

## SUPREME COURT OF RHODE ISLAND

### Cathleen E. Curreri v. Robert B. Saint et al.

Curreri v. Saint, No. 2015-11-Appeal (WC12-613) (R.I. Dec. 8, 2015) · No. No. 2015-11-Appeal (WC12-613) ·  
Decided December 8, 2015

#### SUMMARY

The Rhode Island Supreme Court affirmed summary judgment for Robert and Linda Saint in a negligence action brought by Cathleen Curreri concerning mold-related damage to rented property and personal belongings. The Court held that the District Court settlement stipulation did not establish causation and was properly excluded, after which Curreri lacked evidence supporting the causation element of negligence.

#### CASE DETAILS

|                       |                                                                                                                                                                                  |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Rhode Island                                                                                                                                                    |
| WRITING FOR THE COURT | Associate Justice Francis X. Flaherty; Chief Justice Suttell; Justice Goldberg; Justice Flaherty; Justice Robinson; Justice Indeglia                                             |
| JURISDICTION          | Rhode Island                                                                                                                                                                     |
| DECIDED               | December 8, 2015                                                                                                                                                                 |
| DOCKET                | No. 2015-11-Appeal (WC12-613)                                                                                                                                                    |
| DISPOSITION           | affirmed                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Plaintiff appealed from the Superior Court's grant of defendants' motion for summary judgment and exclusion of a District Court settlement stipulation under a motion in limine. |
| STANDARD OF REVIEW    | Summary judgment is reviewed de novo. The admission of evidence is reviewed for abuse of discretion.                                                                             |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                        |
| PARTIES               | Cathleen E. Curreri v. Robert B. Saint, Linda Saint                                                                                                                              |

#### TOPICS

[summary judgment](#) [judicial notice](#) [evidence](#) [negligence](#) [appellate procedure](#)

#### PRACTICE AREAS

[civil procedure](#) [evidence](#) [negligence](#) [appellate procedure](#)

## QUESTIONS PRESENTED

1. Whether the Superior Court properly excluded the District Court settlement stipulation from evidence in the negligence action.
2. Whether the Superior Court properly granted summary judgment for defendants when Curreri had no other evidence establishing causation.

## HOLDINGS

1. The District Court stipulation did not establish that defendants caused the mold or the damage to Curreri's property, and its exclusion did not warrant reversal of the judgment.
2. Summary judgment was proper because Curreri could not establish the causation element of her negligence claim without the excluded stipulation or other competent evidence.

## KEY QUOTATIONS

*"It is a bedrock principle of tort law that "[t]o maintain a cause of action for negligence, the plaintiff must establish four elements: (1) a legally cognizable duty owed by [the] defendant to [the] plaintiff; (2) breach of that duty; (3) that the conduct proximately caused the injury; and (4) actual loss or damage." (at 5)*

*"That is so because there is nothing in the stipulation that establishes that defendants caused mold to accumulate on plaintiff's personal property." (at 4)*

## FACTUAL BACKGROUND

Robert and Linda Saint owned a house rented by Cathleen Curreri. Curreri claimed that mold rendered the house uninhabitable and damaged her personal property, while she was also in arrears on rent. After the Saints filed an eviction action, the parties entered a stipulation under which the Saints would waive past-due rent and attempt to remediate property identified as damaged by mold. Curreri later sued for negligence, but conceded that she had no evidence other than the stipulation to establish that defendants caused the mold or resulting damage.

## PROCEDURAL HISTORY

The defendants filed a District Court eviction action against Curreri, which the parties resolved by a signed stipulation concerning possession, waiver of past-due rent, and remediation of property allegedly damaged by mold. Curreri then filed a negligence action in Superior Court alleging that defendants failed to maintain the rental property, inspect it, or warn her about mold. The Superior Court excluded the stipulation and granted summary judgment for defendants because Curreri conceded she had no other evidence of causation. The Rhode Island Supreme Court affirmed.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

The record may be remanded to the Superior Court.

