



## Doe v. Dilling

888 N.E.2d 24 (2008); 228 Ill.2d 324

**Country:** United States

**Region:** Americas

**Year:** 2008

**Court:** Supreme Court of Illinois

**Health Topics:** Health care and health services, HIV/AIDS, Infectious diseases, Sexual and reproductive health

**Human Rights:** Right of access to information

### Facts

The Appellant, Jane Doe, brought proceedings against Betty and Kirk Dilling, the parents of her late fiancé, Albert Dilling. She alleged that they had intentionally and falsely stated to her that Albert was not infected with the HIV virus and/or suffered from AIDS when “they knew that, in fact, he was HIV-positive and had AIDS.” She also alleged a claim of negligent misrepresentation in addition to the fraudulent misrepresentation. In both instances, Doe claimed that the actions of the respondents “caused her to delay the discovery that she herself was infected with HIV, resulting in physical harm to her as she was unable to obtain timely medical treatment” and her illness had progressed to AIDS.

In order to prevail on a claim of fraudulent misrepresentation, a plaintiff must have established:“(1) a false statement of material fact; (2) known or believed to be false by the person making it; (3) an intent to induce the plaintiff to act; (4) action by the plaintiff in justifiable reliance on the truth of the statement; and (5) damage to the plaintiff resulting from such reliance.”

The Circuit Court entered a directed verdict for the Dillings on the negligent misrepresentation count. The fraudulent misrepresentation count was directed to jury, which Doe was awarded \$2,000,000 in compensatory damages. The Appellate Court vacated the judgment for Doe on fraudulent misrepresentation, holding the burden to show a justified reliance on the fraudulent statements was not met. It affirmed the dismissal of negligent-misrepresentation. The Supreme Court of Illinois affirmed the Appellate Court’s decision but for different reasons, holding the tort was not even available to fail.

### Decision and Reasoning

The court first examined whether the tort of fraudulent misrepresentation was applicable outside traditional commercial and transactional settings. The court indicated that it was, but it held it was not available in this particular case.

The court held that fraudulent misrepresentation had applications outside of a commercial or transactional setting, particularly if physical harm was involved. However, in examining the Illinois cases cited by Doe in support of her allegations, the court found that the cases were distinguishable on their facts for involving parties with special duties to the injured party and instances where the state had an interest, as opposed to the purely personal setting of Doe’s suit. These cases therefore did not support Doe’s argument that the tort of fraudulent misrepresentation applied to her situation.

Persuasive precedent from other jurisdictions indicated that fraudulent misrepresentation could be applied to people who lied about having HIV/AIDS. However, in those cases the plaintiff sued the person who actually communicated the disease to him or her, not a third person who may or may not have had information about the defendant’s health. The court further noted that third parties did not even necessarily have the requisite duty to inform. As Doe was not suing Albert - who allegedly infected her with HIV - but rather his parents, the court found that these factual differences rendered the cited cases inappropriate to support Doe’s argument. The court thus held that “appellate court improperly expanded the tort of fraudulent misrepresentation to the specific facts in plaintiff’s case” although “the appellate court properly vacated the judgment entered on the jury’s verdict finding defendants liable for fraudulent misrepresentation and awarding Doe compensatory damages.”

The court also discussed an amicus curiae brief filed by the Aids Legal Council of Chicago. The brief

opposed the extension of fraudulent misrepresentation in this case and argued that “civil liability based upon a common law cause of action for allegedly fraudulent misrepresentation of another person's HIV status would be at odds with the provisions of the Confidentiality Act, which guarantee the confidentiality of a person's HIV status.” Under the Confidentiality Act, the Dillings might thus have had "a statutory legal duty to maintain confidentiality if they knew anything about Albert's HIV status.”

The court then examined whether Doe acted in justifiable reliance on the truth of the Dillings' statements. Though not central to the holding, the court additionally determined that Doe had failed to meet her burden of establishing that her reliance upon the allegedly fraudulent statements made by the Dillings was justified. It explained that “Doe not only had actual knowledge of facts that made her reliance unjustifiable, but she also could have easily discovered additional facts if she had not chosen to consciously ignore what was plainly in front of her.” The court stated that the Plaintiff's "inability to prove that she justifiably relied upon the alleged statements” supported its holding that it was “inappropriate to expand the tort of fraudulent misrepresentation” to the facts of the case.

The court lastly examined whether negligent misrepresentation applied if fraudulent misrepresentation failed. The court affirmed the appellate court's decision to uphold the directed verdict for the Dillings on negligent misrepresentation, noting that the tort of fraudulent misrepresentation had been "improperly expanded to Doe's case" and that the elements of the two torts were "essentially the same.

### **Decision Excerpts**

“Our examination of the cited cases from our sister states reveals that the tort of fraudulent misrepresentation has on occasion been extended to actions where the plaintiff has filed suit against the person who transmitted a sexually communicable disease to the plaintiff and not against third parties. As one court explained, ‘people who know that they have genital herpes have a legal duty to take reasonable care to prevent the disease from spreading, and that this duty generally includes, at a minimum, the duty to inform potential sex partners of the possibility of infection.’ R.A.P., 428 N.W.2d at 109. There, the Minnesota Court of Appeals held that the fact that the defendant had ‘knowledge that she had a contagious, incurable, sexually transmissible disease was a material fact that she was obligated to disclose to [the plaintiff] to protect him from injury. [The plaintiff] therefore, has a potential claim against [the defendant] for her alleged fraudulent failure to disclose her genital herpes before beginning a sexual relationship with [the plaintiff].’” 888 N.E.2d, p. 39.

“Again, we find that these cases are factually distinguishable from the matter at bar. In each of the cited cases, the plaintiff sued the person who actually communicated the disease to him or her, and not a third person who may or may not have had information about the defendant's health. In the instant matter, Doe is not suing Albert, who allegedly infected her with HIV; rather, she is suing his parents. We find that these factual differences render the cited cases inapposite to Doe's argument. We further note that neither Doe in her argument to this court, nor the appellate court in its opinion below, cites to a single case in the country where a court has imposed liability under the tort of fraudulent misrepresentation against the parents of a competent adult tortfeasor for their failure to disclose information about that tortfeasor to a third party.” 888 N.E.2d, p. 40.