

DeMaria v. City of Bridgeport (AC 41234)

Brief Summary: Plaintiff was injured when he fell on a sidewalk owned by the defendant. The trial court admitted medical reports from the plaintiff's doctor into evidence. However, the doctor was prevented from testifying by 38C.F.R. § 14.808. The report established the fall as the cause of the injury and the permanency of the injuries. The court held that the medical reports were improperly admitted into evidence and the error was harmful, thus, granting the defendant a new trial.

Background

The plaintiff, Victor DeMaria, caught his foot on a raised portion of a sidewalk owned by the defendant, causing him fall on his face and hands. As a result, he suffered abrasions to his nose and hands, a broken nose, and a broken finger on his left hand. Two months later, the plaintiff experienced a burning sensation in his left arm, weakened grip strength and a limited range of motion in his left hand. After two and one-half years of treatment, Vitale, the plaintiff's primary care provider, wrote a document for his medical file titled "Final Report of Injury." In it she opined that the plaintiff retained only 47 percent of his former grip strength and he continued to experience pain and neuropathy in his left hand. Further, concluding that the injuries were caused with a reasonable degree of medical certainty by the fall. The plaintiff sought damages, alleging that his injuries were caused by the defendant's failure to remedy a defect in its sidewalk, which it knew or should have known would cause injuries to pedestrians.

Prior to the trial, the defendants filed a motion in limine to preclude the admission of Vitale's treatment records, reports, findings, conclusions, and medical opinions as evidence. They argued that the records were inadmissible under § 52-174 (b) because the defendant would

have no opportunity to cross examine her, either at a deposition or at trial, because she was prevented from testifying by 38C.F.R. § 14.808 (stating that department of veteran affairs personnel shall not provide opinion or testimony in any legal proceeding except on behalf of the United States). The court denied the defendant's motion. Following a trial, the jury returned a verdict for the plaintiff, awarding him \$15,295.47 in economic damages and \$77,500 in noneconomic damages, for a total award of \$92,795.47. The defendant's subsequently filed motion to set aside the verdict. The motion argued that the court erred in admitting medical records written by Vitale. The court denied the motion.

Issues

The issues on appeal were (1) whether the trial court improperly admitted medical records by Vitale when the defendant had no opportunity to cross examine her; and (2) if the court did err, whether error was harmful, requiring a new trial.

Discussion

The court held that the trial court improperly admitted the medical records into evidence and the error was harmful to the verdict. Consequently, granting the defendant a new trial.

Section 52-174 (b) permits a signed doctor's report to be admitted into evidence. The statute creates a presumption that the doctor's signature is genuine and that the report was made in the ordinary course of business. Thus, once the report is signed the evidence in it becomes admissible. In *Rhode v. Miller*, the plaintiff sought to introduce medical records from a chiropractor who, having invoked his fifth amendment privilege became unavailable to testify at either a deposition or trial. The Supreme Court of Connecticut found that the trial improperly

admitted the records into evidence because the defendant did not have an adequate opportunity to cross-examine the chiropractor at a deposition or trial.

The plaintiff argued that the records were properly admitted because he, like the plaintiff in *Rhode*, testified that he received the medical treatment in the records. However, the court stated that the plaintiff misinterpreted *Rhode* in stating that § 52-174 (b) requires only that a plaintiff testify about the records. *Rhode* held that the evidence was improperly admitted, however, the error was harmless. Thus, the decision was affirmed. Furthermore, the court stated that this case is indistinguishable from *Rhode* because like the defendant in *Rhode*, the defendant had no opportunity to cross-examine the witness at either a deposition or trial. Having concluded the evidence was improperly admitted the court had to determine whether the error was harmful to the verdict.

An improper evidentiary ruling will result in a new trial only if it is harmful. A ruling is harmful if it likely affected the result. Determining harm requires the court to analyze: (1) the relationship of the improper evidence to the central issues in the case; (2) whether the trial court took any measures, such as corrective instructions, to mitigate the effect of the evidentiary impropriety; and (3) whether the improperly admitted evidence is merely cumulative of other validly admitted testimony.

First, the court looked at the relationship between the medical record and the central issue in the case. The court stated that the plaintiff's counsel relied on the report extensively during closing arguments to establish a causal link between the plaintiff's fall and his lingering symptoms. The plaintiff's counsel read from the report twice and highlighted her opinion on causation. Further, he noted her opinion established the burden of proof on the issue of causation. Additionally, the court stated that unlike in *Rhode*, the medical records were the only evidence

connecting the plaintiff's injury from the fall to his lingering symptoms. Thus, concluding that the records concerned a central issue in the case.

Next, the court looked at whether the court took any measures to mitigate the effects of the improper admission. The court concluded that no such measures were taken as the court did not give corrective instructions or anything to mitigate the effects.

Lastly, the court looked at whether the improperly admitted records were merely cumulative of any other validly admitted testimony. The court noted that there was no other evidence from a treating medical provider rendering an opinion on causation or the permanency of the plaintiff's injuries. Further, Vitale's expert opinion cannot be merely cumulative of the plaintiff's testimony about his loss of grip strength because the plaintiff's testimony was not supported by an expert opinion. Thus, the court concluded that the improperly admitted evidence was harmful, requiring a new trial.

This case elucidates that medical reports cannot be properly admitted into evidence if, for any reason, the doctor who wrote the report is unable to be cross-examined at either a deposition or trial. This is salient for defendants because it does not allow for a plaintiff to present favorable expert opinions without giving the defendant an opportunity to challenge those opinions during cross examination.