

Murray v Cayuga Med. Ctr. at Ithaca, Inc.

2018 NY Slip Op 31220(U)

June 14, 2018

Supreme Court, Tompkins County

Docket Number: 2015-0855

Judge: Eugene D. Faughnan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At a Special Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Tioga County Courthouse, Owego, New York (by agreement of the parties), on the 20th day of April, 2018.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : TOMPKINS COUNTY

RICHARD MURRAY and ANDREA MURRAY,

Plaintiffs,

DECISION AND ORDER

Index No. 2015-0855
RJI No. 2017-0523-J

-vs-

CAYUGA MEDICAL CENTER AT ITHACA, INC.

Defendant.

APPEARANCES:

COUNSEL FOR PLAINTIFFS:

ANDERSON, MOSCHETTI &
TAFFANY, PLLC
By: Jeffrey K. Anderson, Esq.
26 Century Hill Drive, Suite 206
Latham, NY 12110

COUNSEL FOR DEFENDANT:

LEVENE GOULDIN & THOMPSON LLP
By: Margaret Fowler, Esq.
PO Box F-1706
Binghamton, NY 13902-0106

EUGENE D. FAUGHNAN, J.S.C.

This matter comes before the Court upon motion of Defendant Cayuga Medical Center at Ithaca, Inc., (“CMC”) seeking an Order to bifurcate the trial, and separately try the matters of liability and damages in this slip/trip and fall case. The motion was opposed by Plaintiffs Richard Murray and Andrea Murray, and oral argument was heard on April 20, 2018. For the reasons detailed below, the Defendants motion is denied.

BACKGROUND FACTS

Plaintiff, Richard Murray, was working as a physician in the Emergency Department at CMC in April, 2015. On the date of the accident, he was returning to the Emergency Department after retrieving his stethoscope from his car in the parking lot, using a route he had traversed many times previously. To get to the Emergency Department, he walked on a macadam driveway, which was the ambulance entrance, and had a slight decline to get to the Emergency Department. Dr. Justine Waldman was walking up the road/driveway, having just finished her shift, and the two exchanged greetings. Another person was also walking in that area, and as Murray stepped out of the way to let that person pass, Murray stepped into a sunken storm sewer grate and fell. He was taken into the Emergency Department, and he was evaluated and treated by Dr. Waldman and others. Murray was diagnosed with a left quadriceps muscle rupture. Plaintiffs contend that Murray’s leg injury also resulted in a traumatically induced form of Guillain-Barre Syndrome. As a result, he has had to be treated with medications to control pain and neuropathy, and those medications have also affected his cognitive abilities. Murray has remained out of work since the accident.

Plaintiffs contend that the Emergency Department personnel had used this path to access the Emergency Department regularly over a long period of time; and that CMC did not properly maintain the premises in a safe condition. CMC argues that the area where Murray was walking was not intended for pedestrian use, and that there is a sidewalk available for pedestrian use. CMC also contends that the drain condition was open and obvious.

CMC seeks an Order for bifurcation of this case. CMC contends that there is a dispute as to the existence of a dangerous condition, and that based upon Murray's familiarity with the area, as well as the open and obvious nature of the drain, that liability will not be established. If that liability issue is resolved in CMC's favor, then no further testimony would be required, and the case would be concluded. CMC further claims that there is a significant question as to whether Murray's condition is causally related to his fall, and medical testimony will be needed to explain both the diagnoses and the theory of causation. In addition, expert opinion and testimony by vocational consultants, life care planners and economists may be needed to assess potential damages. CMC contends that the liability and damages issues should be tried separately, because they are discrete issues and bifurcation could assist in the clarification or simplification of issues.

Plaintiffs oppose the motion, contending that bifurcation would result in some witnesses having to testify in both the liability and damages phase, causing inconvenience for the witnesses, particularly those who are not parties to the action. There would also be some testimony which would have to be duplicated in both the liability and damages phases, which would consume more courtroom time. In particular, it is expected that Dr. Waldman, Mr. Murray and Mrs. Murray might all testify as fact witnesses in the liability phase of the trial, and then all have to testify again as to the injuries and damages.

