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Establishment of Religion, Supreme Court, Appellate Division, First Department: Robbins v. Bright

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT

Robbins v. Bright[136]
(decided June 5, 1997)

Plaintiff, Gwendolyn Robbins, brought a negligence suit for injuries she suffered when an automobile driven by her father overturned after he fell asleep at the wheel.[137] The jury found for the plaintiff and the defendants appealed.[138] Defendants were not contesting liability, but rather the trial court's treatment of plaintiff's refusal, due to her religious beliefs as a Jehovah's Witness, to obtain a blood transfusion and mitigate her damages.[139] Considering the involvement of plaintiff's right to the free exercise of her religion[140] which is protected by the First Amendment to the United States Constitution[141] and Article I § 3 of the New York State Constitution,[142] the trial court used a "reasonable Jehovah's Witness" standard during the jury instruction on Robbin's duty to mitigate her damages.[143]

The Appellate Division, First Department, reversed the judgment of the lower court; holding that the trial court erred by failing to explain to the jury the impact of plaintiff's religious beliefs on her duty to mitigate damages, which, in essence, directed the verdict to be based upon the validity of those

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[136] 230 A.D.2d 548, 658 N.Y.S.2d 910 (1st Dep't 1997).

[137] *Id.* at 549-50, 658 N.Y.S.2d at 911.

[138] *Id.* at 550, 658 N.Y.S.2d at 911.

[139] *Id.*

[140] *Id.* at 551, 658 N.Y.S.2d at 912.

[141] U.S. CONST. amend. I. This amendment provides in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." *Id.*

[142] N.Y. CONST. art. I, § 3. This section provides in relevant part: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind . . . . " *Id.*

[143] *Robbins*, 230 A.D.2d at 551, 658 N.Y.S.2d at 912.

beliefs.[144] It is well-settled law in New York State that an injured party is bound "to use reasonable and proper efforts to make the damage as small as practicable"[145] and that a failure to do so will reduce any damage award.[146]

As a result of the accident, plaintiff suffered both hip and knee damage.[147] At trial, plaintiff's expert testified that if plaintiff did not have surgery, she would be confined to a wheelchair as a result of "necrotic development in the bone structure of [the affected] limbs."[148] All the experts agreed, however, that surgery would offer plaintiff the "prospect of a good recovery and a near normal life."[149] Plaintiff presented proof, primarily from her hospital records, that she refused the surgery because her religious beliefs, as a Jehovah's Witness, prevented her from having the blood transfusions that surgery would require.[150]

Reflecting New York law, the New York pattern jury instruction concerning damage mitigation refers to the actions of "a reasonably prudent person"[151] and gauges the duty to mitigate by that standard.[152] Although the lower court mentioned the

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[144] *Id.* at 553-54, 658 N.Y.S.2d at 914.

[145] *Id.* at 550, 658 N.Y.S.2d at 911-12 (quoting Blate v. Third Ave. R.R. Co., 44 A.D. 163, 167, 60 N.Y.S. 732, 734 (1st Dep't 1899)).

[146] *Id.* at 550, 658 N.Y.S.2d at 912 (citing Hamilton v. McPherson, 28 N.Y. 72, 77 (1863)).

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *Id.* at 551, 658 N.Y.S.2d at 912.

[151] N.Y. PJI § 2:325 (1996). This section provides in pertinent part:

> A person who has been injured is not permitted to recover for damages that could have been avoided by using means which a reasonably prudent person would have used to (cure the injury, alleviate the pain) . . . . If you find that the plaintiff is entitled to recover in this action, then in deciding the nature and permanence of (his, her) injury and what damages (he, she) may recover for the injury, you must decide whether in refusing to have an operation the plaintiff acted as a reasonably prudent person would have acted under the circumstances.

Id.

