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 Thursday, February 14, 2013

No. 51 Oakes v Patel

Lisa Oakes brought this medical malpractice action, on behalf of herself and her husband Daniel, seeking damages for the failure of health care providers at Buffalo's Millard Fillmore Suburban Hospital to diagnose and treat Daniel's cerebral aneurysm in 1998. He suffered a massive stroke two and a half weeks after he began treatment. After trial in 2008, the jury found Dr. Rajnikant Patel, Dr. Satish Mongia, and hospital owner Kaleida Health were negligent and Kaleida was vicariously liable for the negligence of Dent Neurologic Institute. The jury awarded more than $5.1 million in damages, including $2 million for pain and suffering, $1.8 million for future custodial care, and $210,000 for loss of consortium.

Supreme Court granted plaintiffs' motion to set aside the verdict on damages unless defendants stipulated to increase the awards to $10 million for pain and suffering, $3.9 million for future custodial care, and $3.5 million for loss of consortium. The defendants rejected the proposed additur. The court also denied Kaleida's motion to amend its answer to raise affirmative defenses based on proofs of claim the plaintiffs filed in 2003 in a liquidation proceeding against Kaleida's insurer, PHICO Insurance Company, which included a release of claims against any PHICO insured. After a retrial on damages in 2009, the jury awarded $9.6 million for pain and suffering, $4.72 million for future custodial care, and $2.4 million for loss of consortium, bringing the total verdict to $17.8 million.

The Appellate Division, Fourth Department affirmed on a split vote, ruling the defendants failed to preserve their challenge to the amount of the trial court's proposed additur to damages at the first trial. The majority said that, "because defendants did not challenge the court's additur before, during or after the second trial, and did not raise that issue on appeal, no such issue is properly before us.... We cannot conclude that, by challenging the court's order setting aside the first verdict in part, defendants thereby implicitly challenged the amount of the court's additur." It found the damages award at the second trial was not excessive. Regarding the releases the plaintiffs filed in the PHICO liquidation, they were to become "null and void" if "coverage is avoided by the Liquidator," the court said. "Because Kaleida's liability for the negligence of Dent is included in the claims specified to PHICO and because PHICO's liquidators avoided, or announced that they would avoid, coverage of that portion of the claim, plaintiffs' releases were rendered null and void."

One dissenter argued the majority erred in upholding the damages awarded at the second trial without first reviewing the defendants' claim that the trial court's proposed additur at the first trial was excessive. She said the defendants preserved the issue when they opposed the plaintiffs' motion to set aside the first damages award by contending it did not deviate from what would be reasonable, a contention that "necessarily encompasses the argument that an additur in any amount would be inappropriate," and by rejecting the additur. She also argued that the additur was excessive and the defendants "should be afforded the opportunity to stipulate to a proper additur in the context of this appeal." The other dissenter argued the second damages award was excessive.

For appellant Patel: Ann M. Campbell, Buffalo (716) 849-6500
For appellant Kaleida: Amy Archer Flaherty, Buffalo (716) 856-5500
For appellant Mongia: Gregory T. Miller, Buffalo (716) 852-0400
For respondent Oakes: Ronald J. Wright, Buffalo (716) 852-1234

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No. 52 People v Randolfo Diaz *(papers sealed)*
No. 53 People v Bill Williams *(papers sealed)*

The common issue in these appeals, in which the defendants were charged with sexually abusing children, is whether prosecutors may present expert testimony about the typical behavior of child abusers. In both cases, prosecutors called psychologists to testify about child sex abuse syndrome to explain delayed disclosure and piecemeal disclosure of abuse by victims, but the experts also described the "grooming" of victims -- the means abusers commonly use to obtain access to a child, establish trust, gradually escalate sexual activity, and maintain secrecy.

Randalfo Diaz was accused of abusing a girl in Brooklyn in 2006 and 2007, beginning when she was eight years old. A jury found him guilty of course of sexual conduct against a child in the second degree and child endangerment. He was sentenced to five years in prison.

