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Summary of LVMPD v. Yeghiazarian, 129 Nev. Adv. Op. 81

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TORTS: EVIDENCE OF NEGLIGENCE, EXPERT TESTIMONY,
DAMAGES, AND ATTORNEY FEES

Summary

The Court decided four issues: (1) Whether a deceased's blood alcohol content (BAC) may be submitted to show his comparative negligence in a wrongful death action; (2) whether a district court abuses its discretion by allowing an expert to testify based on an allegedly unreliable report; (3) whether a jury's damages award should be reduced based on comparative negligence before or after imposing a statutory damage cap; and (4) whether awards for attorney fees may include charges for nonattorney staff.

Disposition

BAC is not admissible when it is under the legal limit and there is no causal connection between the alleged intoxication and the accident. In addition, an expert can testify on issues he can calculate to a "reasonable degree of scientific certainty." Jury damages should be reduced on the basis of comparative negligence prior to imposing a final damages cap. Finally, the "reasonable attorney fees" authorized by statute may include charges of nonattorney staff.

Factual and Procedural History

Raymond Yeghiazarian was travelling westbound on Sahara Avenue and attempted a left turn on a green light. At the same time, appellant Las Vegas Metropolitan Police Department (LVMPD) Officer Jared Wicks was driving his patrol vehicle eastbound on Sahara Avenue. The speed limit was 45 miles per hour, but Officer Wicks was driving between 58 and 74 miles per hour. Officer Wicks did not have his police siren or lights activated.

Yeghiazarian entered the intersection and collided with Officer Wicks' patrol car. Yeghiazarian suffered multiple internal injuries, spending three weeks in a coma before death. A blood sample drawn from Yeghiazarian hours after the crash revealed that he had a BAC of .049 percent.

Five plaintiffs from Yeghiazarian's family filed a complaint against LVMPD and Officer Wicks (collectively, "LVMPD"), alleging negligence resulting in Yeghiazarian's death. LVMPD asserted that Yeghiazarian's death was caused by his own negligence. Prior to trial, LVMPD attempted to exclude the testimony of the Yeghiazarian family's expert witness, who would testify that Officer Wicks was traveling at 74 miles per hour. The district court denied the motion. The Yeghiazarian family then moved to exclude evidence of Yeghiazarian's BAC because it was unfairly prejudicial. The district court agreed and granted the motion. The Yeghiazarian family also offered to settle with LVMPD for \$200,000, but LVMPD rejected the offer.

At trial, the Yeghiazarian family won a \$2 million verdict. The jury found Raymond Yeghiazarian 25 percent negligent and Officer Wicks 75 percent negligent. The district court accordingly reduced the \$2 million verdict by 25 percent to \$1.5 million. After this reduction, the court applied the mandatory \$50,000 damages limitation, resulting in a final damages award of \$250,000, or \$50,000 for each of the five plaintiffs. The district court also awarded the Yeghiazarian family \$88,104.75 in attorney fees and \$9,631.53 in costs. LVMPD appeals the district court's judgment.

¹ By Kelsey Bernstein

² NEV. REV. STAT. § 48.035(1) (2013).

³ *Hallmark v. Eldridge*, 124 Nev. 429, 498-500, 189 P.3d 646, 650-51 (2008).

⁴ NEV. REV. STAT. §§ 41.141(2)(b)(1)-(2) (2013).

⁵ NEV. REV. STAT. § 41.035(1) (2007).

⁶ NEV. REV. STAT. § 17.115(4)(d)(3) (2013).

⁷ *See e.g.* *Missouri v. Jenkins*, 491 U.S. 274, 285 (1989); *Richlin Sec'y Serv. Co. v. Chertoff*, 553 U.S. 571, 580-83

Discussion

The district court did not abuse its discretion by excluding evidence of Raymond's BAC

“Relevant evidence may be excluded if, among other things, its ‘probative value is substantially outweighed by the danger of unfair prejudice.’”² Here, LVMPD attempted to introduce Yeghiazarian’s alcohol consumption as substantive evidence without a causal connection between the alleged intoxication and the accident. Since Yeghiazarian’s BAC was under the legal limit, admission of the BAC level would have required the jury to speculate as to its effects on Yeghiazarian’s reaction time and judgment. Without other evidence suggesting the level and effect of his intoxication, Yeghiazarian’s BAC is substantially more prejudicial than probative.

