Doe v. Brightstar Residential Inc., et al. (2022) DJDAR 2512

Trial court erred in excluding a police report as double hearsay because the party-opponent exception and the official records exception made each level of hearsay admissible.

FACTS: Plaintiff Doe (mid-20s female) had severe autism and other developmental disabilities such that her mental age was permanently that of a child. Plaintiff required 24/7 live-in caretaking services. She lived at Defendant Brightstar Residential Incorporated, a facility that provided residential care to individuals like Plaintiff, who "required close supervision" because she "could not appreciate hazards." Defendants Mary and Norlan Machado jointly owned and operated Brightstar. As married co-owners of the business and its facilities, the Machados shared responsibility for developing residence rules, employee hiring and supervision, and for ensuring regulatory compliance.

In 2011, the Machados hired Ruban Alcala as Brightstar's "handyman," classing him an independent contractor. Alcala was hired at the recommendation of a Brightstar caretaker (who happened to be dating Alcala at the time). Alcala "had no regular hours. When on a job, he "worked as needed and without supervision." However, Alcala was only supposed to be on the premises on the job, during business hours, with each job requiring sign-off from Brightstar management - i.e. the Machados.

At around 11:00 p.m. on May 10, 2016, Alcala lured Doe through her bedroom window and sexually assaulted her in the backyard. Brightstar had no alarm system and no surveillance cameras on its premises at the time. On her nightly rounds, the facility's lone nighttime caregiver (and de facto security guard) noticed Doe's open window. Shortly thereafter, the caretaker found Doe outside. She then saw Alcala zip his pants and turn to flee the property. Alcala later fled the country. DNA evidence established conclusively that Alcala had in fact sexually assaulted Doe.

PROCEDURAL POSTURE: Through her father, Doe sued Brightstar and the Machados. After pleading challenges, a litany of negligence-based claims remained. In support of her argument that Defendants knew or should have known that Alcala presented a risk to Brightstar residents, Plaintiff relied heavily on statements attributed directly and/or vicariously to Defendants responding and investigating officer shad recorded in the police file cited by both parties. The statements indicated Brightstar employees had noticed Alcala on-premises at unusual times and acting suspiciously around Doe. After excluding the statements in the police file as inadmissible hearsay, the trial court granted Defendants' motion for summary judgement. According to the trial court, the remaining evidence did not show that a reasonable person could have anticipated Alcala's attack, nor did it show the Machados authorized, directed or were in anyway involved in Alcala's wrongdoing.

HOLDING: Reversed and Remanded. The Second District Court of Appeal held that police reports containing "double hearsay" *may be* admissible *if* the propounding party successfully rebuts the hearsay objection at "each level."

DISCUSSION: On appeal, the court simply merged Plaintiff's numerous negligence-based causes of action a single claim for negligence against Brightstar and the Machados as individuals. With respect to that single case of action, the *Brightstar* court opined that "Doe's appeal raises two central issues." It addressed each issues in turn.

1. Whether the trial court properly excluded evidence from the police file on hearsay ground.
    - The court in *Brightstar* acknowledged that the police report at issue in this case indeed contained numerous "levels" of hearsay. However, "exceptions riddle the hearsay rule and here," the *Brightstar* court explained the applicable exceptions "overwhelmed" the rule entirely. However, even evidence containing multiple levels of hearsay can nevertheless be admissible if a justification for admitting the evidence rebuts the hearsay objection *at each level.* Here, the statements at issue from Mr. Machado to responding officers were admissible despite the rule against hearsay because his statement constituted an admission of a party opponent (Evid. Code, § 1222) that was itself contained within a presumptively admissible official record (Evid. Code, § 1280).
    - Furthermore, the court found that a group of statements Brightstar employees made to police about Alcala, also excluded by the trial court on hearsay grounds, were in fact admissible. After some more acrobatic application of the Evidence Code, the *Brightstar* court concluded that "Whether true or not, these employee statements were admissible as nonhearsay for their notice to Brightstar as a business entity."

2. What duty did Defendants owe to Doe considering the special relationship between the parties?
    - The *Brightstar* court defined Defendants' duty as follows: "it was to take cost-effective measures to protect Doe from foreseeable harm from people like the handyman." After drawing all inferences in the light most favorable to the non-prevailing party, the *Brightstar* court "eyeballed" the *Rowland* public policy factors, and concluded that Defendants "had the duty, as a matter of aw, to contain the danger Alcala posed." Summary judgement was therefore improper, given this "material factual dispute" as to whether Brightstar breached its duty by allowing Alcala around.

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