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MONTANA SUPREME COURT

Roberts v. Ostrum, 97-728, 4/20/99.

NEGLIGENCE: Doctor-patient privilege waived voluntarily and by filing PI suit... defense auto verdict affirmed... Holmstrom affirmed (unpublished).

Patricia Roberts was driving on a 1-way road in Billings in 11/94 when Carl Ostrum, 85, suffering from senile dementia, entered from a side street controlled by a stop sign and hit her. She sued, claiming head, neck, and shoulder injuries. At her 10/96 deposition she testified that in 4/96, after the accident, she suffered a back sprain in a job accident which made her "entire back hurt again." When asked whether the job injury slowed healing of the auto injuries she replied, "Yes," and stated that her "muscles are a lot weaker than before the [job] accident." She testified that she experienced more frequent headaches after her job injury. She testified that Kathi Theade and Scott Callaghan had examined her in connection with her job injury and that she had filed a claim with the State Fund. She did not object to questions pertaining to the job injury during her deposition, and at Ostrum's request voluntarily produced Theade's and Callaghan's reports concerning her job injury. Ostrum discovered inconsistencies between her deposition and her doctors' reports concerning injuries resulting from the auto accident. Theade reported that she stated that she had experienced no prior back injury. Callaghan reported that she stated that she had pain in her lower back but no headaches or neck pain. Ostrum then sought to obtain her comp file. Roberts requested a protective order, which Judge Holmstrom denied. Ostrum then deposed Roberts's supervisor, 2 co-workers, Theade, and Callaghan. At trial Holmstrom admitted medical records and testimony showing that after the auto accident Roberts had suffered an injury to her thoracic and lower back in a job accident. This evidence also revealed inconsistencies in her statements concerning pain and physical problems resulting from the auto accident. Her supervisor and co-workers testified that they were never aware of any physical limitations or pain resulting from a car accident which prevented her from doing her job. A Billings jury found that Ostrum was negligent but not the proximate cause of Roberts's damages (MLW 6/21/97:4). Roberts appeals.

Holmstrom did not err in allowing discovery of Roberts's comp claim and in admitting medical testimony obtained thereby. She waived her doctor-patient privilege by voluntarily producing the reports of the doctors who had treated her concerning her job injury, and also simply by filing this PI suit and placing her physical injury or condition at issue. §39-71-224(a) exempts an employee's comp file from the public's general "right to inspect" public records of DLI articulated in §39-71-221. It does not affect a litigant's right to legitimately obtain documentary evidence through the compulsory process. Mapes (Mont. 1991). We also reject Roberts's argument that her damages stemming from the job injury were wholly unrelated to her damages stemming from the auto accident, making discovery of her comp file beyond the scope of discovery allowed by Mapes. She complained that the job injury aggravated the auto injury, made her muscles sorer, and increased the frequency of headaches. Thus the injuries were sufficiently related to warrant further discovery into the proximate cause of her pain and discomfort. Further, the medical records contradicted her testimony that she continued to have neck pain. Thus they were relevant in determining her credibility concerning the extent of damages from the auto accident.

Hunt, Turnage, Trieweiler, Nelson, Regnier.

Gary Ryder, Hysham, for Roberts; Randall Nelson (Nelson Law Firm), Billings, for Ostrum.