The Appellate Division, Second Department reversed and ordered a new trial, saying the trial court erred in allowing expert testimony "describing how a sex offender typically operates to win over the trust of a child victim, a description closely paralleling the complainant's account of the defendant's behavior.... While expert testimony may be admitted 'to explain behavior of a victim that might appear unusual or that jurors may not be expected to understand' ..., it is inadmissible 'when introduced merely to prove that a sexual assault took place ... or bolster a witness' credibility.'" It said the trial court also improperly precluded testimony of a former boyfriend of the complainant's mother, who claimed the girl falsely accused him of abusing her when she was five.

The prosecution argues the expert testimony was necessary "to explain to jurors why a child victim of sexual abuse may comply with the abuser's sexual demands even in the absence of any threats or use of force by the abuser and why the child may delay in reporting the abuse."

Bill Williams was accused of abusing two 12-year-old girls in Brooklyn in 2006 and 2007. He was convicted at a bench trial of first-degree rape, criminal sex act and other charges, and was sentenced to 66 years to life in prison.

The Appellate Division, Second Department reduced his sentence to 46 years to life, but affirmed his convictions on the most serious charges. "While the hypothetical situation described by the prosecutor during the direct examination of the expert bore some similarities to the facts of this case," it said, "the expert did not offer an opinion with respect to the credibility of the complainants, and expressly disavowed any intention of rendering an opinion as to whether the complainants were victims of sexual abuse...."

Williams argues that "expert testimony about the typical conduct of abusers is highly prejudicial, since it invites the jurors to find a defendant guilty by simply comparing the defendant's alleged conduct with that of a typical pedophile and deciding he fits that profile." He says the expert "improperly provided his 'professional opinion' that detail after detail of the complainants' allegations were 'consistent with' child sex abuse syndrome."

(No. 52) For appellant: Brooklyn Assistant District Attorney Ruth E. Ross (718) 250-2529
For respondent Diaz: Anna Pervukhin, Manhattan (212) 693-0085
(No. 53) For appellant Williams: Kendra L. Hutchinson, Manhattan (212) 693-0085
For respondent: Brooklyn Assistant District Attorney Ruth E. Ross (718) 250-2529

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To be argued Thursday, February 14, 2013

No. 54 Matter of Duarte v City of New York *(papers sealed)*

In September 2010, Arisleida Duarte was indicted in the Bronx on charges including attempted murder and assault, and was held at the Rose M. Singer Center (RMSC) on Rikers Island pending trial. Duarte was pregnant at the time of her arrest and she applied for admission to the RMSC's Nursery Program, which provides housing and other services to permit incarcerated mothers to live with their newborn children up to one year of age. A deputy warden notified her that her "application has been rejected based on the following: VIOLENT CRIMINAL RECORD (Attempted Murder)" and "Extensive Infraction History." The warden of RMSC denied Duarte's appeal "in accordance with the Nursery Program Procedures."

Duarte brought this article 78 proceeding against the City to challenge the determination, arguing it did not comply with Correction Law § 611(2). The statute states, in part, "A child may remain in the correctional institution with its mother for such period as seems desirable for the welfare of such child, but not after it is one year of age.... The officer in charge of such institution may cause a child cared for therein with its mother to be removed from the institution at any time before the child is one year of age." The warden said in an affidavit that Duarte had already served a sentence for gang assault and was convicted of three infractions during that incarceration, including graffiti and assaulting an inmate. She said Duarte's pending charges and criminal history "show that she poses a threat to the safety and security of her unborn child as well as to the other mothers and their babies in the Nursery Program."

Duarte gave birth to a son on April 18, 2011. Two days later, Supreme Court granted her petition and ordered the City to admit her to the Nursery Program, saying, "The sole criterion set forth in [section 611(2)] for the return of a newborn to its inmate mother ... and its remaining in the care of its mother in prison is the welfare of the child.... The only basis for denial of an inmate's request to care for her child in prison ... is a finding by the chief medical officer of the correctional institution that the mother is physically unfit to care for her child." RMSC authorities made no assessment of whether Duarte "was unfit to care for the child or whether placement of her newborn into her care at the Nursery would be detrimental to the welfare of the child," the court said, noting that her application was supported by medical officials at RMSC.

