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Stoops v. Commonwealth DCNR

ROBIN E. STOOPS AND MARY W. STOOPS, Plaintiffs,
v. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch

Civil Action - Law, No. 2001-3570

Spoliation Inference - Fault in the Context of Spoliation - Duty of Public Employees to Members of the Public

1. A "Spoliation Inference" allows a jury to presume that corrupted evidence would have been unfavorable to the party responsible for its loss.

2. To determine whether a spoliation inference is an appropriate sanction, courts should consider: 1) the degree of fault of the party responsible for altering or destroying the evidence; 2) the degree of prejudice suffered by the party in need of the evidence; and 3) whether a lesser sanction will avoid substantial unfairness to the party in need of the evidence and, where the offending party is seriously at fault, will serve to deter such conduct by others in the future.

3. Fault in the context of spoliation has two components: 1) responsibility; and 2) the presence or absence of bad faith.

4. As a public employee's duty is to the public in general, a special relationship must be established between a public employee and an individual member of the public before any legal duty may be imposed upon the public employee or his or her employer on behalf of the individual.

5. A public employee who responds to the scene of an accident to assist the injured party and make the scene safe for emergency responders cannot be said to have established a special relationship with the injured party such that a duty arises to preserve evidence to support the injured party's financial interests in a later civil action.

6. Defendant cannot be said to have acted in bad faith when a tree that was involved in an accident is removed by a third-party tree cutter and no evidence is presented to suggest that the tree cutter was engaged by Defendant to remove the tree for the purpose of frustrating Plaintiff's cause of action.

7. Plaintiff cannot be said to have suffered a prejudice to his cause of action when Plaintiff's expert is able to make definitive conclusions as the condition of a tree that was involved in an accident based upon an inspection of the limited remains of the tree.

Appearances:

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Jay W. Stark, Esq., *Attorney for Defendant*

OPINION

Van Horn, J., March 31, 2005

Factual Background

On July 18, 2001, a Black Oak tree fell and struck Plaintiff, Robin Stoops' truck cab while he was driving through the Michaux State Forest. The forest is real estate owned by the Commonwealth of Pennsylvania and managed by the Department of Natural Resources (DNR). After receiving notice of the accident, Gary Zimmerman, Assistant District Forester, several Forest Rangers and the Pennsylvania State Police responded to the scene. While at the scene, Mr. Zimmerman removed portions of the tree that obstructed the roadway to allow for continued safe traffic flow and ease of access for emergency vehicles. Mr. Stoops was transported to the hospital. The severity of Mr. Stoops' injuries required his hospitalization for a period of several weeks. The portion of the tree that had not fallen into the roadway remained undisturbed on the forest floor.

Following the accident, no efforts were taken on the part of the DNR to preserve the remains of the tree. Mr. Zimmerman testified in his deposition that within three days of the accident either an independent firewood cutter[1] or a poacher[2] removed all the fallen portions of the tree leaving only the stump. No efforts were made by Defendant to preserve the remains of the tree, nor were any photographs taken of the tree prior to its removal.[3] Plaintiffs for their part did not request that Defendants make any effort to preserve the tree, nor did Plaintiffs take any photographs.

Plaintiffs eventually sent an expert to the scene on October 1, 2001 to examine the remaining tree stump. From this examination the expert concluded that the tree had been dead approximately two to three years.[4] Two days later on October 3, 2001, Defendants sent an employee of the Bureau of Risk and Insurance Management to the scene. Photographs were taken on both occasions that display the tree stump and some remaining debris that had been put to the side of the road by Mr. Zimmerman almost three months earlier.

Procedural History

Plaintiffs filed their complaint against the DNR on November 9, 2001 alleging negligence on the part of Defendant for failing to exercise reasonable care to discover the condition of the tree prior to the accident and effectuate its removal.[5] On December 21, 2001, Defendant responded with Answer and New Matter specifically denying any negligence on the part of the DNR.[6] Plaintiffs responded to Defendant's New Matter on January 15, 2002. On September 1, 2004, Plaintiffs filed a Motion In Limine asserting spoliation on the part of Defendant and requesting sanctions. On September 7, 2004 by Order of Court, the Court issued a rule upon Defendant to show cause why Plaintiffs' relief should not be granted. On September 29, 2004, Defendant filed its reply to Plaintiffs' Motion In Limine. Plaintiffs and Defendant filed briefs in support of their positions on October 28, 2004 and November 30, 2004, respectively. Plaintiff by Praecipe filed on December 10, 2004 scheduled this case for Oral Argument on March 3, 2005. The Court having reviewed the record in this case and having heard argument on the matters is prepared to render its decision.