DISCUSSION AND LEGAL ANALYSIS

CPLR § 603 provides that "[i]n furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue." See *Johnson v. Hudson River Constr. Co.*, 13 AD3d 864 (3rd Dept. 2004). The Uniform Rules for Trial Courts also state that "Judges are encouraged to order a bifurcated trial of the issues of liability and damages in any action for personal injury where it appears that bifurcation may assist in a clarification or simplification of issues and a fair and more expeditious resolution of the action." 22 NYCRR § 202.42(a). However, the "determination on bifurcation [is] within

the trial court's sound discretion ..., and in no area is a trial court's discretion entitled to more deference than in the control of its calendar." *Johnson*, 13 AD3d at 865 (internal citation omitted); *see also Harari-Rafal v. Trans World Airlines, Inc.*, 41 AD2d 753 (2nd Dept. 1973) (the purpose of CPLR 603 is to afford courts wide discretion in administering cases); *Herskovitz v. Klein*, 91 AD3d 598 (2nd Dept. 2012). A request for bifurcation is properly denied if the court concludes that bifurcation would not result in a more expeditious resolution of the action. *See Carpenter v. County of Essex*, 67 AD3d 1106 (3rd Dept. 2009); *Johnson, supra*.

In the present matter, CMC has failed to establish that bifurcation is likely to result in a more expeditious resolution of the case. The Court cannot conclude that a defense verdict on liability is likely, which would then eliminate the damages trial. There are numerous questions that need to be resolved to determine liability, including but not limited to, whether this was an area where pedestrian use was permitted/expected, whether the condition of the drain was open and obvious, or whether CMC should have discovered the deteriorated drain and taken corrective actions. Plaintiffs submitted deposition testimony from the Director of Safety and Security at the hospital tending to show that the road/driveway was commonly used by the Emergency Department personnel to get from the parking lot to work. Plaintiffs also submitted deposition testimony from the Facilities Manager showing that the drain where Murray fell should have been included in her regular inspection of the premises, the most recent of which occurred less than two weeks prior to this accident. Plaintiffs have also raised questions about whether the storm grates were improperly installed initially, and they intend to present expert testimony that CMC did not follow its own plans during the installation of the storm drains. These various issues will need to be addressed before a determination on liability can be made.

Furthermore, on this record, the Court cannot conclude that bifurcation would result in a more expeditious resolution. If the trial is bifurcated, "it is likely that two separate juries would need to be empaneled due to the coordination of expert witnesses." *Johnson*, 13 AD3d at 865; *Carpenter*, 67 AD3d at 1107. Additionally, as pointed out by Plaintiffs, a bifurcated trial would result in at least three witnesses having to testify in both the liability phase and damages phase of

the trial. Mr. Murray, of course, would have to testify at the liability phase as to the condition of the roadway, his actions that evening, and his fall and treatment in the Emergency Department immediately afterward. Mrs. Murray also inspected the scene within days after the fall and is expected to testify as to liability questions. Both of them would also likely testify in the damages trial (if the case goes to that stage) as to Murray's injuries, treatment and financial loss. Dr. Waldman would also have to testify twice. She was a witness to the fall and would testify as to the usage of this path for ingress and egress to the Emergency Department. She would also be called to testify as to damages regarding Murray's condition after the fall as well as the treatment she and others provided in the Emergency Department. The Court finds that it would be improvident to separate the issues of liability and damages in light of the fact that these witnesses would have to provide testimony in both trials.

Accordingly, the Court concludes, and determines, that CMC's Motion for bifurcation is DENIED.

Furthermore, at the time of oral argument on this Motion, both parties indicated that the one week already set aside for trial may prove to be inadequate. Therefore, the Court is hereby scheduling a telephone conference with the attorneys of record for JULY 9, 2018 at 2:30 pm, to address trial scheduling.

IT IS SO ORDERED.

This constitutes the **DECISION AND ORDER** of the Court. The transmittal of copies of this Decision and Order by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: June 14, 2018
Ithaca, New York



HON. EUGENE D. FAUGHNAN
Supreme Court Justice