



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



EMMA SPRING v. TIMOTHY R. BRADFORD
CV 17-0068-PR
241 Ariz. 455, 388 P.3d 849 (App. 2017)

PARTIES:

Petitioner: Emma Spring

Respondent: Timothy R. Bradford, D.C.

Amici Curiae: Plattner Verderame, P.C., Cronus Law PLLC, and Patricia E. Ronan Law, LLC

FACTS:

Plaintiff Spring went to defendant Bradford, a chiropractor, to address a “knot” in her shoulder. Defendant used a “high velocity low amplitude thrust” to adjust plaintiff’s neck. Plaintiff immediately felt pain. Plaintiff consulted Dr. Daniel Lieberman, a neurosurgeon, who discovered a fragment of a herniated cervical disc compressing a nerve root in plaintiff’s spine. Dr. Lieberman performed surgery to remove the disc fragment and fuse plaintiff’s spine. Although plaintiff’s symptoms improved, she continued to experience pain and weakness in her neck and left arm. She sued defendant, alleging that defendant negligently performed the adjustment and damaged her spine.

At trial, the court imposed the “rule of exclusion of witnesses” (“The Rule”), which is codified in Rule 615, Arizona Rules of Evidence (“At a party’s request, the court must order witnesses excluded so that they cannot hear other witnesses’ testimony. Or the court may do so on its own. But this rule does not authorize excluding: . . . (c) a person whose presence a party shows to be essential to presenting the party’s claim or defense; . . .”).

Plaintiff’s standard-of-care expert, Dr. Allen Bragman, testified that defendant “improperly used too much force” and “improperly used a rotational maneuver” during the chiropractic adjustment. Plaintiff presented causation testimony from Dr. Lieberman, who concluded that the timing of plaintiff’s symptoms and the type of disc damage left him with “virtually no doubt” that the chiropractic treatment caused plaintiff’s injuries.

Defendant offered controverting causation testimony from Dr. Allen Hamilton, who testified that plaintiff had a preexisting disc herniation that became “suddenly symptomatic” following the manipulation. Dr. Hamilton concluded that the cause of the injury was uncertain absent evidence regarding the extent of the preexisting condition.

While cross-examining Dr. Hamilton, plaintiff’s counsel discovered that, contrary to The

Rule, before Dr. Hamilton's testimony defense counsel had given Dr. Hamilton a transcript of the trial testimony of plaintiff's causation expert and fact witness Dr. Lieberman, and had also given a transcript of the trial testimony of plaintiff's standard-of-care expert Dr. Bragman to Dr. Iverson before Dr. Iverson's upcoming testimony. Plaintiff asked the court to strike Dr. Hamilton's testimony and to preclude Dr. Iverson from testifying.

The court determined that defense counsel had violated The Rule, specifically, the exception set forth in Rule 615(c) for a person shown to be "essential to presenting the party's claim or defense." The court told defense counsel, "I think admittedly if you had asked, I probably would have allowed it, would have allowed either party to do it but you didn't ask and you should have given notice to the other side." The court added, "I think the biggest reason you had to come in and ask is to put the other party on notice." But the court found that the violations had not prejudiced plaintiff, and denied her requests to preclude the testimony of the defense witnesses.

However, the court agreed to give curative jury instructions as a remedy for defendant's violations of The Rule. The instruction concerning Dr. Iverson told the jury:

Defendant, Timothy R. Bradford, had an affirmative duty not to disclose trial testimony to anticipated witnesses prior to their testimony. The court has found that the attorney for Defendant Bradford disclosed to their expert Robert Iversen (sic), D.C. the trial testimony of Plaintiff's chiropractic expert Dr. Bragman for review and preparation of his anticipated testimony without knowledge of [Plaintiff's] counsel.

In weighing the testimony of Defendant Bradford's expert Dr. Iversen (sic), the jury should take into consideration the fact that he was presented in advance with trial testimony.

The court gave a similar instruction with respect to Dr. Hamilton. The jury returned a verdict in favor of defendant. Plaintiff appealed, and the Court of Appeals affirmed.

ISSUES:

- (1) In criminal cases, prejudice is presumed for violations of witness sequestration under Rule 615. The Court of Appeals ruled that prejudice is not presumed in civil cases, and the innocent party must prove 'actual prejudice,' which usually is impossible (and was here) due to the nature of the violation. Should prejudice be presumed for Rule 615 violations in all cases, especially where the violations were deliberate acts of counsel?
- (2) The plain language of Rule 615(c) gives trial courts discretion to allow a witness to hear (or read) trial testimony of a prior witness, provided that witness's presence during the prior testimony is shown to be 'essential to presenting the party's claim or defense.' Is that showing of essential presence actually required, or may the trial court allow an expert to disregard sequestration merely upon request of counsel?

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