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Discussion

The "spoliation inference" allows a jury to presume that corrupted evidence may have been unfavorable to the offending party. Schmid v. Milwaukee Electric Tool Corp., 13 F.3d 76, 78 (3rd Cir. 1994). The reasoning for such an inference is based on the common sense observation that the evidence would have been threatening to the party responsible for its destruction. Id. The test used to determine whether such sanction is appropriate requires the court to consider: (1) the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party; and (3) whether there is a lesser sanction that will avoid substantial unfairness to the opposing party and, where the offending party is seriously at fault, will serve to deter such conduct by others in the future. Id at 79. "[C]ourts [should] select the least onerous sanction corresponding to the willfulness of the destructive act and the prejudice suffered by the victim." Id.

Schmid was a product liability action in which the plaintiff alleged that his injury was due to a design defect in an electric saw. The plaintiff's expert opined that an accumulation of sawdust in the guard mechanism prevented the guard from closing properly when the blade was exposed from a "kick back." To test his theory the expert disassembled the saw, which allowed the sawdust to fall out. The expert took photos of the saw before and after disassembly. The saw was then forwarded to the defendant's expert who reassembled it and found it to work properly.

The defendant moved to strike the plaintiff's expert's testimony in its entirety. The defense argued that by disassembling the saw and not preserving the saw dust the expert destroyed the evidence resulting in extreme prejudice to the defense. The District Court found for the defendant and disallowed the expert's testimony. The lack of expert testimony deprived the plaintiff of any evidence to support his theory resulting in summary judgment for the defendant.

The Circuit Court reversed the District Court and remanded making the following findings. First, the expert did not destroy the saw. Id. at 79. All he did was disassemble it to determine if the plaintiff had a legitimate claim. He took photos before and after disassembly that archived the existence of the sawdust and the general condition of the saw. Therefore, the plaintiff could not be found to have destroyed the saw in an attempt to deprive the defendant, who was not even identified at this time, of the ability to establish a defense. Id. Second, as this was a design defect case rather than a manufacturing defect, the Circuit Court found that the defendant could test any like product for the existence of the alleged flaw. Id. The necessity to rely on the actual saw involved in the accident was greatly reduced. Therefore, the defendant was not prejudiced to any significant degree in establishing a defense. Id. at 79-80. Finally, the Circuit Court concluded that the sanction imposed by the District Court was far from being the least onerous corresponding to the willfulness of the destructive act and the prejudice suffered by the victims. Id. at 81.

The Pennsylvania Supreme Court adopted the Schmid test in Schroeder v. Commonwealth Department of Transportation, et. al., 710 A.2d 23, 27 (Pa. 1998). Like Schmid, Schroeder was a design defect case. In Schroeder, the plaintiff alleged that the truck her husband was driving when he had an accident that resulted in his death was not crashworthy. Following the accident, the remains of the truck were taken to a salvage facility that arranged to purchase the truck from the plaintiff's insurance adjuster. The plaintiff's attorney asked the salvage company to not destroy or sell the truck until it could be examined. The salvage facility agreed to store the truck for a fee. The plaintiff signed the truck's title over to the insurance adjuster who later transferred it to the salvage company. The salvage company began to sell off parts of the truck once it obtained title. The plaintiff's expert and one of the defendant's experts were able to examine what remained of the truck. By the time PennDOT sent an expert to the salvage company the entire truck had been sold off or destroyed. The defendants filed for summary judgment based on spoliation. The trial court granted the motion and the Commonwealth Court affirmed.

Applying the Schmid test, the Supreme Court found that although the plaintiff transferred the title to the truck, the transfer was not made in a bad faith attempt to deprive the defendants of the evidence. Schroeder, 710 A.2d at 27. The Court noted that the plaintiff did ask that the truck be preserved until it could be examined. Id. The Court further concluded that the plaintiff was equally as deprived as the additional defendant since both were limited by the salvage company's decision to sell off portions of the truck. Id. at 27-28. Also, as this was a design defect case, the parties could inspect other like trucks to see if the alleged defect existed. Id. at 28. As the court could not find that Schroeder acted in bad faith when she transferred title to the truck and that none of the defendants were greatly prejudiced because other similar trucks could be inspected for the alleged defect, the court suggested on remand that a lesser sanction such as a jury instruction on the spoliation inference would be proper. Id.

