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Is The Trial Deposition of an Expert Really Just an Interview?

INTRODUCTION

The trial deposition¹ has become an integral part of the litigation system due to the increasing employment of national experts, and the uncertainty of trial dates and witness availability. To accommodate and control this environment, the Pennsylvania legislature has promulgated a rule of civil procedure to govern the use of trial depositions in state courts.² The advent of videotaped trial depositions has also led to escalation in the use of trial depositions since videotape captures the demeanor and appearance of witnesses and alleviates jurors from the boredom usually associated with listening to a reading of a written trial deposition.³

In two cases recently, the Pennsylvania Superior Court was confronted with issues regarding the proper use of trial depositions at trial.⁴ In these two decisions, the superior court ignored the plain language of the Pennsylvania Rules of Civil Procedure and, in turn, has fostered a misuse of trial depositions and added inefficiency to the litigation system. The following hypothetical illustrates this misuse:

A physician, Dr. X, was sued by Mrs. Y for medical malpractice. Mrs. Y's attorney hired Dr. Z to evaluate the claim. After a favorable evaluation of the plaintiff's claim, her attorney decided to hire Dr. Z as an expert to testify at trial. Due to Dr. Z's busy schedule and the uncertainty of trial dates, the attorney set up a date to videotape trial deposition of Dr. Z and show it at trial, in lieu of live testimony. The defendant's attorney prepared diligently for his cross-examination of Dr. Z. At the deposition Dr. Z's testimony was not very persuasive; in fact, the defendant's attorney elicited some responses favorable to the defendant. The plaintiff's attorney also took the trial depositions of four other physicians who had treated Mrs. Y. Instead of presenting Dr. Z's deposition at trial, the plaintiff's attorney decided to forego using Dr. Z's deposition. The plaintiff's attorney also failed to pre-

1. A trial deposition is testimony to be presented at trial, so far as relevant and competent, as though the witness were present in court.

2. Pennsylvania Rule of Civil Procedure 4020.

3. See, M. Belli, 4 *Modern Trials* 59.1 (West, 2d ed 1982).

4. *Pascone v Thomas Jefferson University*, 357 Pa Super 524, 516 A2d 384 (1986); *Smith v Barker*, 368 Pa Super 472, 534 A2d 533 (1987).

sent two of the four treating physicians' depositions. At trial the defendant sought to present cross-examination testimony from the trial depositions of Dr. Z and the two treating physicians whose depositions were not presented, but the court refused.

The question posed by the hypothetical is whether the defendant's attorney can present cross-examination testimony from trial depositions which were scheduled and taken by plaintiff's attorney if plaintiff's attorney fails to present testimony from the depositions. The answer to this question in Pennsylvania is no, which, in turn, has led to a wasteful use of trial depositions.

The Pennsylvania attorney is very aware of the fact that if a trial deposition does not turn out quite to his liking, he can essentially exclude that deposition in its entirety from presentment in court and can schedule another trial deposition of another expert, or can call the original witness live. The Pennsylvania Superior Court's holdings have basically turned the trial deposition into an interviewing session, where the scheduling attorney determines whether the deponent would make a good witness.

THE PENNSYLVANIA SUPERIOR COURT

In *Pascone v Thomas Jefferson University*,⁵ the Pennsylvania Superior Court faced the issue of whether the trial court correctly denied the plaintiffs' introduction of videotaped cross-examination from a trial deposition of the defendant's expert, when the defendants failed to present the deposition during their case.⁶ The defendant hospital had retained Dr. Smith to give his expert medical opinion regarding the standards of medical care during the 1960s.⁷ Unsure of whether Dr. Smith would be available during trial, counsel for the hospital had Dr. Smith's trial deposition taken and recorded by videotape approximately two and one-half weeks before the scheduled trial date.⁸ The videotaped deposition included cross-examination by the plaintiffs' attorney, who, by asking Dr. Smith to assume certain hypothetical facts, had been able to extract certain answers that the plaintiffs believed would be helpful in showing that the hospital physicians had been negligent.⁹ In support of their motion to admit the cross-examination testimony

5. 357 Pa Super 524, 516 A2d 384 (1986).

6. *Pascone*, 516 A2d at 385.

