Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, October 24, 2017

Special Session
University of Georgia School of Law
Athens, Georgia

10:30 A.M. Session

CHRYSLER GROUP, LLC V. WALDEN ET AL. (S17G0832)

Chrysler is appealing a $40 million verdict against it in a lawsuit brought by the parents of a 4-year-old boy who was burned to death in a Jeep Cherokee that was hit from the rear.

FACTS: The record shows that on the afternoon of March 6, 2012, Emily Newsome was driving her 4-year-old nephew, Remington "Remi" Walden, to a tennis lesson in Bainbridge, GA in her father's 1999 Jeep Grand Cherokee. The child was sitting in the back seat. As Newsome was waiting to make a left-hand turn, Bryan Harrell, who was driving a Dodge Dakota pickup truck, plowed into the back of the Cherokee. The Jeep's fuel tank, which was located behind the rear axle, was ruptured in the collision. Gasoline poured from the tank, ignited and the car was quickly engulfed in flames. Newsome was able to climb out of the driver's side window, but the child could not escape and although she tried, Newsome was unable to get Remington out. He died from injuries caused by the fire.

Remington's parents, **James Bryan Walden** and Lindsay Newsome Strickland, sued the Chrysler Group, LLC and Harrell in **Decatur County**. They alleged that Chrysler acted with a reckless disregard for human life in the design of the 1999 Jeep Cherokee due to its rear-mounted fuel tanks, and they sought damages for wrongful death and pain and suffering.

At trial, the parents' attorneys asked a Chrysler witness to confirm the Chrysler CEO's annual pay. Chrysler's attorneys objected, but the trial court overruled the objections. During closing argument, the plaintiffs' attorneys urged the jury to use the CEO's compensation as a basis for calculating a wrongful death award. They specifically asked the jury to "return a verdict for the full value of Remington's life of at least $120 million," stating that this amount was less than two years of salary paid to the CEO, who earned $68 million a year.

Following a nine-day trial, the jury awarded the boy's parents $120 million in wrongful death damages and $30 million in pain and suffering damages. The jury found that Harrell, who did not appeal, was 1 percent at fault for the wreck that killed Remington, and Chrysler was 99 percent at fault. Chrysler filed a motion requesting a new trial, which the court denied on the condition that Walden and Strickland accept a lower wrongful death verdict of $30 million and a pain and suffering verdict of $10 million, which the parents accepted. Chrysler then appealed to the Georgia Court of Appeals, but the lower appellate court upheld the trial court's judgment. Chrysler now appeals to the Georgia Supreme Court, which has agreed to review the case and is asking the parties to answer two questions: Did the Court of Appeals err in ruling that evidence of Chrysler's CEO's compensation was admissible to show bias? And did the appeals court err in failing to consider prior awards given in similar cases to determine whether the final $40 million award was excessive under the law?

ARGUMENTS: Attorneys for Chrysler argue the Court of Appeals erred in holding that evidence of the CEO's compensation and benefits was admissible to prove bias under Georgia Code § 24-6-622, which allows proof of the "state of a witness's feelings toward the parties and the witness's relationship to the parties." The appellate court explained that the wealth evidence was relevant to supporting an inference that the CEO was biased in favor of Chrysler. And yet the plaintiffs "did not use the evidence for that purpose, and even though the purposes for which they *did* use it – to emphasize Chrysler's deep pockets, and as a benchmark for valuing Remington Walden's life – were utterly irrational and improper," Chrysler's attorneys argue in briefs. The evidence of the CEO's salary should have been excluded under the state Supreme Court's 1922 decision in *Smith v. Satilla Pecan Orchard & Stock Co. et al.* and the state's Evidence Code. This is not an exceptional case in which the CEO's wealth was relevant to the claims at issue, and "the unfair prejudicial effect of this evidence vastly outweighed any possible probative value," the attorneys argue. "The Court of Appeals ruling conflicts with nearly a century of Georgia case law." Under *Smith*, "Georgia courts have long enforced the general rule that wealth evidence is '*never* admissible,' yet the Court of Appeals turned the general rule on its head by holding that under § 24-6-622, evidence of the wealth of corporate employee witnesses is '*always* admissible.' Because the error was so clearly prejudicial – indeed it led directly to the stunning and irrational verdict that followed – Chrysler is entitled to a new trial. In response to the second question, the Court of Appeals also erred in refusing to consider similar cases when analyzing excessiveness," the attorneys for Chrysler argue. "As many courts in Georgia and around the country have recognized, awards in similar cases provide an objective benchmark of what courts and juries consider a reasonable range of compensation for particular harms." If this

Court does not grant a new trial due to the erroneous admission of wealth evidence, it should order a further reduction in the damage awards, "guided by the awards that have been upheld in similar Georgia cases," the attorneys argue.