## CASES CITED

- Sisto v. American Condominium Association, Inc., 68 A.3d 603, 611 (R.I. 2013)
- Zanni v. Voccola, 13 A.3d 1068, 1070-71 (R.I. 2011)
- Classic Entertainment & Sports, Inc. v. Pemberton, 988 A.2d 847, 849 (R.I. 2010)
- Gushlaw v. Milner, 42 A.3d 1245, 1251 (R.I. 2012)
- McGarry v. Pielech, 108 A.3d 998, 1005 (R.I. 2015)
- In re Michael A., 552 A.2d 368, 369-70 (R.I. 1989)
- Votolato v. Merandi, 747 A.2d 455, 461 (R.I. 2000)
- Medeiros v. Sitrin, 984 A.2d 620, 625 (R.I. 2009)
- Mills v. State Sales, Inc., 824 A.2d 461, 473 (R.I. 2003)

## OPINION

### PER CURIAM.

Supreme Court No. 2015-11-Appeal. (WC12-613) Cathleen E. Curreri: v.: Robert B. Saint et al.: NOTICE: This opinion is subject to formal revision before publication in the Rhode Island Reporter. Readers are requested to notify the Opinion Analyst, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, at Tel. 222-3258 of any typographical or other formal errors in order that corrections may be made before the opinion is published.

Supreme Court No. 2015-11-Appeal. (WC12-613) Cathleen E. Curreri: v.: Robert B. Saint et al.: Present: Suttell, C.J., Goldberg, Flaherty, Robinson, and Indeglia, JJ. OPINION Justice Flaherty, for the Court. The plaintiff, Cathleen Curreri, appeals from an entry of summary judgment in favor of the defendants, Robert and Linda Saint.

The plaintiff contends that the hearing justice erred when she granted the defendants' motion in limine to exclude a settlement stipulation that had entered in a prior District Court trespass and eviction action between the parties.

The plaintiff argues that the hearing justice should have taken judicial notice of the stipulation and that summary judgment was not appropriate in this case. The matter came before this Court on November 3, 2015, pursuant to an order directing the parties to appear and show cause why the issues raised by this appeal should not summarily be decided.

After considering counsels' oral and written arguments, and after a thorough review of the record, we are of the opinion that cause has not been shown and that this case can be decided without further briefing or argument.

For the reasons given below, we affirm the judgment of the Superior Court. -1- I Facts and Travel There is no serious dispute about the facts of this case. The defendants Robert and Linda Saint own a house that Cathleen Curreri rented from them. According to Curreri, the Saints allowed

mold to grow in the house, rendering it uninhabitable and damaging her furniture, clothing, and other personal property.

Curreri was also in arrears with her rent. As a result, the Saints filed an eviction action against her in the District Court. Eventually, the parties settled the eviction action by filing a stipulation that was signed by all parties and the District Court judge.

The stipulation provided that: “The parties agree that[:] “1) Landlords shall have possession provided that they A) waive any right to any balance that may be due, B) hire SERVPRO of Westerly to professionally remove inventory, remediate tenant’s property – in coordination with her, and to indicate which property cannot be remediated that must be replaced. “2) Tenant shall provide a list with any receipts for damages resulting from the mold under the landlord’s insurance. “3) That this matter shall be dismissed with prejudice with regard to past-due rent.” However, Curreri was not satisfied that the Saints had kept their end of the bargain and claimed that they had simply put her mold-laden personal property in a storage container outside the home.

For that reason, she filed a negligence action in Superior Court, alleging that the Saints failed to maintain the house free from toxic mold and fungus. She also alleged that the Saints failed to inspect the property and failed to warn her about the mold.

The defendants responded by filing (1) a motion in limine to prevent Curreri from entering the parties’ District Court stipulation into evidence to prove causation in this negligence -2- action and (2) a motion for summary judgment, arguing that Curreri could not prove that defendants caused the mold that ruined her personal property. A hearing on the motions was held before a justice of the Superior Court.

At the hearing, plaintiff’s counsel acknowledged that he would not be presenting a causation expert in the case. Instead, plaintiff’s counsel argued that the District Court stipulation was a final judgment about which the Superior Court should take judicial notice under Rule 201 of the Rhode Island Rules of Evidence. Counsel posited that the stipulation proved that the Saints had caused the damage to plaintiff’s property because the Saints had “admitted” in the stipulation that there was mold in the home and that defendants were to repair the property that had been damaged by the mold.

The defendants countered by arguing that the stipulation in no way proved that they admitted that they caused the mold in the house and further that the stipulation was also inadmissible because it was under the ambit of Rule 408 of the Rhode Island Rules of Evidence. 1 After hearing from both sides, the hearing justice issued a bench decision. She granted defendants’ motion in limine and barred the admission of the District Court stipulation because she found that the stipulation in the District Court was evidence of a compromised claim and therefore inadmissible under Rule 408.

Having done so, the trial justice then ruled that because plaintiff could offer no other evidence of causation, summary judgment was appropriate as a matter of law. The plaintiff timely appealed to this Court. On appeal, plaintiff argues that the hearing justice erred because she was required to take judicial notice of the District Court 1 That rule prohibits the admission of settlement offers and agreements.