Here, Plaintiffs are asking the Court to allow for a spoliation inference because they allege that Defendant negligently allowed the tree that caused the injury to Plaintiff, Robin Stoops, to be destroyed. Therefore, Plaintiffs are significantly prejudiced in their ability to support their cause of action against Defendant. Applying the test from Schmid, the Court finds the following:

Degree of Fault to Opposing Party

Plaintiffs' Brief in Support of Their Motion In Limine (Plaintiffs' Brief) asserts that Plaintiffs are entitled to sanctions because Defendant was at fault for failing to preserve the remains of the fallen Black Oak tree. Plaintiffs support this notion by alleging that Defendant was in exclusive control of the tree and should have known that the tree would be essential to determine liability in some later action.[7] The Court does not agree.

Fault in the context of spoliation has two components: (1) responsibility and (2) the presence or absence of bad faith. Pocono Hotels Corp. v. Blanski, Inc., 56 Pa. D. & C.4th 512, 517 (Pa.Com.Pl. 2002) citing Pia v. Perrotti, 718 A.2d 321 (Pa. Super. 1998). Although Pennsylvania courts do not recognize a separate tort cause of action for spoliation of evidence, they do recognize that some duty should be found to exist on the part of a party to preserve evidence before a spoliation inference may be granted. Rhodes v. Pottsville Hospital, 31 Pa. D. & C.4th 500, 511 (Pa.Com.Pl. 1996). In the instant case, no such duty can be said to exist on the part of the DNR or its employees to preserve evidence in anticipation of Plaintiffs' potential civil action.

The court in Rhodes pointed to the case of Caldwell v. City of Philadelphia, 517 A.2d 1296 (Pa. Super. 1986) to emphasize that Pennsylvania courts hesitate to find an affirmative duty on the part of a party to preserve evidence. In Caldwell, a Philadelphia police officer responded to a traffic accident where one of the drivers was injured. The officer failed to obtain identification information from the non-injured driver despite that driver having approached the officer to offer identification. The non-injured driver eventually left the scene and was never identified. Plaintiff brought a negligence action against the city claiming the officer had a duty to the plaintiff to secure the evidence of the non-injured driver's identity.

The court found that the officer's duty is to the public in general and not to the plaintiff. Id. at 1300. The officer's actions concerning the plaintiff's injuries and his actions taken to secure the scene were owed to the public and not the plaintiff. Id. The court found that the officer never assumed any special relationship with the plaintiff, noting that the only legal duty the city had to the plaintiff regarded her physical well-being. Id. Neither the city nor its employee could be said to have a duty regarding the plaintiff's financial interests by preserving evidence to support her civil claim. Id.

In this case, Defendant's employee, Mr. Zimmerman, Assistant District Forester, is a public employee. The facts indicate that Mr. Zimmerman responded to the accident. He made room for emergency personnel to arrive and provided assistance to Plaintiff. He also made the scene safe for other members of the public. In doing so, he removed parts of the tree to the side of the road. He was never asked at any time by Plaintiff or a representative of Plaintiff to preserve the tree as evidence for a potential civil action. Here, no special relationship or agreement was created between Plaintiff and Defendant via Mr. Zimmerman to preserve evidence in Plaintiffs' interest that the law should recognize.

As to bad faith, Plaintiffs allege that Defendant actively engaged in having the tree destroyed. However, neither in their brief nor during argument did Plaintiffs provide any evidence to support their contention. In fact, they admit that no evidence exists to suggest that Defendant had the tree removed to frustrate Plaintiffs' claim. The parties agree that the tree was likely removed for firewood, but Defendant denies that any employee of Defendant engaged a tree cutter for that purpose. Absent a strongly supported claim of bad faith or a legally recognized responsibility on the part of Defendant to preserve evidence for Plaintiffs' later use, the Court finds no degree of fault on the part of Defendant for the loss of the tree.