The parents' attorneys argue that Chrysler does not face this judgment because the trial court allowed in evidence of its CEO's compensation or because the Court of Appeals failed to consider past awards in similar cases. "The trial court's judgment results from 'overwhelming' evidence of wanton and reckless conduct that ended a young and valuable life in pain and terror," the attorneys argue in briefs. "Remington Walden burned to death *because* Chrysler placed the gas tank behind the rear axle of its Jeep." Furthermore, the evidence shows that Chrysler had known for a long time that mounting a gas tank behind the rear axle was dangerous. "In 1978, Chrysler engineers circulated a memorandum that discussed the Ford Pinto fires and advocated locating the fuel tank ahead of the rear wheels." The death of Remington Walden "was tragically foreseeable," the attorneys argue. Witnesses heard the child screaming and saw him burning. "He lived in the flames for 'up to a minute.' There is no more painful way to die." The Court of Appeals correctly held that the trial court did not abuse its discretion in admitting evidence of the CEO's compensation. "Under § 24-6-622 and longstanding rules about witness bias, the money paid to *this* CEO was obviously *relevant*" as he personally had proclaimed the 1999 Cherokee "absolutely safe" in response to a 2009 engineering investigation by the federal government, which led to a recall of several Jeep models with rear gas tanks, including the one at issue here, the attorneys contend. The fact that Chrysler paid its CEO millions of dollars, "and even more if the company did well, went to the credibility of the witness *and* the defense he created." The CEO was a witness in that federal investigation. Indeed, he was the very architect of the defense, and under § 24-6-622, "the money a party pays to a witness is admissible." Furthermore, evidence of a witness's compensation is different than evidence of the wealth of a party, the parents' attorneys argue. The Court of Appeals also did not err by allegedly failing to consider prior awards in similar cases. As the appellate court noted, "no two awards are exactly alike, so it may not be relevant to merely compare cases." Ordering a further reduction in the awards would be "arbitrary and unwarranted," the attorneys argue. Although Chrysler declares that past awards are "highly relevant" in evaluating excessiveness, there is no defined standard, and Chrysler "never tells this Court how to instruct our lower courts to treat past awards."
Attorneys for Appellant (Chrysler): Thomas Dupree, Jr., Rajiv Mohan, Bruce Kirbo, Jr., M. Diane Owens, Terry Brantley, Bradley Wolff
Attorneys for Appellees (Walden): James Butler, Jr., David Rohwedder, James Butler, III, George Floyd, Michael Terry, L. Catharine Cox

WXIA-TV ET AL. V. STATE OF GEORGIA ET AL. (S17A1804)

Media organizations are appealing a gag order imposed by the **Irwin County** Superior Court in the high-profile murder case of Tara Grinstead.

FACTS: Nearly 12 years ago, on Oct. 23, 2005, Grinstead, an Irwin County High School teacher and beauty queen, disappeared from her home in Ocilla, GA. In the ensuing years, the Georgia Bureau of Investigation conducted a massive investigation, interviewing more than 200 people and conducting searches of local waterways and other properties. For years, print and broadcast news reported about the case, but eventually the case went cold.

On Feb. 23, 2017, after allegedly receiving a tip, the GBI arrested Ryan Alexander Duke and charged him with Grinstead's murder. Duke, who had graduated from Irwin County High School a few years before Grinstead vanished, pleaded not guilty. At a news conference that day in the Irwin County courthouse, authorities announced the arrest. Following the news conference, the magistrate conducted a first appearance hearing where Duke appeared in a green and white jail jumpsuit, shackles and handcuffs. The media was permitted to film Duke in the courtroom. Within a week, the trial judge entered a gag order after Duke's attorney asked the court to bar trial participants from commenting on the case. Specifically the order restrained "the prosecution, all law enforcement, the defendant, counsel for the defendant, potential witnesses, expert or other, court personnel and family members for both the defendant and alleged victim" from making any statements outside court "for dissemination by any means of public communication relating to any matters having to do with this case." The judge explained that, "the defendant's sixth amendment right to a fair trial may be prejudiced by extra-judicial statements" because "this case is high profile and has generated extensive media coverage." On March 2, 2017, WXIA-TV and 13 WMAZ-TV filed an "Emergency Motion to Intervene and to Vacate the Gag Order." Several other media outlets also filed a motion to intervene and challenge the gag order. At a hearing on the motions, Duke's attorney introduced 79 exhibits containing various forms of media coverage about the Grinstead case and Duke's arrest.

