

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

SUPERIOR COURT

EUGENE LEE, et al.	:	
	:	
v.	:	C.A. No. 93-3466
	:	
LOUIS E. GELINEAU, BISHOP, et als.	:	
	:	
EDWARD LEE, et al.	:	
	:	
v.	:	C.A. No. 93-3468
	:	
LOUIS E. GELINEAU, BISHOP, et als.	:	

DECISION ON PLAINTIFFS' MOTION FOR A NEW TRIAL

GIBNEY, J., Following a nonjury trial, this Court entered a judgment as a matter of law in favor of the remaining defendants. Plaintiffs, the brothers Lee, now move for a new trial pursuant to Rule 59 of the Superior Court Rules of Civil Procedure. The defendants, including the Rhode Island Catholic Orphanage Asylum d/b/a St. Aloysius Home (St. Aloysius or Home) and the State of Rhode Island Department of Children, Youth and Their Families (DCYF), object to the motion.

Facts/Travel

A complete summary of the extensive facts and travel of this case is available in this Court's previous Decision. A brief summary of those facts which are pertinent to the motion for a new trial follows.

This Court held a jury-waived trial over several days in early November of 2000. At issue were the remaining counts alleged by Eugene Lee against St. Aloysius, including negligence (count IX), assault and battery (count X), intentional infliction of emotional distress (count XI), and 42 U.S.C. § 1983 (count I). The sole surviving count in Edward Lee's complaint against St. Aloysius alleged negligence (count IX). Regarding the defendant DCYF, each plaintiff's negligence count (count IV) remained. These claims stemmed from the plaintiffs' care while they were placed as minors in the St. Aloysius Home by DCYF. Eugene claimed that he was inappropriately touched by Joseph Leeder, a supervisor at the home, and that the incident with Leeder caused post traumatic stress disorder (PTSD). Edward claimed that, following an argument with another resident, he was restrained in a negligent fashion by employees of the Home.

At the close of all of the evidence, this Court entertained the defendants' renewed motions for judgment as a matter of law pursuant to Rule 52 of the Superior Court Rules of Civil Procedure. The Court reserved decision, and the parties filed post-trial memoranda. Subsequently, the Court granted the defendants' trial motions and dismissed all the plaintiffs' remaining claims against St. Aloysius and DCYF. Specifically, the Court ruled that the testimony of Eugene's expert witness, Dr. Steven Feldman, which purported to establish a causal connection between Leeder's actions and PTSD, was outweighed by substantial and credible evidence to the contrary. As to both brothers' claims, the Court ruled that the standard of care practiced by institutions similar to St. Aloysius lies beyond the common knowledge of a lay person and that they had failed to establish such a standard by expert testimony. Also, the Court ruled that even if the brothers could show that the practices of St. Aloysius violated a law or public policy so as to constitute negligence per se, they would still need to show that their

respective harms were the proximate cause of their injury. These were burdens that the plaintiffs could not sustain.

Thereafter, the plaintiffs filed this timely motion for a new trial to which the defendants objected. The Court then heard oral argument on the matter. There, the plaintiffs reasserted many of their previous arguments and requested a new trial based primarily on three grounds: First, plaintiff Eugene asserted error in the admissibility of evidence which rebutted plaintiff's expert testimony regarding causal connection between the abuse suffered by Eugene and his claim of PTSD. Second, plaintiff Eugene asserted error in the exclusion of evidence, namely, the Sgroi report, at trial. Finally, the plaintiffs asserted error in the trial judge's rejection of the argument that St. Aloysius, through the actions of Mr. Leeder and through the restraint of Edward, violated established policies of the facility so as to mandate a finding of negligence per se.

Standard of Review

Rule 59 of the Superior Court Rules of Civil Procedure provides, in pertinent part:

“(a) Grounds. A new trial may be granted to all or any of the parties and on all or any of the issues (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits of equity in the courts of this state. On motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct entry of a new judgment.”

Following a nonjury trial, the grounds for a motion for new trial are extremely limited. Hilton v. Fraioli, 763 A.2d 599 (R.I. 2000). A trial justice sitting without a jury may grant a new trial pursuant to Rule 59 of the Superior Court Rules of Civil Procedure only (1) if there is an error in the judgment that is manifest on the face of the record without further examination of matters of fact or evidence; or (2) if the trial justice is satisfied that newly discovered evidence has come forward which was not available at the

first trial and is of sufficient importance to warrant a new trial. Landfill & Resource Recovery, Inc. v. Gelinas, 703 A.2d 602 (R.I. 1997) (citing Colvin v. Goldenberg, 108 R.I. 198, 208, 273 A.2d 663, 669 (R.I. 1971)). Further, pursuant to the 1995 amendment to Rule 59, in actions tried without a jury, a trial justice may not grant a new trial for errors of law occurring at the trial. See Hilton, 763 A.2d 599, 603. The party appealing an adverse ruling on a motion for a new trial assumes the burden of convincing the court on appeal that the trial justice, in considering the motion, overlooked or misconceived material evidence or was otherwise clearly wrong. Landfill & Resource Recovery, 703 A.2d 602, 603.