The district court did not abuse its discretion in permitting the Yeghiazarian family's expert to testify

. The Court previously articulated three main requirements for admissible expert testimony: (1) qualification, (2) assistance (whether the testimony is relevant and the product of reliable methodology), and (3) limited scope.³ LVMPD argues that the expert should not have been allowed to testify because there was no assistance: his report was based on speculation and conjecture. However, the expert used reports, diagrams, and pictures produced by LVMPD, and the facts used by the expert were an appropriate topic for cross-examination. Accordingly, the expert was “able to calculate to a reasonable degree of scientific certainty” variables such as the vehicles’ starting positions, impact speeds, and general collision angles. Thus, the district court did not abuse its discretion in allowing the expert to testify.

The district court correctly calculated damages under NRS 41.035

NRS 41.141(2)(b)(1) and (2) allows the jury to return a verdict allocating a percentage of negligence to each party.⁴ In addition, NRS 41.035(1) at the time of the accident limited awards for damages in tort actions against state entities to \$50,000.⁵ The jury’s final award in this case encompassed the amount of the \$2 million general verdict minus the 25 percent comparative negligence, rendering a final award of \$1.5 million. Because the jury’s award could not exceed \$50,000 per plaintiff, the district court correctly reduced the award *after* adjusting for Yeghiazarian’s comparative negligence.

The district court did not abuse its discretion in awarding attorney fees

NRS 17.115(4)(d)(3) provides if a party rejects a settlement offer and fails to obtain a more favorable judgment, the district court may order that party to pay the other party’s “reasonable attorney’s fees” from the date of the offer to the entry of the judgment.⁶ Since LVMPD rejected the Yeghiazarian family’s offer of \$200,000, the Yeghiazarian family is entitled to reasonable attorney’s fees for the specified period. Furthermore, as the U.S. Supreme Court, the Ninth Circuit, and other jurisdictions have

² NEV. REV. STAT. § 48.035(1) (2013).

³ *Hallmark v. Eldridge*, 124 Nev. 429, 498-500, 189 P.3d 646, 650-51 (2008).

⁴ NEV. REV. STAT. §§ 41.141(2)(b)(1)-(2) (2013).

⁵ NEV. REV. STAT. § 41.035(1) (2007).

⁶ NEV. REV. STAT. § 17.115(4)(d)(3) (2013).

held,⁷ nonattorney staff costs are recoverable “because they are part of a reasonable attorney fee and promote cost-effective litigation.”

However, the district court failed to evaluate whether the paralegals or office staff’s hourly rates were reasonable under the circumstances. Accordingly, the Court vacated the attorney fee award and remanded this case to the district court for further analysis on this claim.

Conclusion

The district court did not err in excluding the deceased’s BAC because the deceased’s BAC was under the legal limit and there was witness or other evidence to establish a causal connection between the alleged intoxication and the accident. The district court also did not abuse its discretion in allowing the expert to testify because, using reports and data provided by LVMPD, he testified on issues he could calculate to a reasonable degree of scientific certainty. The jury damages was properly reduced based on the deceased’s comparative negligence prior to imposing a final damages cap. Finally, while “reasonable attorney fees” can include the charges of nonattorney staff, the case was remanded on this issue to determine if the nonattorney fees included were reasonable.

⁷ See, e.g., *Missouri v. Jenkins*, 491 U.S. 274, 285 (1989); *Richlin Sec’y Serv. Co. v. Chertoff*, 553 U.S. 571, 580-83 (2007); *Trs. Of Constr. Indus. & Laborers Health & Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1257 (9th Cir. 2006); *U.S. Football League v. Nat’l Football League*, 887 F.2d 408, 416 (2d Cir. 1989); *Guinn v. Dotson*, 28 Cal. Rptr. 2d 409, 413 (Ct. App. 1994).