

SUPREME COURT OF NEW JERSEY

McKenney v. Jersey City Medical Center

167 N.J. 359 (2001) · Decided May 16, 2001

SUMMARY

The Supreme Court of New Jersey held that defense counsel has a continuing obligation to disclose to opposing counsel and the court a material anticipated change in a party's or material witness's deposition testimony. The court concluded that the undisclosed changes in testimony substantially prejudiced the plaintiffs in this medical malpractice and wrongful-birth action. It therefore reversed and remanded for a new trial, holding that the trial court abused its discretion by denying a mistrial.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Coleman, J.; Chief Justice Poritz; Justice Stein; Justice Coleman; Justice Long; Justice Verniero; Justice LaVecchia; Justice Zazzali
JURISDICTION	New Jersey
DECIDED	May 16, 2001
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from a judgment entered after a medical-malpractice jury trial and from denial of their motion for judgment notwithstanding the verdict or, alternatively, a new trial. The Appellate Division affirmed. The Supreme Court of New Jersey granted certification limited to defense counsel's duty to disclose anticipated material changes in deposition testimony and plaintiffs' entitlement to a mistrial.
STANDARD OF REVIEW	The Supreme Court reviewed the denial of a mistrial for abuse of discretion and held that, under the circumstances, the failure to grant a mistrial constituted an abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Jarrell McKenney, an infant by his guardians ad litem, Edward J. McKenney and Jannie McKenney, Edward J. McKenney and Jannie McKenney, individually v. Jersey City Medical Center, Jersey City Family Health Center, Alexander N. Prezioso, M.D., Long-Gue Hu, M.D., Euk Kim, M.D., Director of the Ob/Gyn Clinic of the Family Health Center, Sipra De

TOPICS

discovery dispute

civil procedure

medical malpractice

professional negligence

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PRACTICE AREAS

civil procedure

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QUESTIONS PRESENTED

1. Whether defense counsel has a continuing obligation to disclose to opposing counsel and the trial court that a party or material witness will materially depart from prior deposition testimony.
2. Whether plaintiffs were entitled to a mistrial and a new trial when materially changed testimony was disclosed only after plaintiffs had rested.

HOLDINGS

1. When an attorney knows that a client or material witness intends to deviate materially from deposition testimony, the attorney has a continuing obligation to seasonably disclose that anticipated change to the adversary and the trial court.
2. The trial court abused its discretion by denying a mistrial because the undisclosed, materially changed testimony was prejudicial, was introduced after plaintiffs had rested, and could have influenced the jury's determination of proximate cause.

KEY QUOTATIONS

“An attorney is under a duty seasonably to apprise his adversary where he obtains information upon the basis of which he knows that his client's or witness's prior deposition was incorrect in a material respect when made, or he knows that the deposition, though correct when made, is no longer true in a material respect.”
(1160)

“We agree completely with the Appellate Division's analysis and conclusion that defense counsel had a continuing obligation to disclose to the trial court and counsel for plaintiffs any anticipated material changes in a defendant's or a material witness's deposition testimony.” (1161)

“The trial in this case was inconsistent with the spirit of our discovery rules, which are “designed to eliminate, as far as possible, concealment and surprise in the trial of lawsuits to the end that judgments therein be rested upon the real merits of the causes and not upon the skill and maneuvering of counsel.””
(1163)

FACTUAL BACKGROUND

Plaintiffs alleged that health-care providers failed to detect fetal spina bifida during prenatal care and failed to provide appropriate care during delivery, depriving Jannie McKenney of the opportunity to make an informed decision about terminating the pregnancy. At trial, former defendant Sipra De and defendant Long-Gue Hu gave testimony materially different from their deposition testimony concerning the sonograms, the notation recommending a follow-up study, and when Hu reviewed the August 13, 1990 sonograms. Defense counsel knew or should have known before trial that these witnesses would materially change their testimony, but did not disclose the anticipated changes before the witnesses testified. The surprise testimony was presented after plaintiffs had rested and bore directly on whether any negligence occurred within the narrow period in which an abortion was legally available.