The Appellate Division, Second Department affirmed, ruling the denial of Duarte's application was arbitrary and capricious. "[U]nder the statute, the relevant consideration in determining whether the child may remain with the mother is the welfare of the child," it said, but the RMSC "failed to make any assessment of whether the subject child's welfare would best be served by remaining with his mother."

The City argues, "Under the plain language of the statute..., 'the best interest of the child' is not the exclusive or over-riding consideration" in deciding whether to grant admission to the Nursery Program, and a facility "may consider its institutional needs, including the safety of the other mothers and infants in the program." Section 611(2) "specifically provides the warden with the authority to remove the child from the facility at any time without reference to the 'welfare of the child,'" it says, and it would be "incongruous" to grant the warden such authority to remove a child, "but not authority to deny an initial application for a child to be admitted to the Nursery Program."

For appellant City: Assistant Corporation Counsel Fay Ng (212) 788-1034
For respondent Duarte: Valentina M. Morales, Manhattan (212) 696-8843

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To be argued Thursday, February 14, 2013

No. 55 M&T Real Estate Trust v Doyle

M&T Real Estate Trust brought this action under article 13 of the Real Property Actions and Proceedings Law (RPAPL) to foreclose on commercial mortgages executed by James J. Doyle II and secured by Jim Doyle Ford, his former automobile dealership in the Town of Tonawanda, Erie County. M&T was the successful bidder when the property was sold at public auction in September 2009. M&T's counsel sent the referee who conducted the sale a proposed deed in May 2010, asking him to sign and return it. The referee executed the deed and mailed it back, but before it arrived M&T's counsel telephoned to inform the referee that his client would not accept the deed because another party was negotiating to purchase the foreclosure bid. When the deed arrived, M&T's counsel mailed it back to the referee with a letter reiterating that his client would not accept the deed at that time.

In late July 2010, M&T's counsel told the referee that M&T was willing to accept the deed. When the referee sent the original deed with the May 2010 date, M&T's counsel asked him to "re-execute" the deed so it would be "dated concurrently with its delivery." The referee re-executed the deed, dated August 9, 2010, and delivered it to M&T's counsel, who accepted and retained it. On September 3, 2010, M&T moved to confirm the referee's report and for a deficiency judgment against Doyle and Doyle Ford. Doyle opposed the motion for a deficiency judgment on the ground it was untimely under RPAPL § 1371(2), which provides that such a motion must be made "within ninety days after the date of the consummation of the sale by the delivery of the proper deed of conveyance to the purchaser."

Erie County Court granted M&T's motion, saying, "M&T's motion for a deficiency judgment ... was timely made under RPAPL § 1371, having been brought within ninety (90) days of the consummation of the sale of the Premises by the Referee pursuant to the Referee's Deed dated August 9, 2010...." It subsequently awarded M&T a deficiency judgment of $426,657.11.

The Appellate Division, Fourth Department reversed, ruling M&T's motion for a deficiency judgment was untimely because "the foreclosure sale was consummated and the 90-day period commenced in May 2010 upon the delivery of the Referee's [original] deed." The court said, "'When the Referee[] signed the deed[] presented by [plaintiff's] counsel, [he was] left with no title to convey to any other party,' and thus the sale was consummated upon the delivery of that deed in May 2010, notwithstanding the refusal of plaintiff's counsel to accept and retain physical possession of the deed at that time," quoting Lennar Northeast Partners Ltd. Partnership v Gifaldi (258 AD2d 240).

M&T argues, "Under long-established principles of New York property law, the term 'delivery' requires both delivery and acceptance of the deed," citing Ten Eyck v Whitbeck (156 NY 341 [1898]). "Simply put, a conveyance of real property in New York is not accomplished unilaterally," citing Brackett v Barney (28 NY 333 [1863]). "Accordingly, delivery of a deed must include an acceptance of the deed by the intended grantee in order for the delivery to be complete and the transfer of real property to be consummated."

For appellant M&T: Howard S. Rosenhoch, Buffalo (716) 856-0600
For respondents Doyle et al: John K. Rottaris, Buffalo (716) 854-4300