7. *Id.* at 386.

8. *Id.*

9. *Id.* Dr. Smith's direct testimony had been supportive of the defense's view of the case and had not been even arguably favorable to the plaintiffs' case. *Id.* at 386, n.2.

at trial, plaintiffs argued that because the hospital had deposed Dr. Smith for the sole purpose of using his testimony at trial, the trial had actually commenced upon the taking of his deposition, and therefore, Dr. Smith's testimony was already in evidence.¹⁰

The trial court ruled that plaintiffs could not use the answers extracted from Dr. Smith for the following reasons: (1) the answers had been premised upon hypothetical facts which had not been proved during trial; (2) the testimony that plaintiffs wished to present to the jury had been elicited by the use of leading and suggestive questions, which, if Dr. Smith were to become plaintiffs' witness, would be objectionable; and (3) Dr. Smith had refused to testify as a witness for the plaintiffs so that permitting the plaintiffs to use his deposition would be tantamount to forcing him to testify against his will.¹¹

On appeal, the Superior Court of Pennsylvania declared that the admissibility of videotaped depositions is governed by Rule 4017.1 of the Pennsylvania Rules of Civil Procedure, which states in pertinent part:

(a) Any deposition taken upon oral examination may be recorded by videotape. Except as provided by this rule, *the rules of this chapter governing the practice and procedure in depositions and discovery shall apply.*

(g) In addition to the uses permitted by Rule 4020 a videotape deposition of a medical witness or any witness called as an expert, other than a party, may be used at trial for any purpose whether or not the witness is available to testify.¹²

The court then noted that Pennsylvania Rule 4020, in pertinent part, provides:

(a) At the trial, any part or all of a deposition, *so far as admissible under the rules of evidence*, may be used against any party who was present or represented at the taking of the deposition or who had notice thereof if required, in accordance with any one of the following provisions:

(5) A deposition upon oral examination of a medical witness, other than a party, may be used at trial for any purpose whether or not the witness is

10. *Id.* at 386. The plaintiffs also argued that the answers elicited from Dr. Smith during cross-examination contradicted the trial testimony of Dr. Beck who the hospital ultimately decided to have testify at trial as an expert regarding the pertinent standard of care during the 1960s. Plaintiffs submitted, therefore, that Dr. Smith's testimony should be received for purposes of rebutting Dr. Beck's testimony. *Id.*

11. *Id.*

12. *Id.* at 387 (emphasis added).

available to testify.¹³

Notably, the court did not emphasize the words "may be used at trial for any purpose."

The superior court then held that the evidentiary ruling of the trial court must be affirmed if correct for any reason.¹⁴ The court noted, "It is well settled that the admission of expert testimony is a matter within the sound discretion of the trial court, whose decision will not be reversed unless the court clearly abused that discretion."¹⁵ Consequently, the superior court declared that the first two reasons given by the trial court had enough merit to affirm the ruling.¹⁶ First, the *Pascone* court asserted that a question assuming a fact not proved or admitted into evidence is improper and should be excluded.¹⁷ Since the plaintiffs failed to prove many of the assumed facts underlying the hypothetical questions asked of Dr. Smith on cross-examination, the appellate court concluded that the trial court properly excluded the testimony derived from these factually unsupported hypothetical questions.¹⁸ This portion of the *Pascone* decision represents a sound evidentiary principle which is uncontested.

The superior court's affirmation of the trial court's second reason, on the other hand, is troubling. The *Pascone* court noted that although the plaintiffs wanted the jury to hear their cross-examination of Dr. Smith, they were making him their own witness when they offered into evidence his deposition testimony.¹⁹ As the plaintiffs' witness, the court held that Dr. Smith could not testify by way of leading questions.²⁰ Since a review of Dr. Smith's deposition revealed unequivocally that the questions asked of him on cross-examination were hypothetical in form and were, by their nature, suggestive and leading, the court ruled that the trial court was cor-

13. *Id.* (emphasis added).

14. *Id.* at 386. See, *E.J. McAleer & Co. v Iceland Products, Inc.*, 475 Pa 610, 613, n 4, 381 A2d 441, 443, n 4 (1977); *Gwinn v Kane*, 465 Pa 269, 279, n 12, 348 A2d 900, 905, n 12 (1975).