Review of the Evidence

The background leading to the placement of the plaintiffs at St. Aloysius is a complex and troubled one. Uncontroverted evidence indicates that the boys' mother, Diane Lee, was alcohol and drug dependent for a significant period of her life. The boys' father, Edward Young, was not significantly present during much of their early childhood. He was convicted of armed robbery and served four years in prison. In addition, he was charged with manslaughter for the alleged starvation death of another son. Eugene's school records demonstrated a host of behavioral problems beginning in kindergarten. After DCYF removed the boys from their parents' custody, Eugene revealed to counselors that he had been sexually abused by Anthony Harrison, a male friend of his mother's. Other sexual activity reported by Eugene prior to his placement at St. Aloysius included, at age eight, sexual intercourse with his eight-year-old female cousin and repeated incidents of oral sex with his seventeen year old male cousin, and at aged ten, sexual intercourse with his girlfriend. Additionally, Eugene related that Harrison beat him with a leather strap and that he had witnessed similar behavior directed at his mother and his brother Edward.

During the trial, the plaintiffs established that Joseph Leeder, a supervisor at the Home, inappropriately touched Eugene on one occasion. Specifically, the assault, which lasted approximately one or two minutes, involved Leeder's finger contacting the area above Eugene's genitals while he was fully clothed and sitting on Leeder's lap. When discussing the incident a month later during a counseling session with Donna Carr, a worker at St. Aloysius, Eugene put his head down on the desk. Eugene contended that the trauma caused by the isolated Leeder incident resulted in a condition called post-traumatic stress disorder (PTSD), culminating in the physical manifestation witnessed by Carr. To establish the connection between the incident and PTSD, Eugene presented the expert testimony of psychiatrist Dr. Steven Feldman. It was the discounting of Feldman's testimony by the Court that forms a major part of Eugene's prayer for relief.

To make his diagnosis, Dr. Feldman interviewed Eugene approximately eight years after the Leeder incident on two occasions which, together, totaled an hour-and-one-half. According to the testimony, no discussion of sexual abuse occurred during the first interview. Eugene was less than forthcoming throughout both interviews. In pursuit of a diagnosis, Dr. Feldman read certain criteria for PTSD to Eugene for self-identification of particular symptoms. Such criteria included difficulty falling or staying asleep, irritability or outbursts of anger, difficulty concentrating, hypervigilance or an exaggerated startle response. In this context, Eugene responded affirmatively to most of the elements. Subsequent to the interviews, Dr. Feldman reviewed Eugene's records, but he never interviewed Eugene again to address the content or the accuracy of his previous responses. Additionally, he did not contact any family member or other individual to obtain any additional information or verification of Eugene's alleged condition, or reviewed to the trial testimony of relevant witnesses. Even further, in arriving at his opinion, Dr. Feldman did not indicate any integration of early school records, the extensive history of

physical and sexual abuse suffered before arriving at the Home, the documented absence of symptoms, or Eugene's ongoing educational progress and responsible behavior at the Home after the incident. And finally, Dr. Feldman was unaware of the diagnosed mental illness in many of Eugene's family members.

Dr. Feldman also failed to connect the incident at St. Aloysius with any damage to Eugene. The defense counsel argued, and the Court accepts, that Dr. Feldman could not sufficiently explain why previous traumas could be ruled out as causes of Eugene's claimed injury. Plaintiff argued that by admitting evidence of Eugene's prior history of abuse and mental trauma, the Court somehow left Eugene less protected than any other child when he should have been more protected, and thus evidence of his past history of abuse and mental illness should have been excluded. However, this evidence was relevant to rebut both Dr. Feldman's diagnosis and his explanation of a causal connection between the Leeder incident and PTSD. Dr. Feldman actually testified that Eugene, before his placement at St. Aloysius, was a happy, well-adjusted boy, when in fact, the clear and convincing evidence in the record reveals otherwise. Dr. Feldman could not have been less credible.

Dr. Feldman's assessment of damages is also questionable. Plaintiff's counsel argued that when Eugene rested his head on the table for fifteen minutes, it constituted per se evidence of damages. However, this claim is without merit. Eugene never explained what that action meant, and Dr. Feldman guessed that the event was evidence that Eugene had shut down. Instead, equally persuasive evidence in the record indicates that young Eugene decided not to answer any further questions during his session with Carr and that he had a history of that type of action. There was more than sufficient evidence in the record of the cross examination of Dr. Feldman to show that he engaged in a pattern of interviewing which suggested answers to Eugene and which was not an ordinary and reasonable scientific way to obtain a proper diagnosis. And again, Dr. Feldman failed to connect the Leeder event to Eugene's

head resting on the table. Therefore, in short, it was not the evidence of Eugene's history, but the testimony of Dr. Feldman, that should have been excluded.

