State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Wednesday, February 13, 2013

No. 46 People v Anthony Griffin

In February 2006, Anthony Griffin was arraigned on robbery charges based on holdups at two Starbucks coffee shops in Manhattan in September 2005. The case was repeatedly delayed over the next five months due to the assignment of a new prosecutor, unavailability of police witnesses or the prosecutor, and other things. On July 10, 2006, with the case on for hearing and trial, the prosecutor sought an adjournment to July 25 because two police witnesses were unavailable. Griffin's counsel from the Legal Aid Society then informed Supreme Court that he was leaving Legal Aid and sought more time for his replacement to prepare. The court refused the request and directed that a new defender be assigned by the following day so the case could proceed on July 25. A Legal Aid supervisor told the court that it could not be ready for trial by that date and, if the court thought Legal Aid should be relieved, it should do so. The court said, "Legal Aid is relieved. That is also your request." The supervisor responded, ""[W]hat I asked you to do is if you were going to force us to be ready for trial on July 25th, that what you should do is relieve us because we're not going to be ready." The court adjourned the case to July 12 for assignment of 18-B counsel. Griffin was not consulted throughout the exchange. The case was transferred to another judge in October 2006, when Griffin pled guilty to first-degree robbery and attempted robbery in return for a sentence of 20 years to life.

The Appellate Division, First Department reversed the conviction in a 3-2 decision, saying "the court's discharge of defendant's counsel without consulting defendant was an abuse of discretion and interfered with defendant's right to counsel.... The court's improvident exercise of discretion reflected a difference in treatment of the Legal Aid Society as compared to the People." The issue was not waived by Griffin's guilty plea, the majority said. "In any event..., the court did not include defendant in the discussion to assign new counsel. Therefore, it cannot be said that defendant knowingly and voluntarily waived the issue. Nor do we find that counsel's plea in desperation, that Legal Aid be relieved if an adjournment was not granted, is dispositive of the issue.... Inasmuch as it could not be ready in two weeks in a complex case involving a life sentence, the Legal Aid supervisor had no choice but to ask to be relieved when the court denied his request for a reasonable adjournment, which effectively resulted in removal."

The dissenters said, "[T]he record clearly reflects that the court did not improperly remove Legal Aid from the case or otherwise interfere with the attorney-client relationship.... It directed Legal Aid to assign another of its staff attorneys to be ready for trial within two weeks.... Legal Aid demurred and asked to be relieved. This request was granted and new counsel was assigned. As a result, there was no removal and clearly no violation of the attorney-client relationship." They said, "The majority's criticism of the court for not consulting with the defendant about relieving Legal Aid and appointing 18-B counsel is unfounded. It was Legal Aid who presented the court with the conundrum that it should be relieved if it was not granted more than a two-week adjournment."

For appellant: Manhattan Assistant District Attorney Sheila O'Shea (212) 335-9000
For respondent Griffin: Harold V. Ferguson, Jr., Manhattan (212) 577-3548

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To be argued Wednesday, February 13, 2013

No. 47 People v Keith A. Adams

Keith Adams was arrested by Rochester police in September 2009 for sending three vulgar and highly offensive text messages to a Rochester City Court judge, who had recently ended a brief intimate relationship with him. The complainant-judge saved the messages and Adams acknowledged that he sent them to her. The other Rochester City Court judges recused themselves and a visiting judge from Wayne County was assigned to preside over the case. The acting City Court judge granted the request of the Monroe County Public Defender to be relieved as Adams' counsel and assigned a Wayne County attorney to represent him.

Adams moved for disqualification of the Monroe County District Attorney's Office due to a conflict of interest, based on actual prejudice and an appearance of impropriety, and for appointment of a special prosecutor. Prosecutors from the office regularly appear before the complainant-judge in City Court criminal cases and therefore "feel constrained in how they handle this matter," Adams said, alleging that the district attorney deferred to the wishes of the complainant in refusing to offer a plea. Monroe County Court denied the motion without a hearing, saying "the only actual prejudice noted is whether or not he gets a certain plea bargain and the law is clear that there's no entitlement to a plea bargain." The court also found the case "isn't being treated any differently from other cases." After a jury trial in City Court, Adams was found guilty of second-degree aggravated harassment. He was sentenced to time served, a one-year conditional discharge with an order of protection, and had to pay a $200 surcharge.

