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TRIAL NOTEBOOK

Steven P. Garmisa
Hoey & Farina

Entrustment concept gets wider berth

Calloway v. Bovis Lend Lease Inc.

Creating a serious conflict about the "entrustment" requirement under Section 414 of the Restatement (Second) of Torts — which specifies the duty owed by someone who "entrusts work to an independent contractor" — the Illinois Appellate Court recently rejected what it called the "bright-line test" adopted by the court in *O'Connell v. Turner Construction Co.*, 409 Ill.App.3d 819 (2011).

Section 414 says: "One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care."

In *O'Connell*, the 1st District ruled that the plaintiff could not hold Turner Construction Co., a construction manager for a school district, liable for alleged negligence under Section 414 — even if Turner exercised control over the construction site — because the entrustment requirement was not satisfied.

"While Turner may have aided the school district in drafting contracts or handling construction bids," the 2011 opinion explained, "unless Turner actually selected the contractors or subcontractors, something plaintiff does not claim, it cannot be said that Turner entrusted them with the work, absent which Section 414 is inapplicable."

Based on that analysis, the 1st District affirmed summary judgment for Turner.

In the new 1st District case, Bovis Lend Lease — which, like Turner, was acting as construction manager for a school district — relied on *O'Connell* in appealing from an $8 million verdict for Herman Calloway Jr. and a $1 million judgment for his father's estate.

The complaint alleged Bovis was liable for the accident that grievously injured Herman Jr. and killed his father because the construction manager negligently failed to halt the hazardous practices of a subcontractor, Hamilton Construction.

Concluding that "the issue of entrustment, like that of control, should be decided based upon whether the circumstances of each case show that the construction manager actually entrusted work to a subcontractor and not based upon a bright-line test such as whether the construction manager actually signed the contract with the subcontractor," the 1st District decided there was sufficient evidence to hold Bovis liable under Section 414. *Calloway v. Bovis Lend Lease Inc.*, 2013 IL App (1st) 112746 (Aug. 16, 2013).

Here are highlights of Justice Stuart E. Palmer's opinion (with omissions not noted in the text):

Bovis first argues that it did not entrust work to Hamilton. Bovis claims that it was only the construction manager and in that capacity it did not hire or enter into a contract with Hamilton.

Bovis' contention is based upon the recent decision in *O'Connell*. In that case, a school district hired the defendant, Turner, as the construction manager to build a new high school campus.

Turner and the school district entered into a contract which provided, among other things, that the

NOTEBOOK, *Page 5*

IN THE NEWS

BY CHRISTINE M. PUSATERI

(From left to right) David J. Winthers of Mullen, Winthers & Kollias P.C.; Axel Cerny, a student member of the DuPage County Bar Association; Daniel J. Kollias of Mullen, Winthers & Kollias; and sole practitioner Arthur W. Rummler share a laugh after dinner at the DCBA Oktoberfest Party on Sept. 12. *Ben Speckmann*

IN WASHINGTON

The U.S. Senate Judiciary Committee has voted unanimously to approve President Barack Obama's nominee to head the U.S. attorney's office in Chicago.

Zachary T. Fardon's nomination now moves to the full Senate after today's approval. No date has been fixed for the Senate vote.

The 46-year-old would replace **Patrick J. Fitzgerald**, who resigned last year to enter private practice after more than a decade in the high-profile post.

Fardon served as an assistant U.S. attorney before entering private practice himself. In Chicago, he helped convict former Gov. George Ryan of corruption.

In a statement, Sen. **Richard J. Durbin** says he'll push for the Senate to confirm Fardon as quickly as possible.

The Democrat says Fardon — currently a partner at Latham & Watkins LLP — will have to "hit the ground running" and focus immediately on gang and gun violence in Chicago.

IN THE LAW FIRMS

Gordon & Rees LLP has named **Paul Gamboa** and **Patrick F. Moran** partners at the firm.

Gamboa focuses on general civil litigation, professional-liability defense, commercial litigation and transportation law.

