	§	
Appellant,	§	No. 133, 1999
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware in and
JESSIE R. PRICE, Individually	§	for New Castle County
and as Administratrix of the	§	C.A. No. 89C-06-254
Estate of NATHANIEL PRICE,	§	
LLOYD M. PRICE, STEVEN D.	§	
PRICE, ROBIN COOPER,	§	
THURMOND W. PRICE,	§	
ROHN D. PRICE, DOHN PRICE,	§	
DARETTA A. WILMER, and	§	
NATHANIEL J. PRICE,	§	
	§	
Plaintiffs Below,	§	
Appellees.	§	

Submitted: December 15, 1999
Decided: February 28, 2000

Before VEASEY, Chief Justice, WALSH, and HOLLAND, Justices.

O R D E R

This 28th day of February, 2000, it appears to the Court that:

(1) This is an interlocutory appeal from two separate pretrial rulings of the Superior Court. The underlying proceeding is a negligence and wrongful death action arising out of the death of a hospital patient from HIV

contaminated blood. The defendant-below/appellant, Blood Bank of Delaware, Inc. ("Blood Bank") contends that the Superior Court erred in ruling that: (i) Blood Bank is not a health care provider subject to the proof requirements of 18 *Del. C.* Ch. 68, the Delaware Malpractice Statute, and (ii) the learned intermediary doctrine does not apply to physician-directed blood transfusions. Based on the limited record before us, we affirm both rulings.

(2) This action was commenced by the surviving spouse and administratrix of the estate of Jessie R. Price ("Price" or "the decedent"). Price contracted the HIV virus during treatment for acute anemia at the Wilmington Medical Center after being administered a blood transfusion on October 5, 1984, at the direction of his attending physician, Dr. Carl E. Turner. The blood in question was supplied by Blood Bank and contained the HIV virus which ultimately caused Price's death. The decedent's widow and estate alleged that Blood Bank was negligent in failing to adopt procedures for screening donors, failing to test donors for the HIV virus and failing to warn the decedent that he could contract the HIV virus through the blood transfusion.

(3) After extensive discovery, Blood Bank moved for summary judgment in its favor claiming that as a professional health care provider under Delaware law, its liability could be established only by demonstrating its failure to adhere to the requisite standard of care. Because the decedent had failed to identify an expert during discovery, Blood Bank contended it was entitled to summary judgment. As a further ground for the grant of summary judgment, Blood Bank argued that the decedent was administered blood through the services of a physician and, therefore, the learned intermediary doctrine applied, rendering Blood Bank's failure to warn not a viable basis for liability.

(4) The Superior Court rejected both arguments. It ruled that Blood Bank was not a health care provider as defined in 18 *Del. C.* § 6801, thus rendering inapplicable the expert medical testimony requirement set forth in 18 *Del. C.* § 6853. The court also rejected the contention that the learned intermediary doctrine applied, noting that the doctrine has been restricted in this jurisdiction to prescription drugs and oral contraceptives. Moreover, the court ruled that there were disputed issues of material fact with respect to Dr.

Turner's knowledge of the risk of HIV transmission through blood transfusions at the time the decedent contracted the HIV virus.

(5) Our standard of review of the denial of summary judgment is *de novo*. *See Alfieri v. Martelli*, Del. Supr., 647 A.2d 52, 53 (1994). Because our review is confined to interlocutory rulings, however, we are necessarily limited to the questions raised in the light of the limited discovery record.

(6) We conclude that the Superior Court correctly determined that the Blood Bank is not a health care provider as that term is defined in 18 *Del. C.* § 6801(5).[1] This Court has previously interpreted "health care provider" as "'those professionals in direct personal contact with the patient' and whose insurance malpractice premiums were of dominant concern to the General Assembly." *Cole v. Delaware League for Planned Parenthood*, Del. Supr., 530 A.2d 1119, 1123 (1987) (citing *Keys v. Lynum*, Del. Super., C.A. No. 79C-AU-25, Walsh, J. (Jan. 12, 1982).

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[1]The term "health care provider" is defined in pertinent part, as:

> a person, corporation, facility or institution licensed by this State pursuant to Title 24 … or Title 16 to provide health care or professional services or any officers, employees or agents thereof acting within the scope of their employment.

(7) While we agree with the conclusion of the Superior Court, we restrict our affirmance to the narrow question before us — whether Blood Bank is a health care provider. Our affirmance does not foreclose the question of whether decedent may recover at trial without the presentation of any expert testimony on the standard of care in the screening of blood donors in 1984. We do not agree with the Superior Court that the standard of care governing Blood Bank's conduct may be determined by a reasonable person "through the exercise of his or her common sense." Indeed, the case relied upon by the Superior Court for this comment is not authority for the submission of the standard of care to a jury without expert testimony. In *Snyder v. American Assoc. of Blood Banks*, N.J. Supr., 676 A.2d 1036 (1996), the Supreme Court of New Jersey examined at some length the potential liability of a blood bank for transmission of the HIV virus based on the state of the medical knowledge in 1984. Although the court upheld a jury finding of liability and award of damages, the court noted the plaintiffs' evidence at trial included expert testimony on the defendant's standard of care.

(8) We agree with the Superior Court that the learned intermediary doctrine does not apply to the transfusion of blood to the extent that it would

relieve the provider of blood from liability under the circumstances and in view of the state of the medical knowledge in 1984. Given the uncertainty and limited knowledge surrounding the risk of HIV transmission in 1984, as Blood Bank claims, it is unrealistic to assume that Dr. Turner, a general practitioner, had any greater or more sophisticated knowledge than Blood Bank, an organization specializing in the securing of donors and the supply of blood. The extent of Dr. Turner's knowledge and his duty to advise the decedent of the risk of HIV infection through blood transfusions raise fact questions which preclude the grant of summary judgment.

(9) We affirm the denial of summary judgment of the Superior Court as to this interlocutory appeal subject to the reservations expressed in this order.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is,

AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice