

Teodoro v. City of Bristol (AC 39185)

**Brief Summary:** Plaintiff's daughter was injured at cheerleading practice. The court refused the plaintiff's request to admit excerpts of the transcript containing the deposition of the victim and her coach. The court reversed summary judgment in favor of the defendant, holding: that an excerpt from a certified deposition transcript does not need to be separately certified as such, apart from the certification of the original transcript, in order to make it admissible in support of or in opposition to a motion for summary judgment under Practice Book § 17-45.

### **Facts**

The plaintiff, Dawn Teodoro, sued the defendant on behalf of her minor daughter, Brianna Teodoro. Brianna was practicing as a member of the junior varsity cheerleading squad at Bristol Eastern High. Under the supervision of Bayne, her coach, she attempted, for the first time, to perform a stunt known as the "ladder stunt." Two cheerleaders, acting as "bases", lift a third cheerleader, the "flyer", into the air where they hold her as she transitions from half to full extension. Brianna was practicing as the "flyer" and had difficulty performing the stunt twice. Bayne was aware of Brianna's difficulty performing it and her apprehensiveness. However, she instructed Brianna to attempt it once more, but then walked away to assist other cheerleaders without assisting Brianna to perform the stunt or giving her further instruction as to how to do it correctly. Thereafter, Brianna fell to the floor after being lifted into the air, causing her to break several bones in her arm. The plaintiff alleged that Bayne's conduct in supervising Brianna was negligent because: (1) she encouraged Brianna to perform the stunt again despite Brianna's uncertainty and apprehensiveness; (2) failed to give Brianna hands-on assistance in performing the stunt again or proper instruction as to how to perform it correctly when it should have been apparent that her failure to do so would likely subject Brianna to imminent harm; and (3) failed

to provide sufficient spotters to catch Brianna if she fell. The defendants answered imposing the defense of qualified governmental immunity.

The defendants filed a motion for summary judgment. The plaintiff argued that immunity does not apply because Bayne was performing a ministerial duty; alternatively, if supervising cheerleading practice involves discretionary duties, Bayne's negligence fell within the identifiable person, imminent harm exception to governmental immunity. The plaintiff filed an opposition to the defendants' motion with attached exhibits that included, excerpts from the original certified transcripts of the depositions of Brianna and Bayne. The defendants thereafter filed an additional excerpt from the transcript of Brianna's deposition. Neither party objected to the use of such excerpts. The plaintiff, without permission of the court, then filed a surreply brief, and the defendant, with the permission of the court, filed a surreply brief. During oral arguments, the court advised both parties that it considered the deposition excerpts unauthenticated, and thus inadmissible unless all parties consented. The defendants' counsel then, for the first time, declined to consent to the use of the excerpts. The court announced that, in the absence of an agreement among the parties, none of the deposition excerpts they had filed would be considered in deciding the motion. The court granted the defendants motion for summary judgment holding that they were entitled to governmental immunity because Bayne's duties were discretionary and the fall did not come within the identifiable victim, imminent harm exception. In rendering summary judgment, the court did not consider either deposition excerpts or either party's surreply brief.

## **Issues**

The issues on appeal were: (1) whether an excerpt from a certified deposition transcript must be separately certified as such, apart from the certification of the original transcript from

which it was excerpted, in order to make it admissible in support of or in opposition to a motion for summary judgment under Practice Book § 17-45; and (2) whether the trial court abused its discretion in not considering the parties' surreply memorandum of law.

### **Holding**

The court held that the trial court improperly refused to consider the excerpts as an excerpt does not need to be separately certified as such to be admissible. Thus, reversing the decision of the trial court. The court also held that the trial court did not abuse its discretion in not considering the parties' surreply memoranda of law.

### **Discussion**

The party seeking summary judgment must first support the motion by filing certain designated types of materials with the court that constitute, contain, or demonstrate the availability to the party of admissible evidence. If such materials establish the availability of admissible evidence tending to prove the material facts upon which the movant's right to judgment depends, the burden shifts to the nonmovant to file similar materials tending to raise a genuine issue as to any such material fact.

To resolve the first issue, the court had to consider the process by which evidence submitted in connection with motions for summary judgment must be authenticated before the court can consider it.

Practice Book § 17-45 provides that a motion for summary judgment shall be supported by such documents as may be appropriate, including but not limited to affidavits, certified transcripts of testimony under oath, disclosures, written admissions... Before a document may be

considered, there must be a preliminary showing of the document's genuineness. Meaning that the evidence is what its proponent claims it to be.

The plaintiff argued, and the court agreed, that the trial court's reading of Practice Book § 17-45s was overly narrow. Furthermore, that Practice Book § 17-45 allows a court to consider more than entire certified deposition transcripts or excerpts from deposition transcripts that have been separately certified for their truth and accuracy. Due to the court only being required to have a preliminary showing of a document's genuineness, the court held that the certification page from the original certified deposition transcript from which an excerpt was taken is sufficient to authenticate an excerpt. Furthermore, the court stated that it would be admissible in situations where, like in the case, it is accompanied by other portions of the original deposition transcript tending to establish that the testimony was given under oath. Additionally, the court stated that the rules expressly allow for such excerpts as Practice Book § 17-46 states "sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto." Thus, there is no requirement for the entire document to be attached.

The court stated that the party must include enough of the full deposition transcript to put the testimony in proper context to have the excerpt admitted. Furthermore, it stated that opposing parties are not unjustly impacted by the ruling because they can still object to the chosen excerpt. Also, they can include other portions of the original deposition if they believe the chosen excerpt is misleading. In this case the court must consider both excerpts contemporaneously.

Next, the court concluded that the trial court improperly refused the excerpt of the transcript because it was submitted along with pages from the original deposition transcripts establishing that such original transcripts were accurate transcriptions of the deponents' truthful

testimony under oath. Thus, reversing the court's granting of summary judgment in favor of the defendants and remanding the case for further proceedings.

Lastly, the court held that the court did not abuse its discretion by refusing to consider the parties' surreply memoranda because the commentary accompanying the June 12, 2015 amendments to Practice Book § 11-10 states that "no surreply memoranda can be filed without permission of the judicial authority." Thus, the court was obliging by the rule when it refused to consider the memoranda which were filed without the court's permission.

This case is salient because its holding clarified a rule of evidence with the potential to impact nearly every case where a party files a motion for summary judgment. The court clarified that excerpts of transcripts taken from a deposition are admissible as evidence pertaining to a motion for summary judgment as long as it is submitted with the original certification establishing its accuracy.