Moran represents employers in claims involving discrimination, wrongful termination, harassment and retaliation brought under Title VII and advises on personnel policies and harassment investigations.

IN THE BAR GROUPS

Pulitzer Prize-winning reporter and best-selling author **Bob Woodward** will speak about the Watergate scandal at the American Bar Association Section of Litigation's fall leadership meeting Saturday at the Ritz Carlton.

Woodward, a Wheaton native whose father served as a DuPage County chief circuit judge, will present "Lawyers, Judges and Watergate: A Journalist's Perspective" as the keynote speaker at a session from 9 to 11:30 a.m.

In addition, a high-profile panel will discuss "Lawyering Lessons from Watergate" from 9 to 11 a.m. Friday. The panel will feature former Deputy Attorney General **William D. Ruckelshaus**, former Nixon White House staffer **Egil "Bud" Krogh** and **Richard J. Davis**, previously of the Watergate Special Prosecution Force.

The panel will discuss the ethical and practical lines between a lawyer's duty to a client and a lawyer's duty to the rule of law as well as the ABA's role in Watergate as it unfolded.

• • • • •

The DuPage County Bar Association's Real Estate Committee will host a seminar, "Real Estate Tax Reduction: What Is It and How Do I Do It," from 1 to 4 p.m. Oct. 4 at the Attorney Resource Center, 505 N. County Farm Road, Third Floor, Wheaton.

The guest speaker will be **Richard M. Guerard**, a partner at Guerard, Kalina & Butkus in Wheaton.

The event fee is $50 for DCBA members and $75 for nonmembers. Attendees will earn three Continuing Legal Education credits.

IN THE NEWS, *Page 2*

Paul Gamboa

Patrick F. Moran

Zachary T. Fardon

Man's estate to get $3.2M from ComEd

Power lines killed painting company worker in 2008

Edward G. Willer

BY MARC KARLINSKY
Law Bulletin staff writer

Commonwealth Edison and an equipment-rental business have agreed to pay $3.2 million to settle a lawsuit filed on behalf of a man fatally electrocuted by overhead power lines.

Cook County Associate Judge William Edward Gomolinski entered a dismissal order Monday approving the settlement in the wrongful-death case of Javier Valadez, who died after coming into contact with 12,000-volt cables as he was working beneath a bridge in northwest suburban Elgin.

Valadez's estate sued ComEd, as well as Hertz Equipment Rental, the company that leased the lift Valadez was using.

The parties came to their settlement in August following mediation before Stuart A. Nudelman, a neutral at ADR Systems of America and a former Cook County circuit judge.

On June 11, 2008, Valadez, 31, and his co-worker were in a lift bucket sandblasting the underside of the U.S. Route 20 bridge over the Fox River in Elgin. When they came into contact with a group of electrical cables, both were electrocuted and killed.

Earlier that month, Valadez's employer, Lansing-based Eagle Painting & Maintenance Co. called ComEd's customer service line several times to request their power lines be made safe enough for Eagle's workers to operate safely, either by turning off the power to the lines or by insulating the cables in protective covers.

But there was confusion among ComEd's service representatives on how to process a "make-safe"

SETTLEMENT, *Page 22*

Challenge to state's tuition law rejected

Judge rules plaintiff had no standing to halt some from using in-state rates

BY PATRICIA MANSON
Law Bulletin staff writer

A federal judge has derailed a woman's bid to prevent undocumented immigrants from ever being awarded a music scholarship established by her late father.

In a written opinion Wednesday, U.S. District Judge John A. Nordberg threw out a lawsuit challenging an Illinois statute that allows certain students living in the United States illegally to pay in-state college tuition.

Nordberg did not rule on the merits of the argument that giving some undocumented immigrants who reside in Illinois a break on their tuition while not offering the same benefit to Americans from outside the state violates immigration law.

He also did not address the assertion that undocumented immigrants could not afford to go to college — and therefore would not be eligible for the scholarship — if the Illinois statute was struck down and they had to pay full tuition.

Instead, Nordberg concluded that he had no business considering those matters.