15. *Pascone*, 516 A2d at 386. See, *Pirches v General Accident Insurance Co.*, 354 Pa Super 303, 511 A2d 1349 (1986).

16. *Pascone*, 516 A2d at 388.

17. *Id.* at 387. See, 98 C J S Witnesses § 341; *Kirschman v Pitt Publishing Co.*, 318 Pa 570, 574, 178 A 828, 829 (1935).

18. *Pascone*, 516 A2d at 388.

19. *Id.* See, Pennsylvania Rule of Civil Procedure 4020(d).

20. *Id.* The court held that since Dr. Smith could not testify in open court for a party calling him as a witness by way of leading questions, he could not do so by way of a deposition. See, *Rogan Estate*, 404 Pa 205, 214, 171 A2d 177, 181 (1961). *Pascone*, 516 A2d at 388.

rect in excluding the offered testimony.²¹

Although the *Pascone* court managed to indicate the pertinent rules of civil procedure, it ignored the plain meaning of those same rules. Pennsylvania Rule 4017.1(g) states that "a videotape deposition of a medical witness or any witness called as an expert, other than a party, may be used at trial for any purpose whether or not the witness is available to testify." Rule 4020(a)(5) provides that "A deposition upon oral examination of a medical witness, other than a party, may be used at trial for any purpose whether or not the witness is available to testify." Both rules use the words "may be used at trial for any purpose." The language in these rules is clear, unambiguous and incapable of any meaning other than that either party may use deposition testimony of experts or medical witnesses, regardless of which party scheduled the deposition, as long as the testimony is admissible under the rules of evidence. Since all trial depositions contain, or could contain, cross-examination, the legislature obviously exempted Rules 4017.1(g) and 4020(a)(5) from the prohibition against the admission of testimony on direct examination by leading questions. Otherwise, there is little reason for the enactment of these two rules of civil procedure.

Pennsylvania case law also supports such a reading of the words "for any purpose." In *Flynn v City of Chester*,²² the appellant argued to the Pennsylvania Supreme Court that it was error for the trial judge to refuse to admit into evidence the appellee's deposition.²³ Noting that the plain language of Rule 4020(a)(2) states that "The deposition of a party . . . may be used by an adverse party for any purpose," the Pennsylvania Supreme Court held that the trial court was in error.²⁴ The deposition²⁵ presumably contained testimony derived by leading questions, but the supreme court, seemingly unconcerned, instead applied the plain meaning of Rule 4020(a)(2).²⁶ Since the language in Rule 4020(a)(2) is the same as in Rules 4020(a)(5) and 4017.1(g), the *Pascone* court's failure to give either Rule 4020(a)(5) or 4017.1(g) the same meaning and application was erroneous.

21. *Pascone*, 516 A2d at 388.

22. 429 Pa 170, 239 A2d 322 (1968).

23. *Flynn*, 239 A2d at 323.

24. *Id* at 324 (emphasis added).

25. The deposition in question was most likely a discovery deposition where most if not the entire deposition would have been conducted by leading questions.

26. *Flynn*, 239 A2d at 324. See, *Stambaugh v Reed*, 86 Cmwlth Ct 316, 484 A2d 853 (1984), where the Commonwealth Court held that a party may use the deposition of an adverse party for any purpose at trial.

The *Pascone* court's ruling holds, in effect, that if the scheduling party fails to introduce the deposition, the cross-examining party can only introduce testimony from the direct examination since that is the only part not containing leading questions. Surely, the Pennsylvania Legislature did not intend an application this narrow of Rules 4017.1(g) and 4020(a)(5). Although a party may not question his own witness by leading questions at trial, the trial deposition is not trial. Furthermore, the deponent is neither party's witness at the trial deposition. Nevertheless, the trial deposition has to be conducted in a trial-like manner since its purpose is for the scheduling party to present the deposition in its entirety during his case-in-chief. The scheduling party's intention to use the deponent as his witness dictates the roles of direct and cross examiner; a misjudgment about the deponent should be to the detriment of the scheduling party, not the opposing party. This detriment to the scheduling party should enable the nonscheduling party to introduce on direct examination deposition testimony derived by leading questions. If the scheduling party had instead called the deponent as a live witness in court, the scheduling party would have to live with that testimony for better or worse. Unfortunately, a decision by the scheduling party not to use the deponent's testimony essentially excludes the whole deposition.