On appeal, the conviction was affirmed by a different County Court judge. "Courts, as a general rule, should remove a public prosecutor only to protect a defendant from actual prejudice arising from a demonstrated conflict of interest or substantial risk of abuse," the court said, citing Schumer v Holtzman (60 NY2d 46). "Simply stated, the Defendant had no actual proof of unfair treatment," it said. "Further, Defendant fails to show actual prejudice occurred for the purposes of this appeal. While there is an indication by trial counsel that he would like a plea offer to a violation, there is nothing in the record that Defendant actually would have taken such a plea."

Adams argues, "As a matter of law, the complainant's status as an active judge, presiding over criminal cases in the same county where her criminal complaint was filed, created a *per se* conflict of interest" for the district attorney.... [A] person accused of committing a crime has a right to be prosecuted by an impartial advocate for the People..., someone unhampered by any conflict of interest, real or apparent." He claims he suffered actual prejudice when the district attorney, "based upon the wishes of the complainant," refused to offer a plea to a reduced charge. Conceding that he was not entitled to a plea, he says his "specific argument was that the Monroe County District Attorney should not have been the decision-maker." Adams also argues he was entitled to a hearing on his claim of actual prejudice.

For appellant Adams: David R. Juergens, Rochester (585) 753-4093
For respondent: Monroe County Assistant District Attorney Leslie E. Swift (585) 753-4564

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To be argued Wednesday, February 13, 2013

No. 48 Matter of City of Yonkers v Yonkers Fire Fighters, Local 628, IAFF, AFL-CIO
No. 49 Matter of City of Oswego v Oswego City Firefighters Association, Local 2707

These cases arose after the State Legislature enacted article 22 of the Retirement and Social Security Law in December 2009, establishing a new Tier V for the Police and Firemen's Retirement System (PFRS) and requiring employees who join the PFRS on or after January 10, 2010 to contribute three percent of their wages to the retirement fund. Section 8 of the statute provides an exception to the contribution requirement for new employees who join "a special retirement plan ... pursuant to a collectively negotiated agreement with any state or local government employer, where such agreement is in effect on the effective date of this act and so long as such agreement remains in effect thereafter." Section 1206 states, "In the event of any conflict between the provisions of this article and any other provision of law, this article shall govern."

The cities of Yonkers and Oswego had a preexisting collective bargaining agreements (CBA) with their firefighters' unions that gave employees the option to enroll in PFRS or in a "384-d" retirement plan, and both Cities agreed to pay the employees' retirement contributions. Yonkers' contract with Yonkers Fire Fighters, Local 628, expired on June 30, 2009, and Oswego's contract with Oswego City Firefighters Association, Local 2707, expired on December 31, 2009. Both CBAs were being renegotiated when article 22 took effect. When the Cities began requiring new firefighters to make retirement contributions under article 22, asserting the section 8 exception did not apply because the CBAs were no longer "in effect," the Unions sought arbitration.

In No. 48, the Appellate Division, Second Department granted Yonkers' petition to permanently stay arbitration. "Contrary to the contention of the Union, the CBA, which terminated by its own terms in June 2009, was no longer 'in effect' at the time of the effective date of article 22..., which was January 10, 2010; therefore, the exception set forth in section 8 of that article is inapplicable...," it said. "Under these circumstances, the subject arbitration is barred by statute (see Civil Service Law § 201[4]; Retirement and Social Services Law § 470)."