Citing *Swanson v. City of Chetek*, 719 F.3d 780 (7th Cir. 2013), he wrote that litigants are entitled to bring their grievances to federal court only if they have suffered an "injury in fact."

But the plaintiff in the suit — a trust containing $10,000 that the scholarship's creator asked to be added to the scholarship fund following his death — failed to show that it suffered such an injury, Nordberg wrote.

And because the trust did not show that it is currently suffering

TUITION, *Page 22*

Dixon expected to pocket $40M after settlement

BY CARYN ROUSSEAU
Associated Press writer

The small northern Illinois city that lost more than $53 million over two decades to its thieving former bookkeeper will recoup about $40 million, the mayor said Wednesday when announcing a legal settlement in the case.

Dixon will receive $40 million as part of a settlement with a bank and auditor it had accused of not doing enough to expose former Comptroller Rita Crundwell's scheme, Mayor Jim Burke said.

The city also recouped about $10 million by selling off Crundwell's belongings, but it incurred $10 million in legal and other costs, he said.

"This is huge for the city," Burke said. "I've got to be honest about this. I didn't think we'd see this much."

A judge still needs to approve the settlement.

Crundwell pleaded guilty to wire fraud and was sentenced in February to nearly 20 years in prison.

Prosecutors say she stole the money over 22 years as Dixon's bookkeeper, even while the city was having trouble paying its bills. She

DIXON, *Page 22*

For Type A personality, sabbatical just the ticket

BY JAMIE LOO
Law Bulletin staff writer

Bryan I. Schwartz was so serious about getting completely away from it all, he changed his cellphone number.

"I did not watch the news, read newspapers, look at work e-mail. I was completely off the grid," Schwartz said. "It was awesome. I just laugh out loud when I think about it now."

Some attorneys would call it crazy. Others say he's brave.

But for Schwartz, 53, a founding partner and chairman at Levenfeld, Pearlstein LLC, the decision to go on a 31-day sabbatical was a "no-brainer" because he said he knew it would be well worth it.

And since his return to the office, Schwartz has been telling fellow attorneys and others that everyone should take a break to recharge themselves professionally and for personal growth.

The time away, he said, helped him realize that work isn't everything.

"It's not life and death. If a deal is closed on a Tuesday instead of Monday, it's not the end of the world. We're not doctors. It's not like I left somebody's heart open on the table and went to play golf," Schwartz said. "We're just taking ourselves too seriously."

Bryan I. Schwartz

Schwartz was the first person at his law firm to take a sabbatical. Earlier this year, Levenfeld, Pearlstein completed an 18-month transition where Schwartz stepped down as managing partner after 14 years in an effort to infuse the firm with fresh leadership.

In that previous position, Schwartz worked 50 to 70 hours a week and was constantly involved in the day-to-day issues of running a firm.

"And then I was practicing on top of that," he said. "I was always on

SCHWARTZ, *Page 22*

TURN INSIDE

LAW FIRMS

16 years, 50 think tanks — and counting

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ILLINOIS

Report finds youth prisons still lacking

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SUPREME COURT

Scalia expects NSA issues to be reviewed

PAGE 6

'Freaky fast' suit to be delivered to trial court

BY ANDREW MALONEY
Law Bulletin staff writer

SPRINGFIELD — The state's high court ordered up a number of cases Wednesday, but passed on the chance to consider procedural issues raised by a Jimmy John's sandwich delivery that went awry.

The case, *Robert W. Reynolds v. Jimmy John's Enterprises LLC,* No. 116151 — one of 441 petitions for leave to appeal denied by the Illinois Supreme Court — will instead be directed back to the trial court level for discovery.

According to the plaintiff, the driver for a Springfield-based store collided with him on April 13, 2010. The sub shop employee had driven across the parking lot of his franchise and tried to make a left turn from the parking lot of an adjacent U.S. Bank.

In his complaint against the restaurant and its parent company a year later, Robert Reynolds alleged the defendants "hold themselves out as making 'freaky fast' deliveries to the public and specifically instruct and encourage their drivers to expedite such deliveries."