The *Pascone* court did not agree with the third reason advanced by the trial court, namely, that to allow plaintiffs to use Dr. Smith's testimony would, in effect, force him to testify against his will.²⁷ The superior court noted that although Dr. Smith may have believed that he was giving testimony as a defense witness, the record disclosed that he was giving testimony via deposition for use at trial and that all or part of his testimony could be used for that purpose.²⁸

The superior court also found no merit in the plaintiffs' argument that trial had commenced when Dr. Smith's deposition was taken.²⁹ In refuting this argument, the court stated that such a conclusion would be in direct contradiction to Rule 4020(d) which provides: "A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof . . . makes the deponent the witness of the party introducing the deposition [at

27. *Pascone*, 516 A2d at 386.

28. *Id.*

29. *Id.* at 388.

trial].”³⁰ The court, therefore, held that Dr. Smith’s deposition was not in evidence prior to the commencement of trial proceedings.³¹

One year later the Pennsylvania Superior Court, in *Smith v Barker*,³² reportedly relying on the *Pascone* holding, upheld a trial court’s ruling that allowed the defendant to prevent the plaintiff from presenting cross-examination testimony from a videotaped trial deposition of the plaintiff’s expert. The superior court also affirmed the trial court’s ruling that permitted the defendant to withhold presentation of two other videotaped trial depositions prepared by the defendant.³³ Unlike the comparatively lengthy reasoning given in *Pascone*, the *Smith* court merely stated that a finding opposite to the trial court’s would be in “direct contradiction to Pa.R.C.P. 4020(d).”³⁴ Interestingly, the *Pascone* court used those same words, “direct contradiction to Pa.R.C.P. 4020(d).” However, there the court used them in response only to the question of whether the trial commenced at the taking of the deposition.³⁵ The *Smith* court clearly misapplied the *Pascone* holding since in *Smith* there was no question as to when the trial commenced. The *Pascone* court simply held that the trial court did not abuse its discretion in deciding not to admit the cross-examination of Dr. Smith, since the testimony was based on hypothetical and leading questions. The *Smith* court, on the other hand, never evaluated the testimony for such problems. The *Smith* court incorrectly interpreted Rule 4020(d), a literal reading of which clearly indicates that the introduction by either party of trial deposition testimony is permissible.³⁶ Rule 4020(d) contemplates that any party can introduce any portion of a deposition by stating that the deponent becomes the witness of the party introducing the

30. *Id.* at 389.

31. *Id.*

32. 368 Pa Super 472, 534 A2d 533 (1987).

33. *Smith*, 534 A2d at 535. The superior court affirmed the trial court’s decision to allow the defendant not to present the video depositions prepared by the defendant of Drs. Cook and Simon. *Id.*

34. *Id.*

35. *Pascone*, 516 A2d at 388.

36. Pennsylvania Rule of Civil Procedure 4020(d) provides:

A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition as described in subdivision (a)(2) of this rule. At trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

deposition.³⁷

Although both the *Pascone* and *Smith* decisions involved videotaped depositions of medical witnesses, neither decision applied Rule 4017.1(g) or 4020(a)(5). These rules specifically state that the deposition "may be used at trial for any purpose." These rules were not meant to be restricted by the prohibition against an attorney at trial leading his own witness. In enacting Rules 4017.1(g) and 4020(a)(5), the Pennsylvania Legislature apparently recognized the importance and prevalence of expert trial depositions, and was aware of their misuse in the form of expert-shopping. Hence, the legislature drafted these rules presumably to make the trial deposition of an expert equivalent to a deposition of a party. Logic suggests that the expert trial deposition was meant to be used sparingly and after careful consideration.

In light of the foregoing, an examination of how two other courts have allowed parties to use expert trial depositions at trial is enlightening.