[152] *Id.*

"reasonably prudent person" standard to the jury, the court charged the jury with a "reasonable Jehovah's Witness"[153] standard concerning plaintiff's duty to mitigate her damages.[154]

In reaching its holding, the First Department began its analysis by noting that the trial court, in adopting the "reasonably prudent Jehovah's Witness" standard, sought to protect plaintiff's basic right to the free exercise of her religious beliefs as guaranteed by the Federal and New York State Constitutions.[155] The First Amendment also provides that any law "respecting an establishment of religion," is invalid.[156] The court determined that the trial court therefore erred when it instructed the jury on the issue of plaintiff's refusal to have surgery.[157] According to its jury instruction, the trial court allowed the jury to give total deference to plaintiff's religious beliefs so as not to unlawfully restrain the free exercise of her faith.[158] Such deference to religion is exactly the type of "preference" prohibited by the First Amendment.[159]

The Appellate Division explained that the trial court made its first error when it perceived the issue as a question of whether

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[153] *Robbins*, 230 A.D.2d at 551, 658 N.Y.S.2d at 912 (quoting Williams v. Bright, 167 Misc. 2d 312, 317, 632 N.Y.S.2d 760, 764 (Sup. Ct. New York County 1995)). The New York County, Supreme Court charged the jury in the following manner:

> You have to accept as a given that the dictates of her religion forbid blood transfusions. And so you have to determine . . . whether she . . . *acted reasonably* as a *Jehovah's Witness* in refusing surgery which would involve blood transfusions. Was it reasonable for her, not what you would do -- or your friends or family -- *was it reasonable for her, given her beliefs,* without questioning the validity or the propriety of her beliefs?

Id. (emphasis in original).

[154] *Robbins*, 230 A.D.2d at 551, 658 N.Y.S.2d at 912.

[155] *Id.*

[156] U.S. CONST. amend. I. *See* Lee v. Weisman, 505 U.S. 577 (1992); Board of Education v. Grumet, 512 U.S. 687 (1994); Lynch v. Donnelly, 465 U.S. 668 (1984).

[157] *Robbins*, 230 A.D.2d at 551, 658 N.Y.S.2d at 912.

[158] *Id.*

[159] *Id.*

any jury verdict could conflict with plaintiff's "religious belief that it may be better to suffer present pain than to be barred from entering the Kingdom of Heaven."[160] The court noted that neither the State nor anyone else has the right to interfere with someone's religious beliefs.[161] However, the real issue in the present case is whether the consequences of such a belief should be paid for by someone other than the plaintiff.[162]

Under the Religious Freedom Restoration Act of 1993,[163] a state may only impose a substantial burden on a person's right to freely exercise his/her religion in the presence of a "compelling interest."[164] The court noted that the state has a "compelling interest" in assuring that judicial proceedings are fairly decided and that no litigant is "improperly advantaged or disadvantaged" by an adherence to a particular set of religious beliefs.[165] Because an order originating from a state court constitutes "state action," the court noted that, under the Fourteenth Amendment,[166] the state

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[160] *Id.* at 552, 658 N.Y.S.2d at 912-13 (quoting Williams v. Bright, 167 Misc. 2d 312, 318, 632 N.Y.S.2d 760, 764 (Sup. Ct. New York County 1995)).

[161] *Id.* at 552, 658 N.Y.S.2d at 913.

[162] *Id.*

[163] 42 U.S.C. § 2000bb-1 (a)(b) (1993) (*repealed by* City of Boerne v. Flores, 117 S. Ct (1997)). The statute provides in pertinent part:

> Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except . . . if it demonstrates that the application of the burden to the person—
> (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

Id.

[164] *Robbins*, 230 A.D.2d at 553, 658 N.Y.S.2d at 913. *See also* Wisconsin v. Yoder, 406 U.S. 205, 234 (1972) (holding that the state could not require Amish children to attend public school in violation of their religious beliefs); Sherbert v. Verner, 374 U.S. 398, 408-09 (1963) (finding no compelling state interest when Sabbath observer's unemployment benefits were denied because she refused to work on the Sabbath).

[165] *Robbins*, 230 A.D.2d at 553, 658 N.Y.S.2d at 913.

[166] U.S. CONST. amend. XIV, § 1. This section provides in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." *Id.* In addition, the New York State Constitution

also has an additional interest — to provide equal protection to every individual that comes before its courts.[167]

The court continued its analysis by noting that a state may not give its approval to any particular religion or any set religious practice[168] and that by accepting plaintiff's beliefs without question, the trial court, in essence, granted governmental endorsement to those beliefs.[169]

Because the courts of this country have "no business" endorsing or condemning anyone's religious beliefs, the court contended that the lower court entered into a "forbidden domain."[170] The court noted that the trial court entered the "forbidden domain," under the three-pronged formula of *Lemon v. Kurtzman*,[171] when it decided the "reasonable practice" of

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provides in relevant part: "No person shall be deprived of life, liberty or property without due process of law." N.Y. CONST. art. I, § 6.