Further, he alleged, the employers did not properly train their workers on safe driving and should have known their drivers made a practice of "making an illegal left turn in order to avoid the delay associated with using the traffic light to exit its own parking lot."

In October and November 2011, Jimmy John's and its corporate partner, JThree Inc., filed motions to dismiss that were granted in January 2012 by Sangamon County Circuit Judge Patrick W. Kelley, who did not state a basis or citation for his decision.

FAST, *Page 22*

FROM THE FRONT PAGE

Settlement

request, said Edward G. Willer, an associate at Corboy & Demetrio P.C. who represented Valadez's estate. They were particularly unsure because the space below the bridge didn't have a definitive street address to direct ComEd crews to, he said.

At one point, a ComEd representative told Eagle that the request to make the lines safe had been fulfilled, Willer said. After depositions of the service representatives, Willer found the procedures were inconsistent and unclear at ComEd.

"No two of the representatives knew the written protocols for what you're supposed to tell a client," Willer said.

In addition, a few days before the accident, a ComEd repairman was fixing a power outage a few hundred yards away from where the lift was and became aware of the location where Eagle would work, Willer said.

ComEd was represented by John W. Bell and Charles P. Rantis, shareholders at Johnson & Bell Ltd.

Bell said the areawide storm damage created a "real service crunch" for the utility and that the location of the cables prevented them from being insulated or turned off.

Rantis said the lines led to a nearby sewage treatment plant operated by the Fox River Water Reclamation District, which couldn't have a power interruption.

Bell said Eagle would have needed to enter ComEd's service queue before work was done.

"De-energizing lines is a lengthy process," Rantis said. "A lot of engineers have to get involved."

But Willer said ComEd's explanation of engineering challenges was an excuse for not fulfilling the job request in the first place. The storms didn't effect customer service, he said.

Just before the accident, he said, Eagle's foreman left the worksite, warning Valadez and the other worker — who happened to be the foreman's brother — not to get close to the cables.

Park Ridge, N.J.-based Hertz Equipment Rental was sued because it didn't make the lift's users familiar with the safety features and warnings required by the

John W. Bell

Charles P. Rantis

American National Standards Institute.

As a result of the settlement, ComEd will pay Valadez's estate $3.2 million and Hertz will pay $25,000. Eagle agreed to waive a lien of $243,000 against the estate and would continue paying workers' compensation benefits through the end of this year.

Thomas P. Boylan and Erik L. Andersen, partners at Cassiday, Schade LLP, represented Eagle Painting & Maintenance Co. Boylan said his client lost two valuable employees in the accident, but it was glad to put the situation behind it.

A separate settlement was reached with the estate of the other Eagle employee who was killed in the accident.

Bell said he believes all parties are happy with the resolution.

Hertz Equipment Rental was represented by Gerald P. Cleary, a partner at Pappas, O'Connor & Fildes P.C.

The case is *Leonor Valadez v. Commonwealth Edison Co. and Hertz Equip. Rental Corp.*, No. 08 L 7199.

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Tuition

harm or facing a threat of imminent harm, Nordberg ruled, it does not have standing under Article III of the U.S. Constitution to pursue the case.

In 1992, Ardash Marderosian established a music scholarship in his late wife's honor. It is awarded each year to a student at the University of Illinois at Urbana-Champaign.

Marderosian later created a family trust whose holdings included the $10,000 earmarked for the scholarship fund.

After her father died last year, Catherine V. Marderosian filed suit on behalf of the trust against Gov. Patrick J. Quinn and the university board of trustees.

The suit claimed that Ardash Marderosian wanted the scholarship to go only to American citizens or foreign nationals legally residing in this country.

The suit also said Catherine Marderosian and her siblings, Caryn V. Russell and Steven A. Marderosian, had asked others to donate to the scholarship fund because they believed the scholarship would assist "students from hard-working American families of limited means."

Eleven years after Ardash Marderosian established the trust, the suit said, the Illinois General Assembly enacted a statute that allows undocumented immigrants who meet certain requirements to receive in-state college tuition. Those eligible for reduced tuition include immigrants who have attended a school in Illinois for at least three years and who submit an affidavit stating that they will apply for legal residency in the United States as soon as possible, the suit said.