UNITED STATES DISTRICT COURT (EASTERN DISTRICT OF
PENNSYLVANIA)

In *Reber v General Motors Corp.*,³⁸ the plaintiffs presented post-trial motions³⁹ following a jury trial which ended in a defense verdict. The plaintiffs contended that the court erred in permitting the defendants to use a videotaped trial deposition of a witness whom the plaintiffs alleged was available to testify in court as a live witness.⁴⁰ Just prior to the trial date, plaintiffs took a videotape trial deposition of Dr. Charles McCrae, an orthopedic surgeon who treated Mr. Reber for impingement syndrome.⁴¹ Dr. McCrae was not expected to be within one hundred miles of the courthouse at the time of trial; however, the doctor had returned by the time the defendants proposed to use the deposition at trial.⁴² Plaintiffs,

37. Pennsylvania Rule of Civil Procedure 4020(d).

38. 669 F Supp 717 (E D Pa 1987).

39. The post-trial motions were for a judgment n.o.v. or a new trial. *Reber*, 669 F Supp at 719.

40. *Id.* This was a products liability action in which the plaintiffs alleged that the cab of the tractor-trailer Mr. Reber was in was not "crashworthy." The accident resulted in a severe injury to Mr. Reber's shoulder when he allegedly contacted an air-conditioning unit inside the cab after the truck jackknifed on an icy road. *Id.* at 718.

41. *Id.* at 719. The court defined impingement syndrome as a compression of the rotator cuff between the shoulder blade and the upper arm bone. *Id.*

42. *Id.* at 720. Federal Rule of Civil Procedure 32(a)(3) provides that "The deposition of a witness, whether not a party, may be used by any party for any purpose if the court

in the meantime, had decided to forego the doctor's testimony entirely.⁴³ During the deposition cross-examination of Dr. McCrae, defendants' counsel asked the doctor to describe the cause of the primary injury alleged to have resulted from the accident.⁴⁴ Dr. McCrae replied that the injury occurred as a result of falling on an outstretched arm.⁴⁵ Since Dr. McCrae's causation opinion differed from the one expressed by the physician who testified for the plaintiffs at trial, the defendants used Dr. McCrae's trial deposition as part of their evidence to negate the plaintiffs' theory of causation.⁴⁶

Plaintiffs contended at trial, and in post-trial motions, that the court should have compelled the defendants to produce Dr. McCrae for live testimony since it was established that he was within the 100-mile area.⁴⁷ Defendants argued that the doctor should not be compelled to appear in court after the trial deposition had been taken and that it was understood that he would have no further obligation to testify.⁴⁸ After an "in camera" view of the tape, the court permitted the videotape to be shown to the jury during the defendants' case since there were special circumstances, namely, Dr. McCrae's busy schedule following his return and the admitted expectation that the videotape would, when filmed, be used at trial.⁴⁹ Notably, similar circumstances are almost always said to be present by scheduling attorneys when expert trial depositions are arranged. Still, the trial court concluded that these considerations warranted the deposition's use in the interest of justice and judicial economy, as permitted by federal Rule 32(a)(3)(E).⁵⁰ Upon consideration of the post-trial motions, the district court held that the use of the deposition was proper under the circumstances and placed particular importance on the fact that the parties had unconditionally agreed to present the doctor's testimony by means of videotape at trial.⁵¹ The court asserted that although live testi-

finds: . . . (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing. . . ."

43. *Reber*, 669 F Supp at 720.

44. *Id.* The primary injury alleged to have occurred was a rotator cuff tear. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* When contacted by the defendants, the doctor indicated that he was not available to testify because of a heavy surgical schedule. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* The court noted that had the doctor been unavailable under rule 32(a)(3)(E), plaintiffs could have no basis for objecting to defendants' use of the videotaped testimony at

mony has traditionally been preferred to trial deposition testimony, the videotaped deposition is distinguishable in that video allows the jury to observe and hear both parties question the witness, just as in trial.⁵²

The plaintiffs' principal complaint was that Dr. McCrae, who became the defendants' witness by their introduction of his testimony at trial, was examined by the defendants through leading questions.⁵³ However, the district court found this complaint unpersuasive and maintained that the parties understood that the witness would testify with all objections made and preserved for ruling at trial.⁵⁴ The court further explained that when plaintiffs' counsel heard the adverse testimony, he could then have declared the witness hostile and proceeded as if on cross-examination.⁵⁵ Since the plaintiffs did not avail themselves of this protection, the court held that the plaintiffs could not pursue such protection by way of post-trial relief and, therefore, denied plaintiffs' motions.⁵⁶

