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Med Mal Case Revived Despite Late Reply to Discovery

BY AMARIS ELLIOTT-ENGEL

Of the Legal Staff

The state Supreme Court has revived a medical malpractice case after finding a trial judge inappropriately granted summary judgment, in part, because the plaintiff's delayed response to a discovery request resulted in the defendant's view of the facts being deemed admitted.

The high court, in a ruling by Justice Seamus P. McCaffery, said that in ruling judgment had not properly been granted in *Stimmler v. Chestnut Hill Hospital*, it was restating the appropriate standards for granting summary judgment.

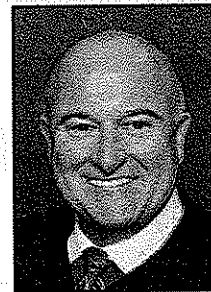
The trial judge should not have found that the deemed admissions overrode the prima facie medical malpractice cause of action the plaintiff established through her two medical experts, whose reports expressed the requisite medical certainty and specificity, the court said.

"Stated another, more metaphorical way,

the lower courts erred by using the oranges of 'deemed admissions' to render null the apples of appellant's expert witness reports," McCaffery wrote.

The court had two questions before it: If Philadelphia Common Pleas Judge Allan L. Tereshko committed an abuse of discretion or made an error of law in granting motions for summary judgment in favor of the defendants, and if the trial judge abused his discretion or made an error of law in deeming that a medical malpractice plaintiff's late, unverified reply to a defense request for admissions results in the admissions being regarded as true.

Stimmler sued the defendants after learning in 1999 that a 12- to 18-inch catheter wire was embedded in her heart, according to the plaintiff's brief. Stimmler argues that the wire



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was lost in her circulatory system in May 1965 when she was at Chestnut Hill Hospital to give birth to her first child and was treated for peripheral circulatory failure following labor, the plaintiff's brief said.

During discovery, defendant Dr. Richard T. Padula asked that Stimmler admit that she had been hospitalized 16 times since 1965 and that catheters were inserted into her body during each of those hospitalizations, according to Padula's brief. Padula also asked that Stimmler admit that the catheter in her heart could be from one of her other hospital visits.

The Supreme Court pinpointed the summary judgment question as the key issue in the case. Even if it is deemed admitted that Stimmler had 16 catheterizations during her hospitalizations after her hospital visit in May 1965, there is sufficient evidence to give to a jury to decide if the catheter in Stimmler's heart was inserted during her May 1965 hospital visit, McCaffery said.

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During Stimmler's May 1965 hospitalization, she had two "cutdowns," or dissections, performed on a vein or artery in both of her elbows, for the insertion of catheters, McCaffery said. And Stimmler's experts, Dr. James A. Reiffel and Dr. Nicholas L. DePace, said in their reports that longer catheters were used for the cutdown procedure than are typically used, McCaffery said.

The court said that the expert reports also stated that the long catheter in Stimmler's heart most likely came from her May 1965 hospital visit because the catheter's state of damage infers that the catheter has been in Stimmler's body for a long time.

Tereshko granted summary judgment July 12, 2004, on behalf of defendants Chestnut Hill Hospital, Padula, Dr. Walter Matteucci and Dr. Samuel Watterson partly on the basis that Padula's request for admissions should be considered to be true because of Stimmler's late reply.

But even if Stimmler had 16 subsequent catheterizations, the jury would have sufficient information to evaluate if the catheter in Stimmler's heart was from her May 1965 hospitalization, McCaffery said. Padula's request for admissions did not concern the placement of catheters that could match the length of the catheter found in Stimmler's body, the justice noticed.

"The fact that appellant's expert witnesses had identified the catheter fragment as one used in a cutdown procedure because this type of catheter is physically distinguishable from other types of catheters, contradicts the lower courts' conclusions that the reports of these expert witnesses were speculative," McCaffery said.

A FLEXIBLE RULE

On the second issue, McCaffery wrote that the defendants placed too much of their focus on the Rule of Civil Procedure 4014, which requires a reply within 30 days to requests for admissions, and not enough on whether summary judgment was appropriate.

Padula's request for admissions was filed March 24, 2004, but Stimmler didn't reply within 30 days as required under Rule

of Civil Procedure 4014, McCaffery said. Stimmler's unverified reply was mailed May 10, 2004.

In a footnote, McCaffery said that Rule 4014 is a flexible rule that does not impose a rigid construction. The Superior Court's affirmation of Tereshko's order of summary judgment on the basis of the deemed admissions was "'quick on the trigger,' so to speak," McCaffery said.

Justice Thomas G. Saylor, who wrote a concurring opinion joined by Chief Justice Ronald D. Castille, focused mainly on Rule 4014. He defended the Superior Court for being sticklers for procedure, writing that under the rule, any unrebutted admission is established as a fact unless the court permits withdrawal or amendment of the admission. Stimmler's counsel should have filed a motion for relief under Rule 4014, Saylor said.

"I cannot agree with the majority that either the trial court or the Superior Court was obliged to step into counsel's shoes to make the necessary motion," Saylor said. "The orderly administration of justice, quite simply, cannot proceed without some structure."

Stimmler's counsel, Joseph L. Messa Jr. of Messa & Associates, said there was too

compressed of a time frame between defendant's motion for summary judgment and Tereshko's decision granting summary judgment on the basis of the deemed admissions to be able to seek to make a motion to rebut the admissions.

McCaffery countered for his colleagues who joined his decision that they are not condoning non-compliance with Rules of Civil Procedure or suggesting that judges step into the shoes of counsel and make a motion to withdraw deemed admissions. McCaffery said that summary judgment can be supported in some cases on the basis of deemed admissions, but that granting summary judgment on the basis of deemed admissions was not appropriate in the *Stimmler* case.

McCaffery was joined by Justices J. Michael Eakin, Max Baer, Debra M. Todd and Jane Cutler Greenspan.

The state Superior Court panel of former Judges Michael T. Joyce and Justin M. Johnson affirmed the summary judgment in favor of Chestnut Hill Hospital on the corporate negligence claim, but reversed summary judgment in favor of the physicians and in favor of the hospital on a

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vicarious liability claim Nov. 30, 2006. Judge Maureen Lally-Green dissented.

An en banc Superior Court panel, which included Johnson and Lally-Green but not

Joyce, reversed the three-judge panel and affirmed summary judgment for all defendants Oct. 17, 2007.

Messa said he hopes trial judges, following the Supreme Court's precedent, will allow more plaintiff's claims to be heard on their merits and not dismissed on procedural grounds.

Chestnut Hill Hospital and Watterson's

counsel, Richard A. Kolb of White & Williams, declined comment because he said he had just received the opinion Monday and had not yet fully studied it.

While the case is going back to trial court, Kolb said he didn't know yet if more motions would be filed or if the case would go to trial.

Padula's counsel, Sheila A. Haren of Post

& Schell, could not be reached for comment Monday.

(Copies of the 28-page opinion in Stimmler v. Chestnut Hill Hospital, PICS No. 09-1656, are available from The Legal Intelligencer. Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information. Some cases are not available until 1 p.m.)