The suit asked that the defendants be enjoined from offering in-state tuition to undocumented immigrants. The suit also sought a declaration that the Illinois tuition law violates the federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

In his opinion, Nordberg conceded that the trust might be able to show — through the testimony of Marderosian's children or other witnesses — that he intended to block certain students from receiving scholarships.

But this alleged "generalized intent" to exclude undocumented immigrants was not made part of the agreement between Ardash Marderosian and the University of Illinois Foundation that established the scholarship fund, Nordberg wrote.

And without such a provision in the agreement, he wrote, the trust has no standing to challenge the tuition statute.

"If there is no contractual right to prevent the foundation from awarding funds to illegal aliens, then the trust by logical extension also has no legal basis for enjoining third parties from taking actions that might increase the chances that the foundation would award funds to these students," Nordberg wrote.

He issued his opinion in *The Ardash Marderosian Trust v. Gov. Patrick Quinn, et al.,* No. 12 C 6869.

The lead attorney for the trust was Howard W. Foster of Foster P.C.

The lead attorney for the board of trustees was Dennis P. W. Johnson of Pugh, Jones & Johnson P.C.

Foster and Johnson could not be reached for comment.

The lead attorney for Quinn was Illinois Assistant Attorney General Michael D. Arnold.

In an e-mail, spokeswoman Maura Possley said the attorney general's office was pleased Nordberg "recognized that this lawsuit should not continue."

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Fast

The 4th District Appellate Court reversed the decision, however, with Justice James A. Knecht authoring the 2-1 opinion that said the defendants improperly filed their motions pursuant to Sections 2-615 and 2-619 of the Code of Civil Procedure.

For starters, the court noted, JThree filed a motion to dismiss under Section 2-615 "and/or" Section 2-619, when the law requires such motions be split into separate filings that specify which section or sections are relied upon specifically.

Additionally, the corporate entity had attached a factual deposition of the Jimmy John's driver to its filings, calling into question both the legal and factual arguments made by Reynolds in his allegation that the company was negligent in its training.

Knecht wrote that a 2-615 motion "only attacks the legal sufficiency of the complaint and accepts all well-pleaded facts as true. Thus, it is a red flag of impropriety to append deposition testimony to such a motion." Knecht added that the legal arguments themselves were also "unpersuasive."

The 2-619 motion, on the other hand, is supposed to assert some cause outside of the legal sufficiency or facts of the case as a reason why the complaint cannot proceed — such as a prior judgment or that the statute of limitations in the case has expired.

Jimmy John's also cited Section 2-619 as the basis for a motion to dismiss, using both the deposition of the driver and an affidavit from a financial officer to show that the company was not negligent and did not encourage drivers to ignore the rules of the road.

The appellate court said that was improper as well.

"Here, Jimmy John's sought to use an unopposed affidavit and deposition testimony to establish 'undisputed' facts to show plaintiff's cause of action is defective," Knecht wrote. "Rather than asserting an affirmative matter, Jimmy John's is misusing [the section] to contest — with facts outside the pleadings — the amended complaint's factual allegations."

Scott E. Umland, a partner at Fleming and Umland in Peoria who argued for JThree, said other courts have had no problem with similar filing procedures.

"There's an argument still that what we did was proper," Umland said.

Gregory P. Sgro, a partner at Sgro, Hanrahan, Durr & Rabin LLP in Springfield who represented Reynolds, used an example to illustrate how he believed justice would not have been done had the court allowed the motions to dismiss stand.

"If you sued me saying I haven't paid my rent, and I could file an affidavit saying I paid my rent, and the case is over," he said, "you'd feel like you didn't get your day in court and to me that's what the appellate court is saying for Bob Reynolds."

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Schwartz

my phone, on the computer, on my iPhone and really just wired all of the time."

The timing was right to get away this summer. He was burning out.

"I was honestly burnt to a crisp," he said.

Schwartz said he has a Type A personality which — according to personality type theories — means he's ambitious, independent, self-critical, deadline-driven and addicted to work. A "very scheduled, meticulous person," Schwartz said the sabbatical forced him to let things go and be all right with not having everything planned.

For the first 10 days, he went to the Aspen/Snowmass resort in Colorado with his wife, Elizabeth. He went fly-fishing, hiking, white-water rafting and spent time meditating and doing yoga. He focused on improving his eating habits.

After his Colorado trip, Schwartz headed to Punta Cana, Dominican Republic. He spent seven days alone walking on the beach, drinking margaritas, playing golf and reading. Schwartz then went to Arcadia Bluffs, Mich., to golf and do some more fly-fishing.

It was in Michigan, Schwartz said, that he had an epiphany.

"I just had this euphoria about what a great life I have," he said.

It sounds corny, he admits, but he felt a sense of gratitude about his life. Being away from daily distractions allowed him to stop and appreciate his blessings — his upcoming 25th wedding anniversary, his three daughters, his law firm, his colleagues.

"I needed this perspective to do this because these are my prime time years as a lawyer," he said.

Although he originally planned to spend more time in Michigan, he came home once he realized he was missing out on time with his family.

Now, Schwartz said, he heads to the office with a new perspective on life. He's more relaxed about problems that arise with clients and aims to pass some of that calmness on to them.

"I realized I wasn't indispensable and I had a firm that could stand behind me," Schwartz said. "You can have a life and work hard and have a degree of connectivity that doesn't rule your life."

His colleagues at Levenfeld, Pearlstein say they too have noticed a difference in Schwartz.

Robert Alan Romanoff, the firm's new managing partner, said the sabbatical helped Schwartz focus on what he wants to do moving forward after a transitional year. He said Schwartz did an "exceptional job" connecting colleagues with his clients before the time off, which helped "institutionalize" clients with the firm.

Levenfeld, Pearlstein general counsel Gary I. Blackman said Schwartz seems happier and less burdened. Some attorneys would think that being out of the office for a month would have a huge impact on a practice, but Blackman said that's not the case.

A lawyer who is happy and well-balanced will be a better service provider in the long run, he said, and "the better a person is, the better the firm." Schwartz didn't lose a single client while he was away.

"He is working just as hard as before — and his business has grown," Blackman said.

Blackman, who has been friends with Schwartz for more than 20 years, said he has a greater focus on his family and his health, which some attorneys push aside in the hectic pace of work.

One of the takeaways from Schwartz's experience, he said, is that people need to slow down and realize that "not everything is always as important as it is in real time."

"Lawyers by nature worry about everything. Everything is not equally important," Blackman said. "We need to pick and choose how we spend our time."

Schwartz said he's been telling people that employers don't control their lives and the decision to be on call and accessible 24 hours a day, seven days a week is a personal one.

It's all about working smarter, not harder, he said.

"Attorneys are just backwards," he said. "If your job is so all encompassing that you can't live, that's not your employer's fault that's your fault."

Sabbaticals, though, aren't for everyone, Blackman cautioned.

"There's a lot of really good, well-balanced lawyers at our firm who may never take a sabbatical," he said. "They may feel like they get that time normally."

Law firms that are interested in the personal growth of employees and that have the financial stability to offer sabbaticals should provide that opportunity, Blackman said. It also requires personal financial planning, Schwartz said, for those looking to travel or planning some other adventure.

Now, Schwartz views his career as having two parts to it — life before the sabbatical and life after the sabbatical.

"I'm pretty excited about how I see the world now," he said. "That's what life is about. Enjoying it and having thanks for the good stuff."

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Letters to the Editor

The Chicago Daily Law Bulletin encourages readers to contribute letters on topics of interest in these pages and letters associated with the legal profession. Please e-mail letters to the editor to editor@lbpc.com.

CASE SUMMARIES

See the full text of each case on our website.

Civil procedure — reasons for forum non conveniens

Where a plaintiff files suit in a forum not his own — a preference treated with "somewhat less" than the "substantial deference" usually granted — the court must find that public and private factors strongly favor transferring the case in order to justify a motion for forum non conveniens.

Christopher Orlando v. Imad M. Al-Basha, Psychiatric Clinics of Northern Illinois, Bethany Bremmer, SwedishAmerican Health System Corporation, SwedishAmerican Hospital, Donald C. Roberts, Ximena R. Llobet, MD, Infinity Healthcare Physicians, and Infinity Healthcare, Inc.

2013 IL App (1st) 112285-U

Writing for the court: Justice Stuart E. Palmer

Concurring: Justices Nathaniel Howse Jr. and Bill Taylor

Released: June 28, 2012

The Illinois Appellate Court, 1st District, 5th Division, affirmed a decision by Cook County Circuit Judge Jeffrey Lawrence.

In 1998, Christopher Orlando's parents divorced. Orlando lived with his mother in Chicago, while his father lived in Cherry Valley outside Rockford.

In June 2005, the 17th Judicial Circuit Court granted Orlando's father's emergency petition for change in custody. The court ordered Orlando to be brought to SwedishAmerican Hospital in Rockford for psychological evaluation. At SwedishAmerican, he was examined by Dr. Ximena R. Llobet, who consulted Dr. Imed Al-Basha and an assessment counselor.

Llobet diagnosed Orlando with a delusional disorder and had him committed to the inpatient psychiatric unit. The following day, a hospital psychiatrist determined that Orlando had "adjustment disorder" rather than delusional disorder and ordered him discharged.

On Sept. 21, 2009, Orlando filed suit in Cook County against Llobet, her employers, Al-Basha, his employers, the counselor, SwedishAmerican Hospital, the SwedishAmerican Health System and the private investigator hired by his father, who drove him to the hospital to be examined.

The defendants moved to transfer the case to Winnebago County under forum non conveniens. Orlando voluntarily dismissed his suit and then refiled a year later, again in Cook County. The defendants again moved to transfer. They conceded that venue was proper, since Llobet, a named defendant and major witness, lived in Cook County.

Orlando, shortly after refiling his suit in 2010, moved to Cook County in early 2011. However, the defendants contended that forum non conveniens justified moving the case, submitting 11 affidavits from witnesses, mostly employees of the hospital, but including Orlando's father, who testified that Winnebago County would be a more convenient forum than Cook County.

Orlando stated that, in addition to living in Cook County, and having Llobet live in Cook County, that he too had several witnesses he would call, physicians he had seen while in Chicago who would testify to his medical condition at the time he was admitted to SwedishAmerican and who would be inconvenienced by switching forums.

Orlando added that Cook County's court system, though much larger than Winnebago County's, goes through cases significantly faster, cases taking nearly a year longer on average to complete in Winnebago County. The circuit court denied the motion to transfer the case. The defendants appealed.

The appellate court began by noting that "substantial deference" is given to the plaintiff's choice of forum. If the suit is valid jurisdictionally then, in general, the court will defer to the plaintiff. However, this case is somewhat unusual. At the time suit was filed, Orlando lived in Winnebago County, not Cook County. Traditionally, when a plaintiff selects a county other than his own to sue in, his preference is treated with "somewhat less deference." However, Orlando had since moved to Cook County.

In addition Winnebago County is relatively close to Cook County, Rockford being an hour-and-a-half drive from Cook County. Acquiring records from the hospital would not be significantly more difficult because of the distance and there is little real evidence at issue. The court found that the "private interests" — the ease of access to witnesses, records and evidence — did not strongly favor transferring the case.

Nor did the public interests. Llobet was now practicing in Cook County, giving the county an interest in her professional behavior and the court system in Cook County, as crowded as it is, is still more able to handle the additional burden of the case than that of Winnebago County.

The court noted, however, there was a general interest in having local matters decided locally that presses for Winnebago County. The appellate court found that the public factors were neutral. The fact that there is an arguable case for transferring to Winnebago County does not mean, even in a case where the plaintiff's choice of forum gets "somewhat less deference," that the situation strongly favors a transfer to Winnebago County, and ultimately that is the bar to which a forum non conveniens motion is held.