Furthermore, during the trial, the Court found that the standard of care practiced by institutions similar to St. Aloysius lies beyond the common knowledge of a lay person. Accordingly, the plaintiffs attempted to establish the foundation for their negligence claim by qualifying Dr. Feldman as an expert in the standard of care practiced by similar institutions. However, upon Feldman's failure to offer sufficient background and expertise regarding residential child care during the relevant period of time or first hand knowledge of the quality of services provided to plaintiffs, the Court ruled that he lacked sufficient expertise to express opinions about the standards of care in residential placement. Accordingly, upon rejection of plaintiff's offer of proof, no expert testimony was introduced to establish an applicable standard of care or that deviation therefrom proximately caused the plaintiffs' alleged injuries.

Plaintiff Eugene then attempted to establish a standard, as well as knowledge on behalf of St. Aloysius and DCYF of the activities of Leeder, by introducing a document entitled Evaluation of St. Aloysius Home, Residential and Treatment Programs (Sgroi report or report). Authored by Dr. Suzanne Sgroi, M.D., the Sgroi report was the product of an independent consultant's evaluation commissioned by DCYF. The report included a review of the Home's policies and suggestions to further safeguard the children from abuse while in residence. In the report's "Reasons for the Evaluation" section, Dr. Sgroi chronicled the investigation into the activities of Leeder and the no less than ten boys that the Home believes he had inappropriately touched. However, the report was written more than a year after the incident with Eugene and offered no indication of prior knowledge of abuse by any uninvolved employee at the Home. Therefore, this Court rejected the report on a relevance basis. Also, the report contained summaries and conclusions based on hearsay and on the reports of

others, and so this Court also rejected the report on a hearsay basis. Dr. Sgroi neither testified at trial, nor is it clear that she could have done so due to her lack of first-hand knowledge. Regardless, the report was insufficient to establish an appropriate standard of residential care in and of itself. As the counsel for the defense correctly stated, “Just because it is in writing doesn’t mean it’s probative or competent evidence.”

Without a standard established by an expert, Eugene’s counsel next argued that the circumstances of the molestation, namely lap-sitting at the time of the assault, constituted negligence per se. However, the plaintiff was unable to point to any law or to any existing industry standard regarding that practice itself during the relevant period of time. Instead, plaintiffs relied on the testimony of the Director of St. Aloysius, Robert McIntyre, who testified that lap-sitting violated a practice of the facility. The plaintiff failed to show that St. Aloysius had a policy allowing such a practice, or that the Home or DCYF was aware of the clandestine activities of Leeder and failed to act. Therefore, Eugene’s renewed claim must fail.

The essence of Edward’s claim of negligence against DCYF and St. Aloysius rested on the contention that during his stay at St. Aloysius, he was inappropriately restrained by the St. Aloysius staff. Again, plaintiff offered no expert testimony establishing the appropriate standard of care, and plaintiff’s counsel offered no evidence of any law or industry standard which St. Aloysius violated in regards to Edward. Instead, he relied solely on St. Aloysius’ restraint policy, as well as his own testimony. Thus, like his brother’s claim, Edward’s must also fail. Further, even assuming that both plaintiffs could establish an appropriate standard using per se rules, neither brother succeeded in showing a causal connection between any violation of policy and any alleged harm. This Court therefore again rejects Edward’s claims.

The plaintiffs in this case have established neither ground for which a new trial can be granted: there is no claim of newly discovered evidence by the plaintiffs, nor is there evidence of a manifest error on the face of the judgment. Moreover, this Court sees no reason to open the judgment for any of the discretionary purposes allowed by Rule 59. Plaintiffs merely asked for reconsideration of many of their previous arguments, which is not a basis for which a new trial may be granted in a non-jury trial. See Landfill & Resource Recovery, 703 A.2d 602, 603; Tillson v. Feingold, 490 A.2d 64, 66 (R.I. 1985) (holding that a motion for a new trial that did not allege manifest error of law or claim that any new evidence had been discovered since the trial and did nothing more than seek to persuade the trial judge that his findings of fact and conclusions of law were clearly erroneous was not even a colorably adequate foundation upon which to base a reasonable argument that the motion should be granted, and that such a motion was a nullity). Accordingly, the plaintiffs have not demonstrated that this Court, in considering the motion for a new trial, overlooked or misconceived material evidence or was materially wrong. See Landfill & Resource Recovery, id. Therefore, the plaintiffs' motions for a new trial are denied.

Counsel shall submit the appropriate judgment for entry.