OHIO

In *Cook v Krause*,⁵⁷ the defendant, Uniroyal, claimed that the trial court committed prejudicial error by not allowing them to read and introduce into evidence a deposition containing cross-examination testimony of plaintiff's attending orthopedic surgeon.⁵⁸ The defendant based its claim of error upon Ohio Rule 32(A)(3), which provides that "The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: . . . (e) that the witness is an attending physician or medical expert, although residing in the county in which the action is heard."⁵⁹

The court of appeals looked to the plain language of Rule 32

trial, nor could they have complained had the defendants compelled the doctor's live testimony. *Feingold v SEPTA*, 339 Pa Super 15, 488 A2d 284 (1985).

52. *Reber*, 669 F Supp at 720. See, M. Belli, *Modern Trials*, §59.1 (2d ed 1982); 23 AM JUR TRIALS 95, § 15; Morrill, *Enter-The Video Tape Trial*, INS L J 406, 411 (1970).

53. *Reber*, 669 F Supp at 720.

54. *Id* at 721.

55. *Id*. Federal Rule of Evidence 611(c).

56. *Reber*, 669 F Supp at 721.

57. Appeal No. 18852, slip op at 10 ([OH] Court of Appeals of Ohio, May 5, 1978).

58. *Cook*, slip op at 11. The defendant, Uniroyal, also claimed that the trial court committed prejudicial error by not allowing defendant to comment in closing argument upon plaintiff's failure to offer the deposition testimony of the attending orthopedic surgeon. *Id*.

59. Ohio Rule of Civil Procedure 32(A)(3).

(A)(3)(e) and held the trial court's action was indeed erroneous.⁶⁰ Notably, Ohio Rule 32(A)(3), like Pennsylvania Rules 4017.1(g) and 4020(a)(5), contains the words "may be used by any party for any purpose." Recognizing that the introduction of only certain selected portions of a deposition gives rise to the possibility that witnesses' statements will be taken out of context (or over-emphasized), the court declared that Rule 32 (A)(4) specifically provides a safety device whereby a party can require the offering party to also introduce any other relevant portions of the deposition.⁶¹ Pennsylvania has an identical rule of civil procedure. That rule states: "If only part of a deposition is offered in evidence by a party, any other party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts."⁶² Accordingly, the Ohio court of appeals found the trial court in error for refusing to permit the introduction of cross-examination testimony of plaintiff's attending orthopedic surgeon.⁶³ The *Cook* decision illustrates a plain meaning application of the Ohio rules of civil procedure.

CONCLUSION

The Pennsylvania Superior Court's holdings in *Pascone* and *Smith* violate the plain meaning and spirit of the controlling rules of civil procedure. The holdings also foster a wasteful use of trial depositions which adds to the inefficiency of the litigation system. The trial deposition was created for a witness unable to attend the courtroom proceedings. However, the trial deposition has become an instrument where a lawyer can create a witness bank from which to choose the best witnesses. Just call it witness-shopping. The way to reduce this abuse is to allow both parties to admit testimony from expert trial depositions. Lawyers will then be more careful before scheduling trial depositions and will prepare more diligently for them.

On the other hand, trial depositions, when taken, should not be forced to be shown in their entirety or even at all. That would be unduly restrictive, uneconomical, and not within the current scope of the Pennsylvania rules of civil procedure. The suggestion here is

60. *Cook*, slip op at 11.

61. *Id.* See, Moore, *Federal Practice*, Section 32.06. *Id.*

62. Pennsylvania Rule of Civil Procedure 4020(a)(4).

63. *Cook*, slip op at 12. See, *Clayton County Board of Education v Hooper*, 128 GA 817, 198 SE2d 373 (1973), where, although not contested, the defendant placed certain deposition testimony of the plaintiff's treating physician into evidence.

simply that the courts adhere to the standing rules of civil procedure—the plain language of the rules.

John T. Hinton