

*Raymond C. Ferrari v. Johnson and Johnson, Inc., Et Al. (AC 41170)*

The plaintiff brought this case forward seeking damages for personal injuries sustained as a result of a defective product. The plaintiff alleged that the defendant's product, a spinal system used in the plaintiff's spinal surgery, was defective and fractured after being implanted, causing the plaintiff to need to undergo a second surgery. The plaintiff claimed that the defendant's products were defective and lacked adequate warnings. In response, the defendant filed a motion for summary judgement on the ground that the plaintiff had failed to produce a witness to testify regarding the alleged product defects. The defendant further noted that the plaintiff was barred from bringing their failure to warn claim under the learned intermediary doctrine. The trial court granted the defendant's motion for summary judgement. The plaintiff appealed.

The issue presented to the Appellate Court in this case is whether the trial court properly granted the defendant's motion for summary judgement. The Court determined that the trial court properly granted summary judgement for the defendant. In reaching this determination, the Court first looked to the plaintiff's claim that expert testimony was not necessary to prove that the defendant's product was defective. The Court was not persuaded by this argument. The Court determined that expert testimony was essential to prove the alleged defect for multiple reasons.

First, the Court determined that the ordinary consumer expectation test, which does not require expert testimony, was inapplicable to this case. Rather, the modified consumer expectation test must be used in the present case. Under the modified consumer expectation test, expert testimony is required to prove the alleged defect. Additionally, the Court determined that because of the complexity associated with the product in question, as an element of spinal surgery, expert testimony is required. The Court reasoned that knowledge of such a product falls outside the scope of common knowledge possessed by the jurors. The therefore found that the

trial court properly determined that the plaintiff could not prove their theory of liability without the testimony of an expert witness.

The Court next considered the plaintiff's argument that their claim should not be barred on the basis of the learned intermediary doctrine. The Court again found the plaintiff's claim unpersuasive. In reaching this conclusion the Court noted that the plaintiff himself had conceded that the defendants' product had adequate warnings. The plaintiff claimed that prior to his surgery, a product representative nullified the written warnings through his communication with the plaintiff's surgeon, thus rendering the warnings inadequate. The Court determined that the plaintiff could not prevail on this claim as he failed to provide evidence that the product representative acted inconsistently with the product warnings. Because the plaintiff previously conceded that the written warnings for this product were adequate and failed to show that the representative acted contrary to those warnings, the plaintiff's claim is barred by the learned intermediary doctrine. By failing to provide such evidence, the plaintiff failed to establish that there was a genuine issue of material fact sufficient to render summary judgement inappropriate in regard to the learned intermediary doctrine.

The Appellate Court determined that the trial court acted properly in granting the defendant's motion for summary judgement. The Court affirmed the decision of the trial court.