Degree of Prejudice

The second measure to determine the degree of a spoliation sanction is the degree of prejudice suffered by the party in need of the lost evidence. This case is distinct from both Schmid and Schroeder in that the subject tree is one of a kind rather than one of many like products. Plaintiffs assert that this fact causes them to be greatly prejudiced because knowledge of the tree's condition prior to the accident can only be obtained from a thorough inspection of the particular tree involved. Plaintiffs allege that an inspection of the entire tree would be necessary to establish whether Defendant knew or should have known of the tree's potential danger. However, Plaintiffs' expert report based on an inspection of the limited remains of the tree refutes this allegation.

Plaintiffs' expert states in his report that he is "firmly convinced this tree had been dead long enough that it should have been readily apparent to a trained forester that it needed to be removed."[8] In fact, the expert predicts the tree had been dead for two to three years prior to the accident. The expert attached photos of the remains of the tree that included the stump and a portion of the trunk. The photos depict insect damage and dry rot that the expert states are good indicators of the tree's level of decay. The expert believes his finding to be definitive and never indicates that he had any difficulty determining the tree's condition due to the fact that most of the tree had been removed.

In addition, the Court notes that Defendant was unable to have an expert inspect the tree prior to its removal. Therefore, Plaintiff can be no more prejudiced by the removal of the tree than can Defendant. That is, Defendant had no more evidence available with which to refute Plaintiffs' claims than Plaintiffs had to make their claims. To impose sanctions on Defendant for the acts of a third party, which are as prejudicial to Defendant's defense as to Plaintiff burden of proof, would be overly harsh. As the Court can find no degree of prejudice suffered by Plaintiffs, that is at least any greater that that suffered by Defendant, a spoliation inference is not warranted in this case.

Lesser Available Sanction

In the conclusion section of their brief, Plaintiffs ask the Court for the following sanctions: (1) that Defendants be precluded from entering any testimony relating to the condition of the tree on the date of

the accident; (2) that Plaintiffs be allowed to present evidence of the destruction of the tree by Defendant; (3) that the jury be instructed to infer that the evidence of the condition of the trunk, branches, and leaves of the tree would be unfavorable to Defendant's case; and (4) that the jury be instructed to infer that the tree had been dead for two to three years prior to the accident.[9]

In Schroeder, the court stated that the common penalty for spoliation is a jury instruction allowing the jury to infer that the evidence would have been damaging to the party responsible for its destruction. Schroeder, 710 A.2d at 26-27. As the Court finds that the lesser sanction of a spoliation inference is not warranted in this case, and only number (3) above accurately represents that sanction, the Court will not entertain imposition of Plaintiffs' additional sanctions on Defendant.

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Conclusion

Plaintiffs are unable to establish a case to support a spoliation inference instruction in this case at this time. They make unfounded claims that Defendant intentionally disposed of the tree in question. They admit there is no evidence to suggest the tree was destroyed in a bad faith effort to frustrate Plaintiffs' claim and agree with Defendant that the tree was removed by a third party. Plaintiffs claim to be greatly prejudiced; yet, they present a thorough expert report in which the expert expresses complete confidence in his conclusions. Defendant for its part had no more opportunity to inspect the tree prior to its removal than had Plaintiffs. Defendant is in no better position than Plaintiffs regarding its ability to utilize the remaining evidence to support its position. For the reasons stated, Plaintiffs' Motion In Limine is denied.

ORDER OF COURT

And now this 31st day of March, 2005, this matter having come before the Court on Plaintiffs' Motion In Limine, the Court having considered the relevant documents submitted by the parties and having heard Oral Argument, it is hereby ordered that Plaintiffs' Motion In Limine is denied.

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[1] Zimmerman Deposition, 26:18-19 (Nov. 20, 2003).

[2] Zimmerman Deposition, 46: 2-3 (Nov. 20, 2003).

[3] Zimmerman Deposition, 26: 22-24, 27: 1-4 (Nov. 20, 2003).

[4] Expert Report of Ronald G. Bennett (Oct. 4, 2001).

[5] Complaint, ¶ 11 (a)-(e) (Nov. 9, 2001).

[6] Defendant's Answer and New Matter, ¶ 11 (a)-(e) (Dec. 21, 2001).

[7] Plaintiffs' Brief, p.3 section IV (Oct. 28, 2004).

[8] Expert Report of Ronald G. Bennett (Oct. 4, 2001).

[9] Plaintiffs' Brief, p.7 section V (Oct. 28, 2004).