On March 27, 2017, the trial court rescinded its "First Order" and issued a "Modified Order of Court." The "revised order," as the State calls it, states that until final disposition of the case, the district attorney, his staff, Duke's attorney, Duke's co-defendant whom the State alleges helped conceal Grinstead's body, the co-defendant's attorney and staff, and all law enforcement who participated in the investigation, "shall not release, make or authorize the release of any extra-judicial statement by any means of public communication and news media." The order states that, "Any violations of this Order may be punished by contempt of court." WXIA and the other media outlets now appeal to the state Supreme Court.

ARGUMENTS: The media's attorneys argue that although the "modified gag order," as they call it, is considerably narrower than the original, "it remains an improper and unconstitutional prior restraint." The U.S. Supreme Court has recognized that a "prior restraint" includes all "administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur," and has "repeatedly and unequivocally held that court orders prohibiting speech are prior restraints." "The United States Supreme Court, this Court, and all courts in between have made clear that any restriction on First Amendment rights – such as limiting speech or closing a courtroom – is a remedy of last resort that is presumptively invalid and subject to the strictest scrutiny, even when imposed to protect a defendant's right to a fair trial," the attorneys argue in briefs. A prior restraint on statements made outside of court may not be upheld unless: 1) there is clear and convincing evidence that the statements would impair a defendant's right to a fair trial; 2) there are no less-restrictive alternatives available, such as a change of venue, that would mitigate the effects of the statements; and 3) the prior restraint would accomplish its intended purpose. "The modified gag order in this case is a prior restraint that both limits certain individuals' rights to speak about the case and impairs the media's ability to gather the news," the attorneys argue. "It therefore should have been subjected to strict scrutiny." Instead, the trial court used a "less stringent standard" not permitted by federal or Georgia law. "Even if the trial court had applied the correct standard, the

modified gag order does not satisfy any of the constitutional requirements for a prior restraint and, thus, cannot survive the strict scrutiny applicable to restrictions on rights guaranteed by both the First Amendment and the Georgia Constitution. Indeed, the pretrial publicity cited by the trial court in support of the modified gag order does not show that the defendant's right to a fair trial will be materially prejudiced in the absence of a gag order; the trial court failed to explain why less restrictive alternatives to a prior restraint would not be sufficient to ensure the defendant receives a fair trial; and while the modified gag order does chill speech, it does not prevent the anticipated harm." When entering the modified gag order, "the trial court appears to have relied on the mistaken belief that an order limiting speech does not constitute a 'prior restraint' unless it is squarely 'directed at the media,'" the attorneys argue. Yet, neither the U.S. Supreme Court nor the Georgia Supreme Court "has ever recognized a distinction between prior restraints on speech that are directed at the media as opposed to those directed at members of the general public." By preventing those with the most knowledge and most reliable information about the case from speaking to the media, the gag order constitutes a prior restraint on the media's "constitutionally-protected right to gather and report the news."

Duke's attorney and the State, which is represented by the District Attorney, argue that the trial court must do everything to ensure that the accused receives a fair trial, including restricting extra-judicial statements – or statements made outside of court proceedings. The trial court has broad discretion in ensuring the accused receives a fair trial, and intense publicity of a criminal proceeding – or "trial by newspaper" – threatens the defendant's right to get one. Although the Georgia Supreme Court has not decided whether a restriction on the speech of trial participants is subject to a less demanding standard than restrictions on the media, the Court of Appeals has held that a gag order restricting communications by trial participants "cannot be classified as a prior restraint because it is not directed at the media," Duke and the State argue. "In sum, although gag orders directed toward the media are presumptively unconstitutional, those directed at trial participants, attorneys, court personnel, and witnesses may be upheld if the pretrial publicity obtained from the speech constitutes a 'substantial likelihood of material prejudice.'" The trial court did not err by declining to apply the "clear and convincing evidence" standard and instead applying the "substantial likelihood of material prejudice" standard in entering its "revised order." The order ensures that Duke receives a fair trial "by preventing further pervasive and prejudicial publicity, which outweighs the media's right to interview trial participants," the attorneys argue. "It is not a prior restraint on speech, and by applying the correct standard, the trial court correctly found there was a substantial likelihood of material prejudice to the Appellee [i.e. Duke] absent a gag order." Furthermore, the revised order is narrowly tailored and not overly broad. And as the trial court ruled, although it considered safeguards to protect Duke's right to a fair trial, they were inadequate. "Therefore, the modified gag order is clearly proper and constitutional," Duke's attorney and the District Attorney argue.
Attorneys for Appellants (WXIA-TV): S. Derek Bauer, Ian Byrnside, Cody Wigington
Attorneys for Appellees (State, Duke): Paul Bowden, District Attorney, John Mobley, II