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 Monday, September 9, 2013

No. 152 Romanello v Intesa Sanpaola S.p.A.

Giuseppe Romanello was an executive in the New York office of an Italian bank, Intesa Sanpaola S.p.A., when he became ill and left work in early January 2008. The illness caused visual disturbances, an inability to read or concentrate, and a feeling that he would pass out. He made an unsuccessful attempt to return to work two weeks later. Romanello was eventually diagnosed as suffering from major depression, syncope and collapse, neurasthenia, and anxiety. After four months, Intesa informed his attorney, by letter dated May 29, 2008, that Romanello's leave under the Family and Medical Leave Act "expires on June 3, 2008 and the bank would appreciate knowing whether he intends to return to work or to abandon his position." His lawyer replied on June 2 that Romanello "remains unable to return to work in any capacity because of his disabling conditions.... [He has] an uncertain prognosis and a return to work date that is indeterminate at this time. Accordingly, if there is to be any severance of the employment relationship..., it will be of the Bank's volition only and not an 'abandonment of position' by Mr. Romanello; and the Bank will bear any related consequences and liabilities for its termination of Mr. Romanello's employment in such circumstances." Intesa terminated him as of June 4, 2008.

Romanello brought this suit against Intesa and its head of personnel, Ann Stefan, claiming they violated the New York State and New York City Human Rights Laws by refusing to make a reasonable accommodation for his disability. Supreme Court granted the bank's motion to dismiss the claims.

The Appellate Division, First Department affirmed in a 3-2 decision. It said Intesa met its obligation to "initiate a good faith interactive process" to identify a reasonable accommodation with its May 29 letter, "which asked plaintiff 'whether he intend[ed] to return to work,' a question that, by necessary implication, also sought the time frame within which plaintiff expected to be able to resume working, if that was his intention.... [T]he allegations of the complaint and the undisputed documentary evidence establish, as a matter of law, that it was plaintiff who abruptly cut off the interactive process that Intesa tried to initiate." It said the "demand" by Romanello's counsel "that Intesa either grant indefinite leave or face litigation excused Intesa from further efforts to seek agreement with plaintiff on a reasonable accommodation."

The dissenters argued that the evidence, particularly the exchange of letters, "does not utterly refute plaintiff's factual allegations or conclusively establish a defense as a matter of law" to his claim that Intesa failed to offer him a reasonable accommodation. They said the majority was "internally inconsistent" in finding that Intesa "did engage in an interactive process, albeit 'by ... implication'..., when it asked plaintiff 'whether [he] intend[ed] to return to work or to abandon his position,' and also finding that Intesa was excused from further efforts by the response of Romanello's counsel. The majority "can only maintain these contradictory positions by treating the employer's letter in a light most favorable to the employer and paradoxically treating plaintiff's counsel's letter in a light least favorable to the employee. Of course, this may be a reasonable position for the jury to take at trial, but not for this court to take when evaluating a motion to dismiss based on documentary evidence that is subject to reasonable interpretations."

For appellant Romanello: Maury B. Josephson, Manhattan (646) 504-1830
For respondents Intesa and Stefan: Michael C. Lambert, Manhattan (212) 425-3220

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To be argued Monday, September 9, 2013

No. 153 Matter of Koch v Sheehan

The State Department of Health received reports that Dr. Eric J. Koch provided negligent medical care at two Buffalo hospitals, Sisters of Charity and Kenmore Mercy, in 2006. After an investigation, the Office of Professional Medical Conduct (OPMC) charged him with nine specifications of professional misconduct in caring for two patients. None of the charges involved Medicaid fraud or treatment of Medicaid recipients. In June 2009, Koch pled no contest to the charges in exchange for permission to continue practicing medicine, entering into a consent order in which he agreed to be placed on probation for 36 months and to comply with various conditions.

In March 2010, the Office of the Medicaid Inspector General (OMIG) adopted a determination excluding Koch from the Medicaid program under 18 NYCRR § 515.7(e), based solely on the OPMC consent order. OMIG did not conduct its own investigation. Koch filed this article 78 proceeding against OMIG, arguing the determination was arbitrary and capricious. Supreme Court granted the petition, vacated OMIG's determination, and ordered it to reinstate Koch to the Medicaid program retroactive to March 10, 2010.

