Third District Court of Appeal

State of Florida

Opinion filed April 1, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2558
Lower Tribunal No. 02-14638

O.J. McDuffie,
Appellant,

vs.

John W. Uribe, M.D.,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Dennis J. Murphy, Judge.

Ratzan Law Group, P.A., and Stuart N. Ratzan, and Stuart J. Weissman; Russomanno & Borrello, P.A., and Herman J. Russomanno, and Robert J. Borrello; Boldt Law Firm, P.A., and Kimberly L. Boldt, Mario R. Giommoni and Ryan C. Tyler (Boca Raton); Podhurst Orseck, P.A., and Joel D. Eaton, for appellant.

Bowman and Brooke LLP, and Wendy F. Lumish, and Alina Alonso Rodriguez, for appellee.

Before LOGUE, LINDSEY and GORDO, JJ.

GORDO, J.

In this medical malpractice case, former Miami Dolphins player, O.J. McDuffie, sued his treating physician, Dr. Uribe, for damages resulting from his career-ending toe injury in 1999. This is an appeal from the final judgment rendered after the second trial, in which the jury returned a verdict in favor of Dr. Uribe, and from the trial court's order denying post-trial motions.

Following the first trial in this case, final judgment was entered in McDuffie's favor. The trial court subsequently granted Dr. Uribe's motion for new trial.[1]

Prior to the second trial in 2018, the defense filed a motion in limine to preclude any reference to Dr. Uribe and Dr. Myerson's prior testimony or opinions concerning non-party Dr. Mills' fault, which was improperly injected into the first trial.[2] The trial court granted the motion in limine and the case proceeded to trial, yielding a defense verdict.

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[1] The order granting a new trial was affirmed by this Court in McDuffie v. Uribe, 133 So. 3d 947 (Fla. 3d DCA 2012).

[2] Prior to the first trial, summary judgment had been entered in favor of Dr. Mills; thus, he was exonerated from fault. See Crowell v. Kaufmann, 845 So. 2d 325, 327 (Fla. 2d DCA 2003). "Because the trial court determined as a matter of law that Dr. [Mills] was not at fault, Dr. [Uribe] would not have been entitled to place him on the verdict form." Id.; see S. Bell Tel. & Tel. Co. v. Fla. Dep't of Transp., 668 So. 2d 1039, 1041 (Fla. 3d DCA 1996) ("If there is no [legally sufficient] evidence [in the record from which the jury can find that the Fabre defendant was at fault], the defendant is not entitled to have the Fabre defendant placed on the verdict form.").

On appeal, McDuffie argues the lower court erred by excluding the prior testimony of Dr. Uribe and Dr. Myerson as impeachment evidence and by allowing Dr. Caldwell and Dr. Anderson to testify without being qualified as expert witnesses.

We review the trial court's rulings on the admissibility of evidence under an abuse of discretion standard. Mathieu v. State, 258 So. 3d 528, 532 (Fla. 3d DCA 2018).

Drs. Uribe & Myerson's Prior Testimony

While McDuffie describes Dr. Uribe's prior testimony as attributing fault to Dr. Mills, the trial court determined Dr. Uribe never testified that Dr. Mills' conduct fell below the standard of care, never said he committed malpractice, and never said the surgery caused the end of McDuffie's career. In its analysis, the court ruled any such reference was irrelevant to the case as a matter of law based on Dr. Mills being shielded from liability.

Similarly, McDuffie challenges the exclusion of the prior trial testimony to impeach Dr. Myerson as to his previous causation opinions. The trial court found, however, that the testimony adduced at the second trial was not inconsistent with Dr. Myerson's prior causation opinions and did not open the door for impeachment.

"It is well settled that '[t]he admissibility of evidence is within the sound discretion of the trial court, and the trial court's determination will not be disturbed on appellate review absent a clear abuse of that discretion.'" Muhammad v. State,

132 So. 3d 176, 192 (Fla. 2013) (quoting Rimmer v. State, 59 So. 3d 763, 774 (Fla. 2010)). Upon a thorough review of the voluminous record and transcripts in this case, we find no abuse of discretion in the trial court's decision to preclude testimony that it deemed irrelevant and evidence that it concluded was improper for impeachment.

Admissibility of Treating Physicians' Testimony

McDuffie separately argues that the court erred in admitting deposition designations from treating physicians, Dr. Anderson and Dr. Caldwell. McDuffie alleges the doctors impermissibly provided standard of care and causation opinions.

"[A] treating physician testifies as a fact witness 'concerning his or her own medical performance on a particular occasion and is not opining about the medical performance of another.'" Gutierrez v. Vargas, 239 So. 3d 615, 622 (Fla. 2018) (quoting Fittipaldi USA, Inc. v. Castroneves, 905 So. 2d 182, 186 (Fla. 3d DCA 2005)). "Treating physicians are limited to their medical opinions as they existed at the time they were treating the plaintiff . . ." Id. The court concluded that the testimony did not amount to expert testimony on standard of care or causation because the opinions rendered were based on the doctors' personal knowledge, experience and treatment of McDuffie. Accordingly, we find no abuse of discretion in the trial court admitting the testimony of the treating physicians.

Affirmed.