EVIDENCE CASE LAW SUMMARIES Updated 1-4-21

Please read about these new Evidence cases

Dial v. Calusa Palms Master Association, Inc., Case No. 2D18-4339 (Fla. 2d DCA Dec. 11, 2020).
The Second District Court of Appeals held that the trial court did not error by limiting the Plaintiff's evidence of medical expenses to the amount paid by Medicare instead of permitting evidence of the full amount charged based on Cooperative Leasing, Inc. v. Johnson, 872 So.2d 956, 960 (Fla. 2d DCA 2004). However, the following question was certified as a question of great public importance: "Does the holding in Joerg v. State Farm Mutual Automobile Insurance Co., 176 So. 3d 1247 (Fla. 2015), prohibiting the instruction of evidence of Medicare benefits in a personal injury case for purposes of a jury's consideration of future medical expenses also apply to past medical expenses.

Baity v. State, 44 Fla. L. Weekly D2053 (Fla. 1st DCA 2019).
A voicemail was admissible pursuant to the excited utterance hearsay exception in Fla. Stat. §90.803(2). The voicemail was left by the Defendant's mother for the Defendant's wife who was the victim. The victim described the Defendant's mother demeanor on the voicemail as scared and upset.

Strong v. Underwood, 275 So.3d 760 (Fla. 5th DCA 2019).

A trial court's exclusion of a Plaintiff's statement contained in a medical record regarding the circumstances of an accident was reversible error. The medical records were admissible pursuant to Fla. Stat. §90.803(6)(a) as a hearsay exception for business records. The statement contained within the medical record was admissible pursuant to Fla. Stat §90.803(18)(a) as an admission by a party opponent. The appellate court noted that that statement was offered against the Plaintiff at trial and the statement indicated the source of the statement was the Plaintiff. The appellate court rejected arguments that the statement was unsupported by corroborating evidence, untrustworthy, and unfairly prejudicial.

Kemp v. State, 44 Fla. L. Weekly D1974 (Fla. 4th DCA 2019).

The appellate court remanded for a new trial concluding expert testimony from a police officer that investigated a motor vehicle accident did not meet the requirements of *Daubert*. This case involved a trial for reckless driving. A central dispute in the case was whether the Defendant was in control of his vehicle at the time of the crash. The defense contended the Defendant fainted and did not have control of his vehicle. To prove the Defendant was in control, the State relied on testimony from an investigating officer that the Defendant was braking before the crash based on the officer's observation of vehicle crush damage. The appellate court concluded that the officer's "testimony was woefully insufficient to establish the reliability of his methodology under *Daubert*."

R-L Sales, LLC v. Hoce, 44 Fla. L. Weekly D1753 (Fla. 1st DCA2019)

After an e-cigarette exploded in plaintiff's mouth, plaintiff sued the company that manufactured and sold the e-cigarette. At trial, the company sought to introduce evidence that plaintiff had been a methamphetamine user, to show that his need for dental work was largely attributable to his methamphetamine use, and not the e-cigarette explosion. The trial court excluded the evidence of methamphetamine use as both irrelevant, and more prejudicial than probative. The jury ultimately found the company 100% responsible for the injury and awarded the plaintiff $48,000 in medical expenses and $2 million for pain and suffering.

On appeal, the 4th DCA agreed that even though the issue of whether plaintiff had already had extensive dental problems was relevant to the jury's determination of the extent of damages, the cause of the preexisting dental problems – whether due to methamphetamine use or otherwise – was not relevant, and additionally, because evidence of illegal drug use is inherently prejudicial, the probative value was substantially outweighed by the prejudicial effect.

R.J. Reynolds Tobacco Co. v. Schlefstein, 44 Fla. L. Weekly D2203 (Fla. 4th DCA 2019)

Plaintiff brought survival action on behalf of deceased smoker against tobacco company. Following a jury trial, the trial court entered judgment against the tobacco company for $13,964,098.10 in compensatory damages and $27,799,999.99 in punitive damages.

During trial, plaintiff argued that when tobacco company withdrew its comparative negligence defense, tobacco company waived the right to argue that the decedent's actions caused her injuries. Tobacco company argued that its withdrawal did not deprive it of the right to argue that decedent's actions were the "sole legal cause" of her damages or restrict its right to defend against issues on which the plaintiff carried the burden of proof.

On appeal, the 4th DCA reversed and remanded, holding that tobacco company's withdrawal of the affirmative defense did not alter a plaintiff's burden of proof, or tobacco company's ability to present evidence to counter it. Additionally, after plaintiff's expert testified that the decedent continued to smoke because of her addiction, despite knowledge that her smoking could harm her, the trial court erred in limiting tobacco company to saying, "we are not blaming [decedent]" or "we are not claiming she's at fault." Under those circumstances, the trial court should have allowed the tobacco company to argue what it believed were reasons *other than addiction* that the decedent continued smoking. Plaintiff opened the door to tobacco company's "choice" arguments when they presented the testimony of their addiction expert.