The Appellate Division, Fourth Department affirmed, ruling that OMIG's determination was arbitrary and capricious. "The penalty imposed [in the OPMC consent order] did not include any suspension, but rather was akin to censure or reprimand with conditions. To adopt [OMIG's] view would create an irrational result that would allow [Koch] to continue to treat non-Medicaid patients, but be prohibited from treating Medicaid patients. Additionally..., it seems unlikely that [Koch] would have agreed to the consent order had he known that he effectively would not be allowed to continue to practice medicine, because the charges to which he pleaded no contest would be used against him factually to exclude him from the Medicaid program." When OPMC has determined whether a physician is fit to practice, the court said, the Legislature "did not likely intend that [OMIG] in such a case might second-guess the Department by also investigating or evaluating whether the physician in question would present a potential danger to a subset of the patient population, i.e., Medicaid recipients."

OMIG argues the Appellate Division decision "is mistaken and undermines OMIG's authority to exclude providers who, in OMIG's judgment, are not qualified to provide medical care and services to Medicaid recipients. This is so even where [OPMC] has determined that a provider may continue to practice medicine generally. OMIG may properly determine that when the government is paying for medical care for its disadvantaged citizens, it may insist that providers possess more than the minimum level of competence necessary to avoid license suspension." It says, "Although OMIG and [OPMC] are nominally under the umbrella of the same department, they operate under distinct grants of legislative authority, and their decisions serve distinct purposes. OMIG, in excluding a provider from the Medicaid program, does not duplicate or intrude on any authority exercised by the [OPMC]."

For appellant OMIG: Assistant Solicitor General Victor Paladino (518) 473-4321
For respondent Koch: Susan A. Eberle, Buffalo (716) 849-6500

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To be argued Monday, September 9, 2013

No. 154 People v Daryl H. *(papers sealed)*

In October 2008, Daryl H. was voluntarily admitted to the psychiatric ward of Erie County Medical Center, where he was treated with anti-psychotic medication. The following night, he became involved in a violent altercation with another psychiatric patient. Staff members responding to the commotion saw Daryl follow the patient out of a lounge, saying, "He shouldn't have hit me." They saw Daryl knock the patient to the floor and repeatedly kick him in the head, causing serious brain injuries. The next morning, Dr. Dori Marshall, the psychiatrist who supervised the unit, spoke with staff members who had been on duty and with Daryl to assess his mental status and "make a decision about his safety and the safety of the other people on the unit." In her discharge summary, Dr. Marshall described the assault as unprovoked, which differed from the trial testimony of eyewitnesses. She concluded that Daryl had the capacity to know right from wrong and that he should be arrested.

At Daryl's bench trial, Dr. Marshall did not testify about the assault itself, which she did not witness, but she testified as a prosecution witness about her interview with Daryl the day after the assault and her conclusion that he should be arrested. Supreme Court precluded defense counsel from cross-examining her about the sources of her report that the assault was unprovoked on the ground that her prior report was not inconsistent with her testimony. The court acquitted Daryl of attempted murder, but found him guilty of first-degree assault and sentenced him to 25 years in prison.

The Appellate Division, Fourth Department affirmed. It said the trial court did not "improperly curtail the cross-examination of [Dr. Marshall] with respect to the sworn statement made by her the day after the assault. That statement was not inconsistent with her trial testimony, and thus there was no basis for impeachment of her trial testimony based on that statement."

Daryl argues that his trial counsel properly sought "to undermine Dr. Marshall's testimony by demonstrating that second-hand facts upon which she relied in forming her opinion that appellant should be arrested for the assault conflicted with other evidence adduced at trial." He say's the court refusal to allow the questioning deprived him of his rights to present a defense, to confront witnesses, and to a fair trial. "Dr. Marshall's testimony -- particularly her opinion that appellant knew right from wrong and should be arrested for the assault -- was extremely important to the prosecution's case ... and the defense had every right to explore all of the facts upon which her testimony was based."

For appellant Daryl H.: Kristin M. Preve, Buffalo (716) 853-9555
For respondent: Erie County Assistant District Attorney Matthew B. Powers (716) 858-7922

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To be argued Monday, September 9, 2013

No. 155 People v John G. Glynn *(papers sealed)*

John G. Glynn was arrested on drug charges in August 2008 after allegedly selling marijuana on three occasions -- first two grams, then five ounces, and finally two pounds -- to an undercover state trooper in Oswego County. At a Huntley hearing, Oswego County Court Judge Walter Hafner, Jr. told the parties that he might have represented or prosecuted Glynn before becoming a judge and asked if there were any objections to his remaining on the case. Glynn said, "Yes, you represented me," but no objections were raised.