In No. 49, an arbitrator ruled Oswego must continue making retirement contributions for firefighters enrolled in the 384-d plan, as provided in the CBA. The Appellate Division, Fourth Department affirmed the award, saying the expired CBA was still in effect and the section 8 exception applied. Under the Triborough doctrine, "as embodied in Civil Service Law § 209-a(1)(e), it is an improper practice ... for a public employer 'to refuse to continue all the terms of an expired agreement until a new agreement is negotiated'...," it said. "Because a new agreement between the City and the Union had not yet been negotiated at the time the subject firefighters joined the PFRS, all of the terms of the expired agreement were still in effect."

(No. 48) For appellant Yonkers Union: Richard S. Corenthal, Manhattan (212) 239-4999
For respondent Yonkers: Terence M. O'Neil, Garden City (516) 267-6300
(No. 49) For appellant Oswego: Earl T. Redding, Albany (518) 464-1300
For respondent Oswego Union: Mimi C. Satter, Syracuse (315) 471-0405

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To be argued Wednesday, February 13, 2013

No. 50 Orsi v Haralabatos

Four-year-old Keith Orsi suffered a displaced fracture of his left elbow when he fell from a trampoline in March 2004. He was taken to Stony Brook University Hospital, where his primary physician was Dr. Susan Haralabatos of Stony Brook Orthopaedic Associates (SBOA). Dr. Haralabatos performed surgery, fixing the fracture in position with two sterile wires that protruded through the boy's skin. Keith was given antibiotics before and after surgery and was released the next day. When he developed a sore throat and fever, he was readmitted to the hospital on March 20. Dr. Haralabatos concluded he had a superficial infection where the wires protruded. Keith was treated with antibiotics and released after two days. At a follow-up visit on March 25, Dr. Haralabatos found no sign of infection. She removed the cast and wires on April 15 and observed pus at the site of the wires, but concluded it was due to irritation rather than infection. On April 19, Dr. Haralabatos noted irritation at the site and prescribed an antibiotic. Keith's parents missed follow-up appointments on April 22, April 29, and May 3. On May 4, Dr. Haralabatos noted pain and swelling at the boy's elbow, and tests determined that he had developed chronic osteomyelitis, a bacterial bone infection, causing permanent skeletal damage.

Keith Orsi and his parents filed this medical malpractice action against Dr. Haralabatos and SBOA, among others. Dr. Haralabatos and SBOA moved for summary judgment dismissing the complaint, submitting affirmations from two medical experts who opined that the doctor acted within the accepted standard of medical care. The plaintiffs opposed the motion and submitted the affirmation of an expert who opined that Dr. Haralabatos departed from the relevant standard of care on the April 15 visit by failing to take a culture of the pus at the puncture site, take Keith's temperature, treat the infected puncture, and prescribe prophylactic antibiotics; and on the April 19 visit by failing to order blood testing and X-rays. The defendants argued that the three "missed visits" from April 22 to May 3 "deprived the defendants of the opportunity to evaluate [Keith] at that critical time and makes it impossible to determine when precisely ... the osteomyelitis began or became apparent."

Supreme Court denied the motion to dismiss, saying the plaintiffs "raised triable issues of fact by submitting an affirmation by their expert as to specific allegations of deviations from the standard of care." On appeal, the defendants reiterated their argument that the parents' failure to bring Keith to the three "missed visits" prevented Dr. Haralabatos from monitoring his condition and constituted a superceding intervening act that caused his injuries.

The Appellate Division, Second Department reversed and dismissed the suit, saying the defendants' expert affirmations established that they "did not depart from good and accepted standards of medical practice, and that, in any event, any alleged departures did not proximately cause [Keith's] injury." While the plaintiffs raised triable issues regarding the defendants' compliance with medical standards, "they failed to raise a triable issue of fact as to whether the alleged departures proximately caused" their son's injury.

The plaintiffs argue they raised triable issues regarding the defendants' departures from the standard of care during the April 15 and 19 visits and, because the three missed appointments came after those departures caused Keith's injuries, any negligence on the parents' part could not be a superceding intervening cause.

For appellant Orsi: Joseph P. Awad, Garden City (516) 832-7777
For respondents Haralabatos and SBOA: Eric M. Kraus, Manhattan (212) 759-4888