PROCEDURAL HISTORY

The trial court granted summary judgment to Sipra De before trial. The jury found Dr. Hu negligent but found that his negligence did not deprive plaintiffs of the opportunity to terminate the pregnancy, and found no negligence by Drs. Kim and Prezioso. The trial court denied post-trial relief, and the Appellate Division affirmed. The Supreme Court reversed and remanded for a new trial, allowing plaintiffs to move to vacate the judgment dismissing De.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment of the Appellate Division was reversed and the matter was remanded for a new trial. Plaintiffs were granted leave to file a motion to vacate the judgment dismissing the case against Sipra De.

CASES CITED

- McKenney v. Jersey City Med. Ctr., 330 N.J.Super. 568, 578, 750 A.2d 189 (App.Div.2000)
- Bahrle v. Exxon Corp., 279 N.J.Super. 5, 22, 652 A.2d 178 (App.Div.1995), aff'd on other grounds, 145 N.J. 144, 678 A.2d 225 (1996)
- Waters v. Island Transp. Corp., 229 N.J.Super. 541, 548, 552 A.2d 205 (App.Div.1989)
- Fanfarillo v. East End Motor Co., 172 N.J.Super. 309, 312, 411 A.2d 1167 (App.Div.1980)
- Maurio v. Mereck Construction Co., Inc., 162 N.J.Super. 566, 569, 394 A.2d 110 (App.Div.1978)
- Hamilton v. Letellier Construction Co., 156 N.J.Super. 336, 338, 383 A.2d 1168 (App.Div.1978)
- Clark v. Fog Contracting Co., 125 N.J.Super. 159, 161-62, 309 A.2d 617 (App.Div.), certif. denied, 64 N.J. 319, 315 A.2d 408 (1973)
- Saia v. Bellizio, 103 N.J.Super. 465, 468, 247 A.2d 683 (App.Div.), aff'd, 53 N.J. 24, 247 A.2d 865 (1968)
- Caparella v. Bennett, 85 N.J.Super. 567, 571, 205 A.2d 466 (App.Div.1964)
- Lang v. Morgan's Home Equipment Corp., 6 N.J. 333, 338, 78 A.2d 705 (1951)
- Plaza 12 Associates v. Carteret Borough, 280 N.J.Super. 471, 477, 655 A.2d 961 (App.Div.1995)

- Bunch v. United States, 680 F.2d 1271, 1281 (9th Cir.1982)
- United Jersey Bank v. Wolosoff, 196 N.J.Super. 553, 567, 483 A.2d 821 (App.Div.1984)
- Kinsella v. Kinsella, 150 N.J. 276, 300-03, 696 A.2d 556 (1997)
- Weingarten v. Weingarten, 234 N.J.Super. 318, 330, 560 A.2d 1243 (App.Div.1989)
- Arena v. Saphier, 201 N.J.Super. 79, 88-89, 492 A.2d 1020 (App.Div.1985)
- Valentin v. Bootes, 325 N.J.Super. 590, 601, 740 A.2d 172 (Law Div.1998)
- In re Kozlov, 79 N.J. 232, 243-44, 398 A.2d 882 (1979)
- Kernan v. One Washington Park Urban Renewal Assocs., 154 N.J. 437, 461-67, 713 A.2d 411 (1998)
- United States v. Proctor & Gamble Co., 356 U.S. 677, 683, 78 S.Ct. 983, 986-87, 2 L.Ed.2d 1077 (1958)
- Canesi v. Wilson, 158 N.J. 490, 501, 730 A.2d 805 (1999)
- Schroeder v. Perkel, 87 N.J. 53, 66, 432 A.2d 834 (1981)
- Berman v. Allan, 80 N.J. 421, 404 A.2d 8 (1979)
- Procanik v. Cillo, 97 N.J. 339, 478 A.2d 755 (1984)
- Tice v. Cramer, 133 N.J. 347, 355, 627 A.2d 1090 (1993)
- Buckley v. Estate of Pirolo, 101 N.J. 68, 79, 500 A.2d 703 (1985)
- State v. Farrell, 61 N.J. 99, 106, 293 A.2d 176 (1972)
- Wymbs v. Township of Wayne, 163 N.J. 523, 543, 750 A.2d 751 (2000)
- Evtush v. Hudson Bus Transp. Co., 7 N.J. 167, 173, 81 A.2d 6 (1951)