**EVIDENCE: CONTEMPORANEOUS OBJECTION RULE**

***WILLIAMS V. HARVEY***

**S20G1121**

**SUPREME COURT OF GEORGIA**

**DECIDED MAY 17, 2021**

HELLO AND WELCOME TO THIS EDITION OF THE GOOD JUDGE-MENT PODCAST! I’M WADE PADGETT

*AND I’M TAIN KELL. TODAY WE’RE GOING TO DO SOMETHING A LITTLE DIFFERENT- AND PERHAPS A LITTLE DANGEROUS!*

THAT’S RIGHT, TODAY WE’RE GOING TO REPORT ON AND DISSECT A RECENT RULING OF THE SUPREME COURT OF GEORGIA.

*NOW BEFORE WE DO THAT, WE NEED TO GET THE NECESSARY DISCLAIMERS AND GRATUITOUS PLATITUDES OUT OF THE WAY.*

RIGHT, TAIN. WHENEVER WE TALK ABOUT INDIVIDUAL CASES, IT USUALL MEANS THAT ONE OF OUR FRIENDS AND COLLEAGUES HAS BEEN OVERRULED. NOW WE LOVE OUR COLLEAGUES, SO JUST UNDERSTAND THAT THE ONE OVERRULED COULD JUST HAVE EASILY BEEN ONE OF US.

*AND WHEN WE DISCUSS OPINIONS OF OUR APPELLATE COURTS, IT OF TEN MAY SOUND LIKE CRITICISM- BUT IT’S NOT. WE LOVE THE APPELLATE COURTS. RIGHT WADE?*

WE SURE DO!

*IN FACT, OUR APPELLATE COURTS ARE JUST ABOUT THE VERY BEST IN THE UNITED STATES, THE WORLD, AND PERHAPS THE UNIVERSE.*

SO NOW LET’S GET ON TO TODAY’S TOPIC:

THE SUPREME COURT OF GEORGIA RECENTLY DECIDED A CASE ENTITLED *WILLIAMS V. HARVEY*.

*THAT WAS A SERIOUS PERSONAL INJURY CASE, RIGHT WADE?*

THAT’S RIGHT. THE FACTS OF THE CASE DO NOT MATTER GREATLY BUT THERE ARE SEVERAL IMPORTANT RULINGS FOR THE TRIAL JUDGE TO NOTE. WHAT IS IMPORTANT TO UNDERSTAND IS THAT PRETRIAL, THE DEFENDANT MADE SEVERAL VERY VAGUE, GENERAL “MOTIONS IN LIMINE” THAT WE’VE ALL SEEN:

*BASICALLY THE BOILERPLATE MOTIONS LIKE “JUDGE, PLEASE PROHIBIT THEM FROM WINNING THIS CASE”?*

EXACTLY. IN FACT, ONE OF THE MOTIONS DISCUSSED IN THE OPINION ASKED FOR A PROHIBITION AS TO “[S]TATEMENTS, CONTENTIONS, ARGUMENTS, INFERENCES, OR PROFFER OF ANY EVIDENCE TO ELICIT SYMPATHY FOR THE PLAINTIFF OR ANY INDIVIDUAL.”

SO IN THIS CASE, THE TRIAL JUDGE (WISELY) RESERVED RULING ON MOST OF THE MOTIONS AS BEING OVERLY BROAD AND TOO VAGUE, BUT HE MADE A SPECIFIC RULING THAT NO “GOLDEN RULE” ARGUMENTS SHOULD BE MADE (DO TO THIS PLAINTIFF AS YOU WOULD LIKE TO HAVE DONE TO YOU IF YOU WERE IN HIS SHOES”) AND MADE A GENERAL RULING THAT

“Nevertheless, any statements, arguments, or evidence offered predominantly to overly inflame the emotions of the jury or to [e]licit excessive or undue sympathy, hostility, or prejudice for or against either party is prohibited.”

*AFTER TRIAL, THE DEFENDANT MOVED FOR A NEW TRIAL ON THE GROUNDS THAT THE PLAINTIFF VIOLATED THE COURT’S RULING BY ARGUING (IN CLOSING) THAT THE DEFENDANT’S SUGGESTION THAT THE PLAINTIFF COULD BE PROPERLY -AND LESS EXPENSIVELY- CARED FOR IN A NURSING HOME AMOUNTED TO A “DEATH WARRANT”*

TAIN, DID THE DEFENDANT OBJECT TO THE CLOSING ARGUMENT?

NO, BUT THE COURT OF APPEALS FOUND THAT THE COURT’S RULING ON THE MOTION IN LIMINE SUFFICIENTLY PRESERVED THE OBJECTION AND REVERSED THE TRIAL COURT’S DENIAL OF A NEW TRIAL.

THE COURT OF APPEALS STATED:

In reversing the judgment, the Court of Appeals held that Williams’s closing argument, in which counsel compared the life care plan with the nursing home option to a “death warrant,” “clearly violated the trial court’s ruling precluding argument offered 6 predominantly to overly inflame the emotions of the jury.” Id. at 768 (1) (a). And, although there was no contemporaneous objection, the Court of Appeals, relying on Central of Ga. R. Co. v. Swindle, 260 Ga. 685, 687 (398 SE2d 365) (1990), held that the trial court’s ruling on the motion in limine was sufficient to preserve the issue for appeal, and that the error was harmful. See Harvey, 354 Ga. App. at 769-70 (1) (a).

