

SUPREME COURT OF PENNSYLVANIA

Freed v. Geisinger Medical Center

607 Pa. 225 (2010) (Pa. 2010) · No. No. 77 MAP 2007 · Decided September 29, 2010

SUMMARY

The Supreme Court of Pennsylvania, on reargument, reaffirmed its prior decision overruling *Flanagan v. Labe*. The court held that an otherwise qualified nurse is not categorically barred from offering expert testimony concerning medical causation under the Professional Nursing Law, and that qualification is governed by applicable evidentiary standards and, where applicable, the MCARE Act. The court rejected the appellants’ arguments concerning waiver, sua sponte reconsideration of precedent, and retroactivity, and remanded the matter consistent with its original opinion.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Todd; Chief Justice Castille; Justice Saylor; Justice Eakin; Justice Baer; Former Justice Greenspan
JURISDICTION	Pennsylvania
DECIDED	September 29, 2010
DOCKET	No. 77 MAP 2007
DISPOSITION	remanded
PROCEDURAL POSTURE	On reargument, the Supreme Court of Pennsylvania reconsidered its prior decision affirming the Superior Court's reversal of a compulsory nonsuit entered for defendants in a medical-negligence action. The Court reaffirmed its prior decision overruling <i>Flanagan v. Labe</i> and remanded for assessment of the plaintiff's nurse expert's competency.
STANDARD OF REVIEW	The Court reviewed the legal question concerning the admissibility and qualification of expert testimony de novo and considered the propriety of sua sponte reconsidering precedent as a threshold jurisprudential issue.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Geisinger Medical Center, HealthSouth Corporation, formerly known as HealthSouth Rehabilitation Corporation, HealthSouth of Nittany Valley, Inc., t/d/b/a HealthSouth Nittany Valley Rehabilitation Hospital v. Rodger A. Freed

TOPICS

expert testimony

medical malpractice

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Supreme Court of Pennsylvania may sua sponte reconsider and overrule precedent when the precedent is antecedent to and implicated by an issue properly before the Court.
2. Whether traditional waiver principles barred consideration of the continued viability of *Flanagan v. Labe*.
3. Whether an otherwise competent and properly qualified nurse may testify regarding medical causation in a negligence or medical-liability action.
4. Whether the Court's rule permitting such testimony applied retroactively to the parties.

HOLDINGS

1. The Supreme Court of Pennsylvania has authority to sua sponte reconsider precedent when the precedent is clearly implicated by the case before it; there is no absolute jurisprudential bar to doing so, particularly where the parties are afforded an opportunity for briefing and argument.
2. An otherwise competent and properly qualified nurse is not prohibited by the Professional Nursing Law from offering expert testimony at trial regarding medical causation.
3. *Flanagan v. Labe*, which categorically precluded a nurse from offering expert opinion testimony concerning medical causation on the basis of the Professional Nursing Law, was wrongly decided and is overruled.
4. The Court's rule permitting a properly qualified nurse to testify regarding medical causation applies retroactively to the parties in this case.

KEY QUOTATIONS

"Finally, there is no absolute jurisprudential bar to this Court's sua sponte reconsideration of precedent."
(216)

"Thus, Flanagan clearly operates as a rule of evidence in that it precludes an otherwise qualified nurse from offering expert testimony." (217)

"Accordingly, we reaffirm our prior decision." (217)

FACTUAL BACKGROUND

Rodger Freed alleged that negligent nursing care caused or contributed to pressure wounds. He sought to present a registered nurse as an expert regarding the nursing standard of care and medical causation. The defendants

relied on *Flanagan v. Labe*, which had barred a nurse from offering expert testimony concerning the identity or cause of a medical condition.

PROCEDURAL HISTORY

The trial court granted defendants a compulsory nonsuit. The Superior Court reversed, and the Supreme Court initially affirmed that reversal in *Freed v. Geisinger Medical Center*, 601 Pa. 233, 971 A.2d 1202 (2009), holding that a properly qualified nurse may testify regarding medical causation and overruling *Flanagan v. Labe*. The Court granted reargument to address whether it could overrule *Flanagan* sua sponte and whether the issue had been waived, received supplemental briefing and oral argument, and reaffirmed its prior decision.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The matter was remanded under the Court's original opinion for the trial court to assess the competency of Freed's registered-nurse witness to testify regarding the relevant nursing standard of care and medical causation under the common-law standards of *Miller* or the MCARE Act, if applicable. Jurisdiction was relinquished.

CASES CITED

- *Freed v. Geisinger Medical Center*, 601 Pa. 233, 971 A.2d 1202 (2009)
- *Flanagan v. Labe*, 547 Pa. 254, 690 A.2d 183 (1997)
- *Miller v. Brass Rail Tavern, Inc.*, 541 Pa. 474, 664 A.2d 525 (1995)
- *Commonwealth v. Collins*, 585 Pa. 45, 888 A.2d 564 (2005)
- *Cimaszewski v. Board of Probation & Parole*, 582 Pa. 27, 868 A.2d 416 (2005)
- *Commonwealth v. Freeman*, 573 Pa. 532, 827 A.2d 385 (2003)
- *Commonwealth v. Grant*, 572 Pa. 48, 813 A.2d 726 (2002)
- *Commonwealth v. Albrecht*, 554 Pa. 31, 720 A.2d 693 (1998)
- *Arcadia v. Ohio Power Co.*, 498 U.S. 73 (1990)
- *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)
- *Mapp v. Ohio*, 367 U.S. 643 (1961)
- *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938)
- *Pridgen v. Parker Hannifin Corp.*, 591 Pa. 305, 916 A.2d 619 (2007)
- *Coady v. Vaughn*, 564 Pa. 604, 770 A.2d 287 (2001)
- *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 518 U.S. 604 (1996)
- *United States v. International Business Machines Corp.*, 517 U.S. 843 (1996)
- *Pioneer Commercial Funding Corp. v. American Financial Mortgage Corp.*, 579 Pa. 275, 855 A.2d 818 (2004)
- *Castellani v. Scranton Times, L.P.*, 598 Pa. 283, 956 A.2d 937 (2008)

- Commonwealth v. McMullen, 599 Pa. 435, 961 A.2d 842 (2008)
- Pa. Department of Banking v. NCAS of Delaware, LLC, 596 Pa. 638, 948 A.2d 752 (2008)
- Danville Area School District v. Danville Area Education Association, 562 Pa. 238, 754 A.2d 1255 (2000)
- Cooper v. Schoffstall, 588 Pa. 505, 905 A.2d 482 (2006)
- Fritz v. Wright, 589 Pa. 219, 907 A.2d 1083 (2006)
- Official Committee of Unsecured Creditors of Allegheny Health Education and Research Foundation v. PriceWaterhouseCoopers, LLP, 989 A.2d 313 (Pa. 2010)
- Laudenberg v. Port Authority of Allegheny County, 496 Pa. 52, 436 A.2d 147 (1981)
- Wexler v. Hecht, 847 A.2d 95 (Pa. Super. Ct. 2004)
- Naylor v. Township of Hellam, 565 Pa. 397, 773 A.2d 770 (2001)
- Program Administrative Services, Inc. v. Dauphin County General Authority, 593 Pa. 184, 928 A.2d 1013 (2007)