

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Willie L. Harris et al. v. Steelweld Equipment Company, Inc.

14 Fed. R. Serv. 3d 252 (8th Cir. 1989) · No. No. 88-1688EM · Decided March 6, 1989

SUMMARY

The United States Court of Appeals for the Eighth Circuit affirmed a judgment for Steelweld Equipment Company after a jury found no liability for injuries allegedly sustained when Willie L. Harris slipped on snow and ice in the company parking lot. The court upheld the exclusion of Harris's meteorological expert, found no prejudicial judicial misconduct or improper expert cross-examination, and rejected challenges to defense counsel's closing argument. The court concluded that the challenged rulings were within the district court's discretion and that Harris had not shown prejudice.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Dean Whipple, District Judge, sitting by designation; Frank J. McMILLIAN, Circuit Judge; Morris S. Arnold? no; Pasco M. Bowman? no; William L. Beam, Circuit Judge
JURISDICTION	Federal
DECIDED	March 6, 1989
DOCKET	No. 88-1688EM
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from a final judgment entered after an eight-day jury trial in which the jury answered a special verdict interrogatory 'no' on liability.
STANDARD OF REVIEW	The court reviewed the exclusion of the expert and the challenged evidentiary and trial-management rulings for clear abuse of discretion. Alleged judicial misconduct required a showing that the conduct was intended or calculated to disparage a party and prevent impartial judgment, together with prejudice. Unpreserved objections were reviewed, where applicable, for plain error or treated as waived. The ruling on closing argument was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential federal appellate opinion
PARTIES	Willie L. Harris et al. v. Steelweld Equipment Company, Inc.

TOPICS

expert testimony hearsay evidence appellate procedure standard of review

PRACTICE AREAS

evidence civil procedure appellate procedure torts

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by excluding plaintiffs' meteorological expert for failure to comply with Local Rule 33.
2. Whether the district court's questioning, commentary, and interventions during the trial deprived plaintiffs of a fair trial.
3. Whether cross-examination of plaintiffs' rehabilitation expert concerning statements by plaintiffs' attorney and a related letter was improperly admitted hearsay or otherwise improper.
4. Whether defense counsel's closing argument was improper and sufficiently prejudicial to require reversal despite plaintiffs' failure to object.

HOLDINGS

1. The district court did not abuse its discretion by enforcing Local Rule 33 and refusing to vacate its order disqualifying plaintiffs' meteorologist. The plaintiffs' lack of compliance, their counsel's agreement that the case would remain in the same posture, and the availability of other evidence supported exclusion.
2. The district court's questioning, comments, and interventions did not constitute reversible judicial misconduct because they were directed toward clarifying evidence and controlling the trial, did not demonstrate advocacy or partiality, and did not prejudice plaintiffs.
3. Cross-examination of plaintiffs' rehabilitation expert concerning statements made by plaintiffs' workers' compensation attorney was proper. The statements were admissions by a party opponent under Federal Rule of Evidence 801(d)(2)(D), and the questioning was also relevant to the expert's credibility and possible bias.
4. The defense closing argument did not require reversal because it was supported by evidence and drew permissible inferences from the record. Plaintiffs' failure to object at trial waived their challenge to the argument.

KEY QUOTATIONS

"It is fundamental that it is within the trial court's discretionary power whether to allow the testimony of witnesses not listed prior to trial." (869 F.2d at 397)

"A trial judge should never assume the role of advocate, e.g., United States v. Gunter, 631 F.2d 583, 587 (8th Cir.1980), and must preserve an attitude of impartiality in the conduct of a trial" (869 F.2d at 399)

"This is the district court's right, as well as its duty." (869 F.2d at 400)

“A careful examination of the closing argument in the instant case reflects that counsel for appellee merely summarized the facts and drew proper inferences therefrom.” (869 F.2d at 403)

FACTUAL BACKGROUND

Willie Harris allegedly suffered disabling back injuries when he slipped and fell on accumulated snow and ice in Steelweld's parking lot in St. Clair, Missouri. Plaintiffs sought to use meteorologist John A. Ebert to interpret weather records and address the condition of the snow-covered parking lot, but the expert was excluded for failure to comply with the district court's local disclosure rule. At trial, Harris, a coworker, and other witnesses testified about the parking-lot conditions, and weather records were introduced. The jury found Steelweld not liable.

PROCEDURAL HISTORY

Willie Harris and his wife sued Steelweld for damages arising from Harris's alleged slip and fall on accumulated snow and ice in Steelweld's parking lot. The district court disqualified plaintiffs' meteorological expert under Local Rule 33, denied a motion to vacate that order, and conducted a jury trial resulting in a defense verdict on liability. The Eighth Circuit rejected plaintiffs' challenges concerning exclusion of the expert, judicial conduct, cross-examination, and closing argument, and affirmed.

DISPOSITION

affirmed

CASES CITED

- Blue v. Rose, 786 F.2d 349, 351 (8th Cir. 1986)
- Simplex, Inc. v. Diversified Energy Systems, Inc., 847 F.2d 1290, 1292 (7th Cir. 1988)
- LaBarge Water Well Supply Co. v. United States, 325 F.2d 798, 802 (8th Cir. 1963)
- Goldstein v. United States, 63 F.2d 609, 613 (8th Cir. 1933)
- Woodring v. United States, 311 F.2d 417, 420 (8th Cir.), cert. denied, 373 U.S. 913 (1963)
- Warner v. Trans-America Insurance Co., 739 F.2d 1347, 1351 (8th Cir. 1984)
- United States v. Gunter, 631 F.2d 583, 587 (8th Cir. 1980)
- United States v. Singer, 687 F.2d 1135, 1141 n.10 (8th Cir. 1982), rev'd on rehearing, 710 F.2d 431 (8th Cir. 1983)
- Coast to Coast Stores, Inc. v. Womack-Bowers, Inc., 818 F.2d 1398, 1401-02 (8th Cir. 1987)
- Cowens v. Siemens-Elema AB, 837 F.2d 817, 823 (8th Cir. 1988)
- Lewy v. Remington Arms Co., Inc., 836 F.2d 1104, 1111 (8th Cir. 1988)
- Jaeger v. Henningson, Durham, Richardson, Inc., 714 F.2d 773, 777 (8th Cir. 1983)
- Champeau v. Fruehauf Corp., 814 F.2d 1271, 1275 (8th Cir. 1987)
- Adams v. Fuqua Industries, Inc., 820 F.2d 271, 273 (8th Cir. 1987)
- Mahlandt v. Wild Canid Survival and Research Center, Inc., 588 F.2d 626 (8th Cir. 1978)

- Russell v. United Parcel Service, 666 F.2d 1188 (8th Cir. 1981)
- U.S. v. Margiotta, 662 F.2d 131 (2d Cir. 1981)
- Vanskike v. Union Pacific Railroad Co., 725 F.2d 1146, 1149 (8th Cir. 1984)
- Vanskike v. ACF Industries, Inc., 665 F.2d 188 (8th Cir. 1981)
- McDonald v. United Airlines, Inc., 365 F.2d 593 (10th Cir. 1966)
- Harris v. Zurich Insurance Co., 527 F.2d 528, 532 (8th Cir. 1975)
- Ludwig v. Marion Laboratories, Inc., 465 F.2d 114, 117 (8th Cir. 1972)
- Sanden v. Mayo Clinic, 495 F.2d 221, 227 (8th Cir. 1974)
- Van Leirsberg v. Sioux Valley Hospital, 831 F.2d 169 (8th Cir. 1987)

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