OK, SO NOW THE STAGE IS BASICALLY SET FOR THE SUPREME COURT…

RIGHT! THE COURT BEGAN ITS ANALYSIS BY REVIEWING THE HISTORY OF THE CONTEMPORANEOUS OBJECTION RULE IN GEORGIA WHICH THE COURT REFERRED TO AS

“a cornerstone of Georgia trial practice for over 150 years”

WOW, WE DON’T GET MANY “CORNERSTONE RULINGS” THESE DAYS…

ANYWAY, THE GEORGIA RULE IS BASICALLY:

“in order to preserve a point of error for the consideration of an appellate court, counsel must take exception to the alleged error at the earliest possible opportunity in the progress of the case by a proper objection made a part of the record.”

RIGHT. WELL, THAT IS A RULE THAT, AS A TRIAL JUDGE, I LIKE. THE SUPREME COURT SAID, AND I QUOTE:

 [THE CONTEMPORANEOUS OBJECTION] requirement affords the trial court the opportunity to take remedial action if necessary at the time the alleged error is made, thereby reducing the likelihood that a motion for new trial or appeal will result in reversal of the final judgment.

AMEN AND WELL SAID, SUPREME COURT, AMEN!

THE COURT ANALYZED OCGA 24-1-103 UNDER BOTH STATE AND FEDERAL LAW AND CONCLUDED THAT:

“a contemporaneous objection must be made at the time an alleged violation of a ruled-upon motion in limine occurs at trial – *whether during the presentation of evidence or in opening statements or arguments* made by counsel before the factfinder – in order to preserve the error for appeal.”

WOW, THAT’S A MAJOR RULING! THINK ABOUT IT. EVEN WHERE A MOTION IN LIMINE HAS BEEN GRANTED AND VIOLATED, THE MOVANT CAN’T SIT BACK IN SILENCE AND LET THE ERROR HAPPEN IN HOPES OF GETTING A NEW TRIAL OR WINNING AN APPEAL LATER.

EVEN MORE IMPORTANT, THE COURT ALSO FOUND THAT DESPITE THE FACT THAT OCGA 24-1-103 ONLY APPLIES TO *EVIDENCE*, THE COURT SAW NO REASON IT SHOULDN’T ALSO APPLY IT TO STATEMENTS MADE IN CLOSING ARGUMENT THAT VIOLATE A MOTION IN LIMINE

THE COURT SAID:

“[t]o hold otherwise would adopt a rule that violates principles of judicial economy by permitting counsel to sit silently when an error is committed at trial with the hope that they will get a new trial because of that error if they lose.”

THEY KIND OF COPIED WHAT I JUST SAID…

LET’S LOOK AT SOME OF THE INTERESTING RAMIFICATIONS OF THIS RULE FOR THE TRIAL JUDGE:

FIRST, IN REVIEWING VIOLATIONS OF MOTIONS IN LIMINE AT THE NEW TRIAL STAGE, THE TRIAL JUDGE SHOULD LOOK FOR A CONTEMPORANEOUS OBJECTION IN MAKING A RULING

SECOND, IN RULING ON MOTIONS IN LIMINE, THE COURT REITERATED PRIOR RULINGS THAT A TRIAL JUDGE ABSOLUTELY DOES NOT HVE TO RULE ON MOTIONS IN LIMINE BEFORE HEARING EVIDENCE- ESPECIALLY VAGUE AND OVERBROAD MOTIONS.

THIRD, OCGA 24-1-103 APPLIES TO ARGUMENTS OF COUNSEL AS WELL AS EVIDENCE PRESENTED AT TRIAL.

FOURTH, BOILERPLATE MOTIONS IN LIMINE ARE NOT PREFERRED. IN FACT, JUSTICE BETHEL CONCURRED SPECIALLY TO EMPHASIZE THAT THE BEST PRACTICE IS TO TAILOR MOTIONS IN LIMINE TO THE FACTS OF THE SPECIFIC CASE- A PRACTICE THAT IS PARTICULARLY PERTINENT TO CRIMINAL CASES, NOT JUST CIVIL

FIFTH, TRIAL COURTS SHOULD MAKE EVERY EFFORT TO IMMEDIATELY CORRECT A VIOLATION OF A MOTION IN LIMINE UPON A TIMELY OBJECTION FOR PURPOSES OF JUDICIAL ECONOMY

FOLKS, THANKS FOR LISTENING TO THIS EPISODE OF THE GOODJUDGE-MENT PODCASE. WE HOPE IT HAS GIVEN YOU SOME USEFUL INSIGHTS INTO A RECENT DECISION OF OUR APPELLATE COURTS.

WE ALSO HOPE IT WILL HELP OUR TRIAL JUDGES OUT THERE WITH FUTURE MOTIONS IN LIMINE AND MOTIONS FOR NEW TRIAL.

THANKS FOR LISTENING. I’M WADE PADGETT

AND I’M TAIN KELL.