

SUPREME COURT OF COLORADO

Warden v. Exempla, Inc.

291 P.3d 30 (Colo. 2012) · Decided December 20, 2012

SUMMARY

The Colorado Supreme Court reviewed a trial court order striking rebuttal expert testimony in a medical malpractice action. It held that Dr. Shott's testimony properly rebutted the defendants' causation theory and that the late disclosure of life-expectancy opinions by Drs. Cokely and Wilson was harmless under the applicable discovery-sanctions rule. The court vacated the order, made the rule absolute, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Rice; Justice Eid; Justice Boatright
JURISDICTION	Colorado
DECIDED	December 20, 2012
DISPOSITION	vacated
PROCEDURAL POSTURE	The Wardens petitioned the Colorado Supreme Court under C.A.R. 21 for original review of a district court order affirming a magistrate's order striking rebuttal expert testimony and portions of testimony from previously disclosed experts.
STANDARD OF REVIEW	The court reviews discovery sanctions imposed under Rule 37 for abuse of discretion. A trial court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Noah Warden, Stacy Warden, Chris Warden v. Exempla, Inc., Exempla Good Samaritan Medical Center, LLC, Camille S. Calderwood, M.D., Jennifer Dillon, RN, Jessica Jenks, RN

TOPICS

discovery dispute

sanctions

expert testimony

writ of certiorari

medical malpractice

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Dr. Shott's testimony challenging the NEACP report and the defendants' causation theory was proper rebuttal expert testimony under C.R.C.P. 26(a)(2)(C)(III).
2. Whether the trial court abused its discretion by excluding the late-disclosed life-expectancy testimony of previously disclosed experts under C.R.C.P. 37(c)(1) when the late disclosure was harmless.
3. Whether the Colorado Supreme Court should exercise original jurisdiction under C.A.R. 21 to review interlocutory discovery sanctions that significantly hindered the Wardens' ability to prove their negligence claim.

HOLDINGS

1. Dr. Shott's testimony was proper rebuttal disclosure because it specifically refuted a central causation theory advanced by the defendants' experts and did not introduce an entirely new theory of the case.
2. The trial court abused its discretion by excluding the life-expectancy testimony of Dr. Cokely and Dr. Wilson because the late disclosure was harmless to the defendants.
3. The Colorado Supreme Court properly exercised original jurisdiction because the erroneous discovery sanctions significantly hindered the Wardens' ability to litigate the merits of their negligence claim and ordinary appellate review would be inadequate.

KEY QUOTATIONS

"We hold that Dr. Shott's testimony was a proper rebuttal disclosure because it rebutted a specific, important portion of Exempla's expert disclosures." (291 P.3d at 34)

"While we are sympathetic to the [trial] court's concerns that no new theories be introduced at such a late stage of the discovery process, our review of the expert reports [reveals, that the investors' rebuttal report] did not espouse a new theory." (291 P.3d at 35)

"Rule 37(c) provides for the exclusion of non-disclosed evidence unless the failure to disclose is either substantially justified or harmless to the opposing party." (291 P.3d at 37)

FACTUAL BACKGROUND

The Wardens brought a medical-malpractice action alleging that negligent fetal monitoring and delayed cesarean delivery caused Noah Warden to suffer severe hypoxic-ischemic encephalopathy and permanent disabilities. The defendants' experts attributed Noah's injuries to abnormalities occurring days or weeks before birth and relied substantially on a report establishing criteria for determining whether the injury resulted from intrapartum events. The Wardens disclosed Dr. Susan Shott as a rebuttal expert to challenge the validity of those criteria and expanded the opinions of previously disclosed experts regarding Noah's life expectancy.

PROCEDURAL HISTORY

The magistrate struck Dr. Susan Shott as a rebuttal expert and struck the expanded life-expectancy testimony of Dr. Harriet T. Cokely and Dr. Pamela E. Wilson under the expert-disclosure and sanctions rules. The Boulder County District Court affirmed the magistrate's order. The Colorado Supreme Court exercised original jurisdiction, vacated the order, made the rule absolute, and remanded for further proceedings.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The trial court must conduct further proceedings consistent with the opinion and may not strike the testimony at issue on the grounds addressed by the Supreme Court.

CASES CITED

- People v. Vlassis, 247 P.3d 196 (Colo. 2011)
- In re Marriage of Wiggins, 2012 CO 44, 279 P.3d 1 (Colo. 2012)
- Todd v. Bear Valley Village Apartments, 980 P.2d 973 (Colo. 1999)
- Berry v. Keltner, 208 P.3d 247 (Colo. 2009)
- Pinkstaff v. Black & Decker (U.S.) Inc., 211 P.3d 698 (Colo. 2009)
- Trattler v. Citron, 182 P.3d 674 (Colo. 2008)
- Leaffer v. Zarlengo, 44 P.3d 1072 (Colo. 2002)
- Kerwin v. District Court, 649 P.2d 1086 (Colo. 1982)
- Williams v. District Court, 866 P.2d 908 (Colo. 1993)
- Garrigan v. Bowen, 243 P.3d 231 (Colo. 2010)
- 103 Investors I, L.P. v. Square D Co., 372 F.3d 1213 (10th Cir. 2004)
- Golden Nugget, Inc. v. Chesapeake Bay Fishing Co., 93 Fed. App'x 530 (4th Cir. 2004)
- Walter International Products, Inc. v. Salinas, 650 F.3d 1402 (11th Cir. 2011)
- Sierra Club, Lone Star Chapter v. Cedar Point Oil Co., 73 F.3d 546 (5th Cir. 1996)
- People v. Welsh, 80 P.3d 296 (Colo. 2003)
- Taylor v. Mazzola, 150 Colo. 558, 375 P.2d 96 (1962)
- Mayer v. District Court, 198 Colo. 199, 597 P.2d 577 (1979)
- City of Aurora ex rel. Utility Enterprises v. Colorado State Engineer, 105 P.3d 595 (Colo. 2005)
- Heller-Mark & Co. v. Kassler & Co., 37 Colo. App. 267, 544 P.2d 995 (1976)