

SUPREME COURT OF CONNECTICUT

Michael Smith et al. v. Raymond Andrews et al., 289 Conn. 61

959 A.2d 597 (2008) · No. No. 17745 · Decided October 21, 2008

SUMMARY

The Supreme Court of Connecticut reviewed a medical malpractice appeal arising from a jury verdict for the defendants in connection with the plaintiff's spinal cord injury during surgery. The court held that evidence of practices at the hospital was properly admitted because expert testimony linked those practices to the applicable national standard of care, and it upheld admission of the challenged hypothetical question. The court also affirmed the judgment concerning the plaintiff's claims of trial misconduct, while the excerpt indicates that the award of trial costs was affirmed in part and reversed in part.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Schaller, J.; Katz, J.; Palmer, J.; Vertefeuille, J.; Zarella, J.
JURISDICTION	Connecticut
DECIDED	October 21, 2008
DOCKET	No. 17745
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a judgment entered after a jury verdict for the defendants in a medical malpractice action, including an appeal from the denial of the plaintiff's motion to set aside the verdict and for a new trial and from an award of trial costs.
STANDARD OF REVIEW	Evidentiary rulings, including admission of local-practice evidence and hypothetical questions, are reviewed for abuse of discretion; a new trial based on an evidentiary error requires a showing of harmful error. Unpreserved claims are generally not reviewed absent applicable plain-error, constitutional, or supervisory-authority grounds. The taxability of trial costs is reviewed de novo or plenary as a question of law.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Michael Smith, Sharon Smith, Other plaintiffs v. Raymond Andrews, Medical Anesthesiology Associates, P.C.

TOPICS

medical malpractice standard of care expert testimony preservation of error appellate procedure

PRACTICE AREAS

medical malpractice professional negligence evidence appellate procedure costs

QUESTIONS PRESENTED

1. Whether evidence concerning the intubation practices at St. Vincent's Hospital was relevant and admissible to establish compliance with the applicable national standard of care.
2. Whether the trial court abused its discretion by permitting a hypothetical question concerning the plaintiff's condition and the standard of care.
3. Whether alleged improprieties by defense counsel during trial required a new trial despite the plaintiff's failure to preserve and adequately brief the claims.
4. Whether the trial court had statutory authority to tax the defendants' expedited trial transcripts, videoconference deposition expenses, expenses for defendants and employees testifying at trial, and expert preparation, travel, transportation, and hotel expenses as costs.

HOLDINGS

1. Evidence of a particular hospital's practice is relevant and admissible when supported by expert testimony linking that practice to an accepted, applicable national standard of care.
2. A hypothetical question is admissible when its assumptions bear a true and fair relationship to the evidence, are not likely to mislead or confuse the jury, and contain sufficient essential facts to be useful in deciding the case.
3. The court declined to review the plaintiff's unpreserved claims concerning defense counsel's use of a trial schedule and conduct during summation because the claims were abandoned or inadequately briefed and did not warrant plain-error, constitutional, or supervisory-authority review.
4. Trial costs may be taxed against a party only when expressly authorized by statute; the offer-of-compromise statute does not independently authorize costs that are not otherwise authorized by statute.

KEY QUOTATIONS

"We conclude that expert testimony establishing a standard of care at a particular hospital is relevant only if it comports with an accepted, applicable national standard of care." (604)

"Accordingly, absent such an express legislative provision, we find no reason to abrogate this state's long-standing adherence to the American rule that litigants are responsible for the payment of their own litigation expenses." (615)

FACTUAL BACKGROUND

Michael Smith underwent cervical disk surgery after a slip-and-fall injury. Before surgery, Raymond Andrews and nurse anesthetist Alana Rotondi intubated Smith using standard endotracheal intubation by laryngoscopy; Smith then suffered a severe spinal-cord injury and became paraplegic. The malpractice dispute centered on whether Smith had an "unstable" spine, which allegedly required fiber-optic intubation, or merely spinal "instability," for which standard endotracheal intubation could satisfy the national standard of care. Defense experts and treating physicians testified that the two terms described different conditions and that Smith's spine was not unstable.

