Supreme Court Summaries

Opinions filed June 22, 2006

No. 98800 People v. Robinson

Appellate citation: 349 Ill. App. 3d 622.

JUSTICE GARMAN delivered the judgment of the court, with opinion.
Chief Justice Thomas and Justices Fitzgerald, Kilbride, and Karmeier concurred in the judgment and opinion.
Justice Freeman dissented, with opinion, joined by Justice McMorrow.

This Cook County defendant was convicted by a jury of driving with a blood-alcohol concentration of 0.08 or more and of driving under the influence of alcohol.

The Chicago police officer who arrested the defendant in 1999 testified as to how he performed several field sobriety tests, which the defendant did not pass. One was the horizontal gaze nystagmus (HGN) test. In this, the person is asked to follow a moving object with his eyes without turning his head. An involuntary jerking of the eyeball while it is moving slowly from one side to another indicates that the person is impaired.

When the cause reached the appellate court, that reviewing body remanded for a determination as to the appropriate amount of a fine, but otherwise affirmed. When the defendant appealed to the Illinois Supreme Court, he sought review of the question whether a defendant is entitled to a *Frye* hearing (which he did not have) to determine whether HGN test results are admissible as evidence of driving under the influence. He claimed that review of his case would resolve questions on this issue left open by the 2000 supreme court decision of *People v. Basler* and would resolve a conflict among the appellate districts.

However, once leave to appeal was granted, the defendant failed to argue the HGN issue in his brief, raising instead other matters which had already been forfeited. For lack of an appropriate record on which to resolve the appeal, the supreme court dismissed it.

No. 99310 ***In re* M.T.**

Appellate citation: 352 Ill. App. 3d 131.

JUSTICE KILBRIDE delivered the judgment of the court, with opinion.
Chief Justice Thomas and Justices Freeman, McMorrow, Fitzgerald, Garman, and Karmeier concurred in the judgment and opinion.

This Cook County offender was 16 in 2001 when he was involved in an incident on the basis of which he was adjudicated a delinquent. M.T., a sophomore at Luther South High School, arranged for a girl who was not a minor to perform a sex act on a boy of 16 in an empty classroom. The criminal code provision he was found to have violated is the statute on indecent solicitation of an adult. It forbids any person from arranging for an adult to have sex a with a minor. M.T. asserted on appeal that a juvenile could not be found guilty under this provision, but in this decision the Illinois Supreme Court rejected this argument, holding that the meaning of the statute is plain. Other due process challenges to the statute were also rejected.

The results reached in the circuit court were affirmed.

No. 99507 **York v. Rush-Presbyterian-St. Luke's Medical Center**

Appellate citation: 353 Ill. App. 3d 1.

JUSTICE McMORROW delivered the judgment of the court, with opinion.
Chief Justice Thomas and Justices Freeman, Fitzgerald, Kilbride, and Karmeier concurred in the judgment and opinion.
Justice Garman dissented, with opinion.

In 1998, a retired physician underwent knee surgery at Rush-Presbyterian-St. Luke's Medical Center. That procedure was successful, but the patient, the plaintiff here, suffered a spinal injury as a result of the anesthesia. He experienced pain and loss of movement in his right leg, as well as loss of bladder and bowel control. Rehabilitation was only partially successful.

Suit was filed in the circuit court of Cook County, naming the attending anesthesiologist, the professional group to which he belonged, and the hospital. The jury returned a total verdict of $12.5 million, and the appellate court affirmed. Only the hospital's petition for leave to appeal to the Illinois Supreme Court was allowed. Therefore, this decision concerns only that defendant.

It was asserted as a defense to liability that the anesthesiologist was an independent contractor. However, the supreme court held in this decision that the hospital could be held vicariously liable under a theory of apparent agency, and that the facts here supported such a claim. The court held that the jury could have found

that the patient reasonably believed the anesthesiologist to be a hospital employee.

The results reached below were affirmed.

Nos. 99584, 99595 cons. Tri-G, Inc. v. Burke, Bosselman & Weaver

Appellate citation: 353 Ill. App. 3d at 232.

JUSTICE KARMEIER delivered the judgment of the court, with opinion.

Chief Justice Thomas and Justices Kilbride and Garman concurred in the judgment and opinion.

