

INDIANA SUPREME COURT

Levetta Tunstall v. Dawn Manning

124 N.E.3d 1193 (Ind. 2019) · No. 19S-CT-18 · Decided June 26, 2019

SUMMARY

The Indiana Supreme Court held that evidence of an expert witness’s professional licensure status and the reasons for professional discipline may be admissible to impeach the expert’s credibility, subject to applicable evidentiary rules. The court found that excluding evidence of the medical expert’s prior license probation was an abuse of discretion, but deemed the error harmless and affirmed the \$1.3 million jury verdict for the plaintiff.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Rush, Chief Justice; David, Justice; Massa, Justice; Goff, Justice; Slaughter, Justice
JURISDICTION	Indiana
DECIDED	June 26, 2019
DOCKET	19S-CT-18
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant Levetta Tunstall appealed a jury verdict awarding plaintiff Dawn Manning \$1.3 million in damages. After the Indiana Court of Appeals affirmed, Tunstall petitioned for transfer, which the Indiana Supreme Court granted.
STANDARD OF REVIEW	Questions concerning the general admissibility of evidence for impeachment are reviewed de novo; other evidentiary rulings are reviewed for abuse of discretion. Exclusion of evidence is harmless when its probable impact on the jury, in light of all the evidence, is sufficiently minor not to affect the defendant's substantial rights.
PRECEDENTIAL VALUE	published precedential Indiana Supreme Court opinion
PARTIES	Levetta Tunstall v. Dawn Manning

TOPICS

- expert testimony
- impeachment
- evidence
- harmless error
- appellate procedure

PRACTICE AREAS

evidence

personal injury

appellate procedure

QUESTIONS PRESENTED

1. Whether evidence that a testifying expert's professional license had previously been placed on probation is admissible to impeach the expert's credibility.
2. Whether evidence of the reasons underlying an expert's prior professional discipline is admissible to impeach the expert under Indiana Evidence Rules 608 and 609.
3. Whether the exclusion of evidence concerning the expert's prior license probation constituted prejudicial, reversible error.

HOLDINGS

1. Evidence of an expert witness's professional licensure status, including a prior limitation or probation of the license, may be admissible to impeach the expert's credibility when relevant and when its probative value is not substantially outweighed by the dangers identified in Indiana Evidence Rule 403.
2. The reasons underlying an expert's professional discipline may be relevant to credibility, but their admissibility remains subject to statutory restrictions and specific evidentiary rules. Here, the reasons for Paschall's discipline were properly excluded under Indiana Evidence Rules 608(b) and 609.
3. The trial court's erroneous exclusion of evidence that Paschall's medical license had previously been on probation was harmless and did not require reversal.

KEY QUOTATIONS

“Both types of professional disciplinary history—limitations on professional licenses and the reasons underlying professional discipline—may be relevant to an expert's credibility.” (1198)

“Evidence of the licensure probation was admissible to impeach the doctor because it was relevant to his credibility and its probative value outweighed any prejudicial effect.” (1196)

“But because we find that error was harmless, we affirm the jury's verdict.” (1201)

FACTUAL BACKGROUND

Dawn Manning was rear-ended by Levetta Tunstall and thereafter reported continuing neck pain and back spasms. After other imaging was normal, Dr. Stephen Paschall examined Manning nearly a year after the accident, diagnosed a permanent spinal injury, assigned a 28% whole-body impairment, and attributed the injury to the collision. Paschall was Manning's only medical expert, while Tunstall presented two experts who disagreed with his assessment. Paschall's medical license had previously been placed on probation, and the trial court excluded evidence of that fact and of the reasons for his professional discipline.

PROCEDURAL HISTORY

Manning sued Tunstall for injuries arising from a rear-end automobile collision. The trial court excluded evidence concerning the medical expert's prior license probation and the reasons for his professional discipline;

the jury found for Manning and awarded \$1.3 million. The Court of Appeals affirmed in a split decision. The Indiana Supreme Court granted transfer, vacated the Court of Appeals opinion, and affirmed the judgment after finding one evidentiary error but holding it harmless.

DISPOSITION

affirmed

CASES CITED

- Tunstall v. Manning, 107 N.E.3d 1093, 1098-99, 1102 (Ind. Ct. App. 2018)
- Fairbanks v. State, 119 N.E.3d 564, 567 (Ind. 2019)
- Fridono v. Chuman, 747 N.E.2d 610, 617-20 (Ind. Ct. App. 2001)
- Linton v. Davis, 887 N.E.2d 960, 969 (Ind. Ct. App. 2008)
- Bennett v. Richmond, 960 N.E.2d 782, 786-87 (Ind. 2012)
- Sears Roebuck & Co. v. Manuilov, 742 N.E.2d 453, 461 (Ind. 2001)
- Sims v. Pappas, 73 N.E.3d 700, 707 (Ind. 2017)
- Stonebraker v. State, 505 N.E.2d 55, 59 (Ind. 1987)
- Turnbow v. State, 637 N.E.2d 1329, 1332 (Ind. Ct. App. 1994)
- Zanders v. State, 118 N.E.3d 736, 754 (Ind. 2019)
- Bonner v. State, 650 N.E.2d 1139, 1141-42 (Ind. 1995)
- Murphy v. State, 265 Ind. 116, 128, 352 N.E.2d 479, 486 (1976)