Under Rule 408 of the Rhode Island Rules of Evidence, “[e]vidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.” -3- stipulation under Rule 201 and that the hearing justice further erred when she granted defendants’ motion for summary judgment.

II Standard of Review This Court “review[s] a hearing justice’s grant of summary judgment de novo.” *Sisto v. American Condominium Association, Inc.*, 68 A.3d 603, 611 (R.I. 2013). This Court “will affirm the granting of ‘a party’s motion for summary judgment if there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.’” *Zanni v. Voccola*, 13 A.3d 1068, 1070-71 (R.I.

2011) (quoting *Classic Entertainment & Sports, Inc. v. Pemberton*, 988 A.2d 847, 849 (R.I. 2010)). A party opposing summary judgment has the burden to establish by competent evidence that material facts are in dispute. *Gushlaw v. Milner*, 42 A.3d 1245, 1251 (R.I. 2012).

The admission of evidence is committed to the sound discretion of the trial justice. *McGarry v. Pielech*, 108 A.3d 998, 1005 (R.I. 2015). A Exclusion of the District Court Stipulation We start by noting that we recognize that a court may take judicial notice of court records. See *In re Michael A.*, 552 A.2d 368, 369-70 (R.I. 1989).

However, “[n]ot every document that may have been placed in a court file at some time during the course of proceedings may properly be regarded as part of the record.” *Id.* at 370. In examining Rule 201 of the Rhode Island Rules of Evidence on taking judicial notice, we have said that judicial notice should “only apply to those aspects of a court record that cannot be reasonably disputed.” *In re Michael A.*, 552 A.2d at 370. “These would include judgments previously entered by the court that have the effect of res adjudicata \* \* \* pleadings or answers to interrogatories by a party, -4- which pleading or answer might constitute an admission (whether or not superseded by a later pleading or answer) \* \* \*.” *Id.* Under Rule 201(b), “[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Although a court may take judicial notice of court records, documents offered on that basis may be excluded by another rule of evidence.

See *Votolato v. Merandi*, 747 A.2d 455, 461 (R.I. 2000) (noting that although evidence of a settlement agreement is both probative and material, it is generally not admissible to prove liability). The value of Rule 408 lies in the fact that it “facilitates an atmosphere of compromise among the parties and promotes alternatives to litigation.” *Votolato*, 747 A.2d at 461.

However, we need not delve into a construction of the interplay between the rules of evidence to decide this case. That is so because there is nothing in the stipulation that establishes that defendants caused mold to accumulate on plaintiff’s personal property. Indeed, the stipulation merely establishes that the parties came to an agreement in a disputed eviction action and in exchange for plaintiff leaving the premises, defendants would waive any right they may have had to past due-rent and they would attempt to remediate any property that plaintiff identified as destroyed by mold.

**B Granting of Summary Judgment** It is clear to us that once the trial justice properly excluded the stipulation dismissing the eviction action from any consideration in the negligence action, the case was ripe for summary disposition. It is a bedrock principle of tort law that “[t]o maintain a cause of action for -5- negligence, the plaintiff must establish four elements: (1) a legally cognizable duty owed by [the] defendant to [the] plaintiff; (2) breach of that duty; (3) that the conduct proximately caused the injury; and (4) actual loss or damage.” *Medeiros v. Sitrin*, 984 A.2d 620, 625 (R.I.

2009). For the plaintiff to succeed on her claims, she was required to prove that the defendants’ actions or inactions caused the mold in the home and on her property. Because the plaintiff conceded that there was no other evidence on the element of causation, the hearing justice correctly granted the defendants’ motion for summary judgment. See *Mills v. State Sales, Inc.*, 824 A.2d 461, 473 (R.I.

2003). **Conclusion** For the reasons set forth above, we affirm the grant of summary judgment. The record may be remanded to the Superior Court. -6- RHODE ISLAND SUPREME COURT CLERK’S OFFICE Clerk’s Office Order/Opinion Cover Sheet TITLE OF CASE: Cathleen E. Curreri v. Robert B. Saint et al. CASE NO: No. 2015-11-Appeal. (WC12-613) COURT: Supreme Court DATE OPINION FILED: December 8, 2015 JUSTICES: Suttell, C.J., Goldberg, Flaherty, Robinson, and Indeglia, JJ. WRITTEN BY: Associate Justice Francis X. Flaherty SOURCE OF APPEAL: Washington County Superior Court JUDGE FROM LOWER COURT: Associate Justice Kristin E. Rodgers ATTORNEYS ON APPEAL: For Plaintiff: Gregory P. Sorbello, Esq.

For Defendant: Elizabeth A. Bourke, Esq.