The appellate court affirmed the decision of the trial court denying the forum non conveniens motion.

FROM THE FRONT PAGE

Dixon

used the money to live lavishly and to build a nationally renowned horse-breeding operation.

In its lawsuit, the city accused Fifth Third Bank and auditors Clifton, Larson, Allen, Samuel Card of not doing enough to expose Crundwell's theft. It cited a deposition by a former bank branch manager who said the bank failed to follow reasonable commercial banking standards while handling a Crundwell account.

Specifically, the manager said the bank cashed unendorsed checks from Crundwell, cashed checks made payable to "treasurer" without further inquiry and allowed Crundwell's secret personal account to be opened as a city account without proper verification.

Burke said the settlement was reached Saturday after 17 hours of negotiations that began Friday morning in Chicago.

"The only suggestion I gave our attorney, I said, was 'don't leave any money on the table,' " Burke said.

Burke said he will hold a public meeting next week to explain the settlement to Dixon residents and the financial impact it will have on the city.

The money is due in a lump sum before the end of the year, Burke said. After the October meeting, the city can start to talk about what to do with the funds, he said.

"My guess is they're going to be pretty pleased with it," Burke said, adding that he thinks most residents doubted whether the city would get much out of its lawsuit.

FROM PAGE 3

Sessions

Franklin sometimes acts as a children's representative in divorce cases.

"I oftentimes need expertise to direct my clients and my children for therapeutic interventions," he said. "I have found resources (at the think tanks) and the networking is excellent."

The next think tank focusing on lawyer-assisted mediation is set to run 9 a.m. to noon Saturday at The Peninsula Chicago, 108 E. Superior St. There is no fee to attend.

The featured speakers are Karen G. Shields, a retired Cook County associate judge and current neutral at JAMS Inc., along with Beverly Tarr, a Chicago-based divorce mediator.

As many as 50 people may attend the session, Allen said.

"I think it makes us better lawyers with the give-and-the take and the fact that we get to pick someone with expertise" to present, she said. "I think we learn as much as we give."

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Letter

and apply the law? Not one has the ethical integrity to preside over a case that has been labeled "politically sensitive?" Not one has the ability to fulfill the duties of an independent judicial officer? To conclude that, one must have no experience and no personal knowledge of the many extraordinary judges that we have in the criminal courts and elsewhere.

I have practiced in smaller Illinois counties where the judges have attended school with litigants and witnesses. The judges often come from the same political party as the elected state's attorney who is prosecuting the case. That does not create an "appearance of impropriety." That unto itself does not even raise a fear of bias. In the smaller counties it is not unusual for a juror to know all the parties and witnesses to a case. That juror is not excused from service. The jurors will be asked, under oath, if they can be fair and impartial and apply the law to the facts. Only if the jurors say that they cannot be fair are they excused from service. The oath that the judges and the jurors take should overcome any chance of justice being contaminated.

On a daily basis, judges preside over numerous cases. While every case should be decided on its own merits, many of the cases have similarities. To label a case "politically sensitive" does not somehow make it unique or a first of its kind in a system that handles thousands of cases a year. One can look to the federal courts in Chicago to see that no one questions the district judge's background when they preside over a "politically sensitive" trial. Why is Cook County any different? I know it makes for a good story, but it is terribly insulting and unfair to many of the very fine judges that we are lucky to have. Our judges are not political hacks sitting back waiting for a good cigar and a "politically sensitive" case.

Since facts are so important in decision-making, it is laughable to argue as fact that every Cook County judge has ties to Mr. Daley. That is simply not true.

Those of us who practice law every day in this justice system have to abide by the method in which cases are assigned to judges. There is no distinction among cases; each is important in its own right.

I have written this letter because I am keenly aware of how hard many of our judges work. I am also aware that many have ruled in favor of unpopular causes and litigants subjecting themselves to unfounded criticism. That is what being a judge is all about.

While I may argue and disagree from time to time with rulings made by a court, I will never argue that our county does not have a deep reservoir of fine judges to hear the most complicated or sensitive cases in the country.