

Golfland Entertainment Centers, Inc. v. Superior Court (2003) 108 Cal.App.4th 739

Doctor could elicit history from the plaintiff during mental examination, but could not ask questions regarding the facts and circumstances of the accident to the extent that those matters were already stated in the plaintiff's deposition or previous examination.

FACTS AND PROCEDURAL POSTURE

As the result of an accident on a “bumper-boats” ride, a ten year old boy, David Nunez, suffered brain damage after nearly drowning. David and his mother sued Golfland Entertainment Centers for personal injury and emotional distress. During discovery, the defendant demanded that David submit to a mental examination by a neuropsychologist chosen by the defendant. The parties could not agree on the ground rules for the examination, so the defendant moved to compel compliance with its demand.

The trial court entered an order requiring David to submit to the examination. The court ordered that the doctor could ask questions, but could not require or elicit “narrative” responses to those questions. Both plaintiffs’ counsel and defense counsel could attend the examination, but no other third parties could be present. A court reporter should also be provided by the defendant to take down only David’s oral responses during the examination. Defendant challenged the order by writ.

DISCUSSION

The court of appeal held that the trial court erred in disallowing “narrative” responses. The court said the term “narrative” is vague, and creates an unworkable rule that will lead to further argument over the permissible scope of examination. Additionally, the court explained that the order prohibited the doctor from asking questions that were necessary to the formation of an opinion about David’s condition. Because David had already been deposed, and given an account of the accident at a previous examination, the trial court could prohibit the doctor from eliciting a third narrative about the facts and circumstances of the accident; but, the court could not limit the doctor’s questioning of the plaintiff with respect to symptoms, perceptions, relationships or other issues relevant to his psychiatric condition.

The court then turned to the issue of whether counsel could attend the examination, and how it would be recorded. Citing CCP 2032(g)(2) [now 2032.530] the court explained that existing case law makes clear that counsel should not be permitted to attend a mental examination in most cases. David’s mother, however, could be present during the examination. Finally, the only permissible method for recording the examination is by audio recording. No stenographer may be present, but the entire examination can be recorded by the doctor.

The court issued a peremptory writ of mandate, but noted that nothing precludes the parties from stipulating to other procedures for the examination as they see fit.