Justice Freeman concurred in part and dissented in part, with opinion, joined by Justices McMorrow and Fitzgerald.

In 1976, Clarence and Irene Geschke purchased land in McHenry County to develop the Huntington Point subdivision. They formed a corporation, Tri-G, Inc., to act as general contractor, and they obtained financing for the construction from the Elgin Federal Bank. Later, disputes arose over the handling of the loan, and, by 1981, Tri-G had filed a suit for damages against the bank, alleging breach of contract and common law and statutory fraud. That case never went to trial, however. A succession of law firms provided counsel. The firm of Burke, Bosselman & Weaver, the defendant here, began representing the plaintiffs about three months before the scheduled May 11, 1987, trial date. When the case was called for trial, the attorney for the firm answered "not ready" and had not sought a voluntary nonsuit. The cause was dismissed with prejudice.

In 1989, Tri-G filed its first legal malpractice action against the law firm. In 2002, a judgment was entered against defendant firm. It is that judgment which is before the Illinois Supreme Court in this appeal.

Although upholding part of the compensatory damage award, the supreme court said that it had been too high because it was more than the plaintiff had asked for and was unsupported by the instructions. A remittitur of $420,213 against the $1,168,775 award was ordered, bringing the award down to $748,562, the amount which plaintiff had originally asked for. Should plaintiff choose not to accept that remittitur, there will be a new trial on damages.

The jury had also awarded $1,168,775 in punitive damages against the law firm. In this decision, the supreme court reversed this award, holding that a plaintiff in a legal malpractice action cannot recover from its attorneys those punitive damages which allegedly would have been available in the underlying action. The bar to this type of damage is provided by a statute, which also reflects public policy. The supreme court said that the purpose of punitive damages is not served by allowing them in these circumstances.

No. 100257 People v. Klebanowski

Appellate citation: No. 1–04–0119 (unpublished order under Supreme Court Rule 23).

JUSTICE FREEMAN delivered the judgment of the court, with opinion.
Chief Justice Thomas and Justices Fitzgerald, Kilbride, Garman, and Karmeier concurred in the judgment and opinion.
Justice McMorrow dissented, with opinion.

In 2002, this defendant was staying at a suburban motel when he was approached by Robert Winters, another motel resident, who wanted a ride into Chicago so he could find someone to rob. Winters had two BB guns he had stolen in a burglary of a home. The defendant agreed, and, driving his pickup truck, took the would-be robber on a ride looking for a victim. Winters spotted one in the alley behind 5128 South Naragansett. Winters, armed with one of the BB guns, struggled with the victim, took his wallet, and ran down the alley while the defendant was waiting in the vehicle. However, unbeknownst to the two offenders, the victim was an off-duty police officer who was carrying a Luger. When the assailant stopped in his flight and turned and faced the victim with the BB gun pointed at him, he was shot dead by the would-be robbery victim. Defendant drove off when he heard the shots, but was later arrested. His subsequent statements indicated that he had expected a part of the robbery proceeds.

In a bench trial in the circuit court of Cook County, defendant was found guilty of armed robbery and first degree murder based on the commission of a felony, although judgment was not entered on the armed robbery charge. A 20-year sentence was imposed. The appellate court affirmed and the supreme court, in this decision, also affirmed, noting that guilt for felony murder is different from guilt by accountability and may be imposed even when the decedent is a cofelon who is shot by the intended victim of the crime.

No. 100372 Marshall v. Burger King Corporation

Appellate citation: 355 Ill. App. 3d 685.

JUSTICE GARMAN delivered the judgment of the court, with opinion.
Chief Justice Thomas and Justices Fitzgerald, Kilbride, and Karmeier concurred in the judgment and opinion.
Justice McMorrow dissented, with opinion, joined by Justice Freeman.

This Winnebago County negligence suit brought under the Wrongful Death Act is at the pleading stage. No trial has yet occurred.

In 2001, there was a fatal accident at a Burger King restaurant in Rockford. A diner inside the building was killed when a driver in the parking lot lost control of her vehicle and crashed it through the large glass window of the building. The driver, Burger King, its franchisee, and various insurers all were sued. This appeal concerns the claims against Burger King and its franchisee in their capacities as owners and operators of the restaurant. The circuit court dismissed these claims for lack of any duty on the part of the defendants to protect the decedent from the injury which occurred, but the appellate court reversed.