Seven weeks later, at an appearance to discuss a four-year sentence offer for a possible plea, Glynn asked Judge Hafner to recuse himself. The court refused, saying, "Mr. Glynn[,] because you've been arrested 39 times..., you've had a large majority of the defense bar at some point representing you. This court feels it has no reason at all to disqualify itself from handling this matter. I don't even recall what I represented you on other than I know that I have represented you previously. I've also prosecuted you as an assistant district attorney previously...." The court then raised several issues noted in the pre-sentence report, including Glynn's daily marijuana use for 32 years and his extensive criminal history. "You have never had a job on the books," the court continued. "You have ten different children from I don't know how many different women..." and "...you owe $789,000.00 in back child support for these ten children. That's over three quarters of a million dollars." Glynn said, "All I got to say to that is so what?" The court responded, "Well really it is irrelevant I suppose...." In other pre-trial rulings, the court suppressed two of three statements Glynn made to police and granted his request for new counsel. Glynn rejected the plea offer and went to trial, was convicted of criminal sale and possession of marijuana in the second and fourth degrees, and was sentenced to an aggregate term of six years.

The Appellate Division, Fourth Department affirmed, saying County Court "was not required to recuse itself based on the fact that Judge Hafner had previously represented defendant on an unrelated matter and may have previously prosecuted him on another unrelated matter.... 'Moreover, none of [the c]ourt's remarks ... was indicative of bias against defendant and, therefore, recusal was not warranted on [that] basis'...."

Glynn says the fact that Judge Hafner previously prosecuted and represented him on unrelated matters would not, by itself, require recusal. "In this case, however, there were 'additional or special circumstances' that warranted disqualification, specifically, Judge Hafner's bias and prejudice against Mr. Glynn, as demonstrated by the many inappropriate comments he made about Mr. Glynn on the record." He also argues that he received ineffective assistance of counsel from both of his attorneys.

For appellant Glynn: Paul V. Mullin, Syracuse (315) 474-2943
For respondent: Oswego County Assistant District Attorney Mark Moody (315) 349-3200

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To be argued Monday, September 9, 2013

No. 145 Matter of Hroncich v Con Edison

Antonio Hroncich, a long-time employee of Consolidated Edison, was diagnosed in 1993 as having asbestosis and asbestos-related pleural disease. The Workers' Compensation Board found he was permanently partially disabled as a result of occupational lung disease and awarded him disability benefits in proportion to his lost earning capacity. He later developed thyroid cancer, which spread to his lungs.

Hroncich died in 2007 and his wife, Gaudenzia Hroncich, filed this claim for death benefits under Workers' Compensation Law § 16. Her medical expert testified that her husband's death was attributable 20 percent to his work-related illnesses and 80 percent to thyroid cancer. The Workers' Compensation Law Judge held that Hroncich's death was causally related to his occupational lung disease and that liability for benefits may not be apportioned between work-related and non-work-related causes of death. The Workers' Compensation Board upheld the determination.

The Appellate Division, Third Department affirmed, rejecting Con Edison's argument that the claimant's death benefits should be apportioned to reflect the degree to which thyroid cancer was the primary cause of her husband's death. The court cited its 2009 decision in Matter of Webb v Cooper Crouse Hinds Co. (62 AD3d 57), which held that apportionment between work-related and non-work-related causes of death is not available based, in part, on "the absence of any indication in Workers' Compensation Law § 16 that death benefits are to be apportioned in the same manner as disability benefits" under Workers' Compensation Law § 15(7).

Con Edison argues, "The plain language of section 15(7) expressly provides that a previous disability will not preclude compensation for a later injury or 'death resulting therefrom,' and that compensation for death will be determined on the basis of the decedent's 'earning capacity at the time of the later injury' causing death. This section clearly authorizes apportionment in death benefit claims. The Legislature used the term 'death' twice in section 15(7) and did so to apply the apportionment provisions to death benefit claims." It says "apportionment appropriately confines compensation to the injury caused by employment" and "prevents a windfall to claimants at the expense of employers for injuries that were not related to employment."

For appellants Con Edison et al: David W. Faber, Carle Place (516) 486-4640
For respondent Special Disability Fund: Jill B. Singer, Albany (518) 438-3585
For respondent Workers' Compensation Bd.: Asst. Solicitor Gen'l Laura Etlinger (518) 474-2256