PROCEDURAL HISTORY

The jury found that Raymond Andrews and Medical Anesthesiology Associates did not breach the applicable standard of care. The trial court denied the plaintiff's postverdict motion to set aside the verdict and for a new trial and awarded the defendants various trial costs. The plaintiff appealed to the Appellate Court, and the Supreme Court of Connecticut transferred the appeal to itself.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Render judgment as on file except as modified to eliminate the award of the challenged costs, including expedited trial transcript costs, videoconference deposition attendance expenses, fees for defendants and employees testifying at trial, and experts' nontestimonial preparation, travel, transportation, and hotel expenses. The judgment is affirmed in all other respects.

CASES CITED

- Jacobs v. General Electric Co., 275 Conn. 395, 406, 880 A.2d 151 (2005)
- Desrosiers v. Henne, 283 Conn. 361, 366, 926 A.2d 1024 (2007)
- Logan v. Greenwich Hospital Ass'n, 191 Conn. 282, 301-02, 465 A.2d 294 (1983)
- Grayson v. Wofsey, Rosen, Kweskin & Kuriansky, 231 Conn. 168, 188-89, 646 A.2d 195 (1994)
- Baxter v. Cardiology Associates of New Haven, 46 Conn. App. 377, 390-91, 699 A.2d 271, cert. denied, 243 Conn. 933, 702 A.2d 640 (1997)
- Koontz v. Ferber, 870 S.W.2d 885, 892 (Mo. App. 1993)
- State v. Silva, 285 Conn. 447, 461, 939 A.2d 581 (2008)
- Johnson v. Healy, 183 Conn. 514, 516-17, 440 A.2d 765 (1981)
- Smith v. Smith, 183 Conn. 121, 123, 438 A.2d 842 (1981)
- Pisel v. Stamford Hospital, 180 Conn. 314, 344, 430 A.2d 1 (1980)
- National Folding Box Co. v. New Haven, 146 Conn. 578, 586, 153 A.2d 420 (1959)
- Mather v. Griffin Hospital, 207 Conn. 125, 145, 540 A.2d 666 (1988)

- *Shelnitz v. Greenberg*, 200 Conn. 58, 77, 509 A.2d 1023 (1986)
- *Tomer v. American Home Products Corp.*, 170 Conn. 681, 687, 368 A.2d 35 (1976)
- *Viera v. Cohen*, 283 Conn. 412, 444, 927 A.2d 843 (2007)
- *State v. Stenner*, 281 Conn. 742, 755, 917 A.2d 28, cert. denied, 128 S. Ct. 290 (2007)
- *Skrzypiec v. Noonan*, 228 Conn. 1, 22 n. 13, 633 A.2d 716 (1993)
- *State v. Lawrence*, 282 Conn. 141, 183, 920 A.2d 236 (2007)
- *State v. Golding*, 213 Conn. 233, 239-40, 567 A.2d 823 (1989)
- *State v. Ramos*, 261 Conn. 156, 172 n. 16, 801 A.2d 788 (2002)
- *State v. Anderson*, 255 Conn. 425, 439, 773 A.2d 287 (2001)
- *Connecticut Light & Power Co. v. Dept. of Public Utility Control*, 266 Conn. 108, 120, 830 A.2d 1121 (2003)
- *Traystman, Coric & Keramidas, P.C. v. Daigle*, 282 Conn. 418, 428-29, 433-34, 922 A.2d 1056 (2007)
- *Verrastro v. Sivertsen*, 188 Conn. 213, 217, 448 A.2d 1344 (1982)
- *M. DeMatteo Construction Co. v. New London*, 236 Conn. 710, 715-17, 674 A.2d 845 (1996)
- *Arnone v. Enfield*, 79 Conn. App. 501, 531-34, 831 A.2d 260, cert. denied, 266 Conn. 932, 837 A.2d 804 (2003)
- *ACMAT Corp. v. Greater New York Mutual Ins. Co.*, 282 Conn. 576, 582, 923 A.2d 697 (2007)
- *Levesque v. Bristol Hospital, Inc.*, 286 Conn. 234, 259, 262-63, 943 A.2d 430 (2008)
- *Ludington v. Sayers*, 64 Conn. App. 768, 780-81, 778 A.2d 262 (2001)