

SUPREME COURT OF IDAHO

Clark v. Klein, 137 Idaho 154

45 P.3d 810 (2002) · No. No. 26652 · Decided March 5, 2002

SUMMARY

The Idaho Supreme Court reviewed a medical malpractice and wrongful death action arising from the death of Corey Ayres after his discharge from a hospital. The court held that the trial court committed reversible error by allowing an inadequately disclosed expert to testify under Idaho Rule of Civil Procedure 26 and remanded for a new trial. The court also provided guidance concerning jury instructions and the right of separately represented plaintiffs to cross-examine witnesses.

CASE DETAILS

COURT	Supreme Court of Idaho
WRITING FOR THE COURT	TROUT, Chief Justice; Trout, Chief Justice; Schroeder, Justice; Walters, Justice; Kidwell, Justice; Eismann, Justice
JURISDICTION	Idaho
DECIDED	March 5, 2002
DOCKET	No. 26652
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from a jury verdict and final judgment in favor of the defendant physician in a medical malpractice and wrongful-death action.
STANDARD OF REVIEW	Evidentiary rulings, including admission or exclusion of expert testimony, and rulings concerning cross-examination are reviewed for abuse of discretion. An erroneous evidentiary ruling warrants a new trial only if it affected a substantial right. Jury-instruction issues are reviewed freely as questions of law, including whether evidence supported the instruction and whether the instruction correctly stated the law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Debra Clark, individually and as personal representative of the Estate of Corey Ayres, Allen Ayres, Estate of Corey Ayres v. Frederick J. Klein, M.D.

TOPICS

medical malpractice

discovery dispute

expert testimony

standard of review

appellate procedure

PRACTICE AREAS

medical malpractice

health law

torts

civil procedure

evidence

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by allowing Dr. Renee Bourquard to testify when the substance of her expert opinions had not been disclosed under Idaho Rule of Civil Procedure 26(b)(4) and 26(e).
2. Whether the trial court abused its discretion by limiting cross-examination of the defendant's witnesses to counsel for only one of two separately represented plaintiffs.
3. Whether the challenged jury instruction concerning the effect of an undesirable or unfortunate result following medical care constituted reversible error.

HOLDINGS

1. The trial court abused its discretion by allowing Bourquard to testify about an undisclosed causation and standard-of-care theory. The nondisclosure prejudiced the plaintiffs because they lacked an opportunity to prepare cross-examination or rebuttal testimony, requiring reversal and a new trial.
2. A party seeking exclusion of an expert for failure to disclose the substance of the expert's testimony is not required to first move to compel compliance with Rule 26.
3. A trial court may not completely exclude cross-examination by one of two separately represented parties with separate interests; each party must be permitted to cross-examine witnesses.

KEY QUOTATIONS

"Rule 26(e)(1), stating that the rule "unambiguously imposes a continuing duty to supplement responses to discovery with respect to the substance and subject matter of an expert's testimony where the initial responses have been rejected, modified, expanded upon, or otherwise altered in some manner." (813)

"Because this was the first time that this theory was advanced that Corey did not have the hole in his intestine at the time of his release, Appellants did not have an opportunity to prepare cross-examination or to offer rebuttal testimony." (815)

"Although vested with broad discretion, a trial court cannot completely deny a party the right of cross-examination." (816)

FACTUAL BACKGROUND

Corey Ayres, nineteen, injured his abdomen when he struck the tailgate of a pickup truck. After negative CT and X-ray results, Dr. Frederick Klein discharged him from the hospital with pain medication and instructions to return if his symptoms worsened. Corey died the next day from peritonitis caused by an intestinal tear. At trial, Klein presented expert testimony from Dr. Renee Bourquard concerning a theory that the intestinal tear

developed or opened after Corey left the hospital, although the substance of that testimony had not been disclosed in response to the plaintiffs' discovery request.

PROCEDURAL HISTORY

Clark and Ayres filed a wrongful-death complaint in the Fourth Judicial District Court against Klein and St. Alphonsus Regional Medical Center. The claim against St. Alphonsus settled. After a jury trial, the jury found for Klein and final judgment was entered on May 18, 2000. Plaintiffs timely appealed, and the Idaho Supreme Court reversed and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for a new trial. The court also directed that each separately represented plaintiff be permitted to cross-examine witnesses, although it did not decide whether the cross-examination limitation independently required reversal.

CASES CITED

- Morris By and Through Morris v. Thomson, 130 Idaho 138, 144, 937 P.2d 1212, 1218 (1997)
- Burgess v. Salmon River Canal Co. Ltd., 127 Idaho 565, 574, 903 P.2d 730, 739 (1995)
- Hake v. DeLane, 117 Idaho 1058, 1065, 793 P.2d 1230, 1237 (1990)
- Boeck v. Boeck, 29 Idaho 639, 161 P. 576 (1916)
- Sun Valley Shopping Center Inc. v. Idaho Power Co., 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991)
- Holzheimer v. Johannesen, 125 Idaho 397, 400, 871 P.2d 814, 817 (1994)
- State v. Nunez, 133 Idaho 13, 19, 981 P.2d 738, 744 (1999)
- Radmer v. Ford Motor Co., 120 Idaho 86, 813 P.2d 897 (1991)
- Hopkins v. Duo-Fast Corp., 123 Idaho 205, 217-18, 846 P.2d 207, 219-20 (1993)
- Urrutia v. Blaine County, 134 Idaho 353, 359, 2 P.3d 738, 744 (2000)
- Wooley Trust v. DeBest Plumbing, Inc., 133 Idaho 180, 182, 983 P.2d 834, 836 (1999)
- Sherwood v. Carter, 119 Idaho 246, 256, 805 P.2d 452, 462 (1991)
- Jerome Thriftway Drug, Inc. v. Winslow, 110 Idaho 615, 717 P.2d 1033 (1986)
- Nishi v. Hartwell, 52 Haw. 188, 473 P.2d 116 (1970)
- State v. Hairston, 133 Idaho 496, 988 P.2d 1170 (1999)
- State v. Jesser, 95 Idaho 43, 49, 501 P.2d 727, 734 (1972)
- Robertson v. Richards, 115 Idaho 628, 769 P.2d 505 (1989)
- Mueller v. J.C. Penney Co., 173 Cal. App. 3d 713, 721, 219 Cal. Rptr. 272 (Cal. Ct. App. 1985)
- McCarthy v. Mobile Cranes, Inc., 199 Cal. App. 2d 500, 18 Cal. Rptr. 750 (1962)
- Simon v. Carroll, 241 Minn. 211, 62 N.W.2d 822, 827 (1954)

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