In this decision, the supreme court held that, because of the special relationship between defendants and the decedent (who was defendants' business invitee), the defendants owed the decedent a duty of reasonable care. Whether that duty was breached is a question that cannot be answered at this stage. The circuit court should not have ordered a dismissal, and the cause was remanded for further proceedings.

Nos. 100555 Solaia Technology v. Specialty Publishing Company

Appellate citation: 357 Ill. App. 3d 1.

JUSTICE FITZGERALD delivered the judgment of the court, with opinion.

Justices McMorrow, Kilbride, Garman, and Karmeier concurred in the judgment and opinion.

Justice Freeman concurred in part and dissented in part, with opinion.

Chief Justice Thomas took no part in the decision.

This defamation suit is at the pleading stage. No trial has occurred. Start magazine, a publication for manufacturing company executives, ran articles in 2002 and 2003 about a patent infringement controversy involving Solaia Technology, the owner of a patent commonly known as patent 318. This patent relates to a system or standard by which companies using computers to control manufacturing operations communicate real-time information between computers and machines. Solaia had been bringing litigation to enforce the patent and collecting settlements. Part of this dispute was a suit which Rockwell Automation, a vendor of technology incorporating the patent, had filed against Solaia in federal court, alleging antitrust violations. In 2003, the instant case, alleging defamatory coverage of these matters, was brought by Solaia and its attorneys against Start's publisher, Specialty Publishing Company. The circuit court of Cook County dismissed the complaint, finding that the challenged statements were either subject to an innocent construction, protected as opinion, or privileged as a "fair abridgement" of litigation. Solaia appealed. The appellate court agreed with the circuit court on some points, but held that the privilege to make a fair report of litigation did not apply to Start's coverage of the Rockwell lawsuit because Start's actual malice was alleged.

In this decision, the Illinois Supreme Court did not agree on this last issue,

holding that the privilege to make a fair report or abridgement of a judicial proceedings applies. The supreme court held that this privilege comes into effect when a complaint is filed and cannot be defeated merely by allegations of actual malice. However, there were aspects of the defamation complaint which should not have been dismissed. One was the publication of a letter to the editor by an individual who stated that the patent was worthless. The other was the inaccurate statement that Solaia's attorney, Raymond Niro, had been sued personally in the Rockwell litigation. The cause was remanded to the circuit court so that the defamation plaintiffs could proceed on these claims.

No. 101171 People *ex rel.* Devine v. Sharkey

Original action seeking writ of *mandamus*.

JUSTICE FREEMAN delivered the judgment of the court, with opinion.

Justices McMorrow, Fitzgerald, and Kilbride concurred in the judgment and opinion.

Justice Karmeier specially concurred, with opinion, joined by Chief Justice Thomas and Justice Garman.

In the circuit court of Cook County, a juvenile had three delinquency petitions pending against him. In 2005, the most serious, alleging attempted first degree murder, was transferred to the criminal division for trial. Two months later, while that matter was still pending, the State made a motion to proceed on another of the delinquency petitions, one which alleged unlawful use of a weapon. The circuit court, expressing concern about the fairness of requiring the minor to prepare for two cases at once, denied the motion. The State brought an original action in the supreme court for *mandamus* to compel the judge to set the case for trial.

The Juvenile Court Act has speedy-trial language providing that trial within 120 days may be demanded by "a party." In this decision, the supreme court held that the term "party was not intended to include the State in this context, and that the State cannot force a juvenile to trial. Even a criminal defendant is entitled to a continuance in the interests of justice and cannot be forced to trial by the prosecution. In the criminal context, the right to demand trial within a certain speedy-trial period resides only with the defendant, not with the prosecution. Also, the speedy-trial section of the Juvenile Court Act includes a provision stating that the juvenile may waive the time limits set forth therein.

The supreme court noted that a circuit court's management of its own docket is a matter traditionally reserved to its discretion and is not, therefore, amenable to *mandamus* relief. Because of this, and because of the supreme court's interpretation of the Juvenile Court Act in this decision, the request for *mandamus* was denied.