

SUPREME COURT OF RHODE ISLAND

Morra v. Harrop

791 A.2d 472 (R.I. 2002) · No. No. 00-149-Appeal · Decided March 6, 2002

SUMMARY

The Rhode Island Supreme Court reviewed a medical negligence action arising from the suicide of the plaintiff's father while hospitalized under the defendant psychiatrist's care. The court held that the trial justice abused discretion by striking the plaintiff's expert testimony concerning the manner of death and by denying a continuance to clarify that testimony. The court also explained the proper use of continuing objections and remanded the case for a new trial.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Goldberg, J.; Williams, C.J.; Lederberg, J.; Bourcier, J.; Flanders, J.
JURISDICTION	Rhode Island
DECIDED	March 6, 2002
DOCKET	No. 00-149-Appeal
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from a Superior Court judgment granting the defendant physician's motion for judgment as a matter of law after the trial justice struck the plaintiff's chief expert's testimony and denied a continuance.
STANDARD OF REVIEW	Admission or exclusion of expert testimony is reviewed for abuse of discretion. A discretionary ruling must be soundly and judicially exercised in light of reason, all facts, the parties' rights, and applicable law.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Rhode Island; precedential.
PARTIES	Lucinda Morra v. Daniel Harrop

TOPICS

- medical malpractice
- professional negligence
- expert testimony
- evidence
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial justice abused his discretion by striking the plaintiff's expert testimony because the expert used the word "possibility" in describing the manner of death.
2. Whether the trial justice abused his discretion by denying the plaintiff a short continuance to clarify the expert's testimony after striking it.
3. Whether the defendant's continuing objection authorized a mid-trial motion to strike testimony that had been admitted over objection.

HOLDINGS

1. An expert need not use talismanic phrases such as "strong probability" or avoid the word "possibility" if the testimony, viewed as a whole, is expressed with some degree of positiveness and has substantial probative value. Dr. Sharp's testimony that suicide was the only possibility, together with his exclusion of homicide, accident, and disease, was sufficiently definite and should not have been stricken.
2. The trial justice abused his discretion by striking the plaintiff's expert testimony in its entirety, because the testimony adequately addressed the manner of death and the plaintiff's medical-negligence claims.
3. When exclusion of expert testimony leaves a party fatally vulnerable to judgment as a matter of law, the trial justice should grant a reasonable short continuance to permit clarification or allow another witness, or consider treating the Rule 50 motion as an involuntary nonsuit under Rule 50(a)(3).
4. A continuing objection preserves an issue for appellate review without requiring repeated objections, but it does not reserve admissibility for later determination or authorize a party to move to strike an entire line of testimony after the evidence has been admitted and the opposing party has relied on it.

KEY QUOTATIONS

"The expert must merely testify to the effect that he reached his conclusion with reasonable medical certainty." (477)

"Absolute certainty, of course, never has been required." (477)

"The purpose of the 'continuing objection' is not, however, to leave an issue open for a determination of admissibility at a later point during the trial." (479)

FACTUAL BACKGROUND

William Morra, who suffered from bipolar disorder and had recently attempted suicide, was hospitalized at Butler Hospital under close supervision and without grounds privileges. After Morra became increasingly agitated and threatened suicide during discussions of his discharge placement, Dr. Harrop discontinued staff supervision and granted him unsupervised grounds privileges; Morra was later found dead in the Seekonk River. The plaintiff's psychiatric expert testified that Morra's death was suicide and that Harrop's treatment, including granting grounds privileges, deviated from the standard of care.

PROCEDURAL HISTORY

Lucinda Morra sued Dr. Daniel Harrop for negligent medical care and treatment of her father, including the decision to grant him unsupervised grounds privileges while hospitalized for bipolar disorder and suicidal tendencies. During trial, the Superior Court struck the testimony of the plaintiff's chief expert concerning the manner of death, denied a continuance to allow clarification, and entered judgment as a matter of law for Harrop. The Supreme Court of Rhode Island sustained the appeal, vacated the judgment, and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the Superior Court judgment and conduct a new trial consistent with the opinion.

CASES CITED

- State v. Capalbo, 433 A.2d 242, 246-47 (R.I. 1981)
- State v. Benton, 413 A.2d 104, 112-13 (R.I. 1980)
- DeBartolo v. DiBattista, 117 R.I. 349, 353, 367 A.2d 701, 703 (1976)
- State v. Lima, 546 A.2d 770, 773 (R.I. 1988)
- Gallucci v. Humbyrd, 709 A.2d 1059, 1066 (R.I. 1998)
- Sweet v. Hemingway Transport, Inc., 114 R.I. 348, 355, 333 A.2d 411, 415 (1975)
- Montuori v. Narragansett Electric Co., 418 A.2d 5, 10 (R.I. 1980)
- DeBar v. Women and Infants Hospital, 762 A.2d 1182, 1189 (R.I. 2000)
- State v. Toole, 640 A.2d 965, 972 (R.I. 1994)
- Tinney v. Tinney, 770 A.2d 420, 433 (R.I. 2001)
- State v. Anderson, 752 A.2d 946, 948 (R.I. 2000)