[167] *Robbins*, 230 A.D.2d at 553, 658 N.Y.S.2d at 913.

[168] *Id.* at 554, 658 N.Y.S.2d at 914 (citing Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384, 394 (1993)).

[169] *Robbins*, 230 A.D.2d at 553, 658 N.Y.S.2d at 913.

[170] *Id.* (citing United States v. Ballard, 322 U.S. 78, 86-87 (1944)). In *Ballard*, Justice Douglas, writing for the majority, stated:

> Freedom of thought, which includes freedom of religious belief, . . . embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. . . . [I]f those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position.

Ballard, 322 U.S. at 86-87 (citing Murdock v. Pennsylvania, 319 U.S. 105, 114 (1943).

[171] *Robbins*, 230 A.D.2d at 555, 658 N.Y.S.2d at 914 (citing Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971)). The *Lemon* Court found no constitutional violation if the state action in question has a non-religious legislative purpose, the main effect of which does not enhance nor inhibit

Jehovah's Witnesses.[172] Once the trial court decided the damage mitigation issue with total deference to plaintiff's beliefs, the court became "excessively entangled" in religious matters.[173] The court then used the case of *Lundman v. McKowan*[174] to illustrate an excursion into the "forbidden domain."[175] The Appellate Division explained that the court in *Lundman,* by undertaking an evaluation of different practices and tenets of the Christian Scientist faith, chose to proceed into the "forbidden domain"[176] that Justice Douglas so admonished against.[177]

In reversing the judgment in part and remanding on the issue of damages only, the court held that the pattern jury instruction must be supplemented by what is called a "reasonable believer" charge.[178] The court stated that the application of this additional

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religion, and the [action] does not cause the state to become excessively entangled with religion. *Lemon*, 403 U.S. at 612-13.

[172] *Robbins*, 230 A.D.2d at 554, 658 N.Y.S.2d at 914.

[173] *Id.* *See* Kirk v. Cisler, 244 A.D. 733, 733-34 (2d Dep't 1935) (admonishing the lower court for allowing the beliefs of the Christian Science religion "to creep into the trial" in such a way that invited prejudice to the plaintiff's advantage).

[174] 530 N.W.2d 807 (Minn. Ct. App. 1995). In *Lundman*, a wrongful death action was brought on behalf of a young Christian Scientist boy who had died of juvenile onset diabetes. *Id.* at 813. The young boy's caretakers consistently failed to seek medical assistance in the three days prior to the youth's death relying instead on Christian Science prayer. *Id.* at 828. The Minnesota Court of Appeals held that the proper standard of care would be whether, given the facts in this case, a "reasonable person — who is a good faith Christian Scientist" would have done the same under similar circumstances. *Id.*

[175] *Robbins*, 230 A.D.2d at 554, 658 N.Y.S.2d at 915.

[176] United States v. Ballard, 322 U.S. 78, 87 (1944).

[177] *Robbins*, 230 A.D.2d at 556, 658 N.Y.S.2d at 915-16.

[178] *Id.* at 556-57, 658 N.Y.S.2d at 915-16. The court instructed the trial court to supplement the jury charge with the following instruction:

> In considering whether the plaintiff acted as a reasonably prudent person, you may consider the plaintiff's testimony that she is a believer in the Jehovah's Witness faith, and . . . that . . . she cannot accept any medical treatment which requires a blood transfusion. I charge you that such belief is a factor for you to consider, together with all the other evidence you have heard, in determining whether the

charge is intended to fairly balance the competing interests of the parties involved in the litigation.[179]

In the dissent,[180] Justice Rosenberger reasoned that the jury instruction met the state's interest in minimizing damages, under tort law, to those reasonably incurred without placing an excessive burden placed on plaintiff's religious beliefs.[181] This charge, the dissent noted, did not take the issue of plaintiff's reasonableness away from the jury.[182] Because the majority wanted to have the jury hear evidence to determine whether plaintiff's refusal to have the blood transfusion was reasonable, the dissent contended that this crossed impermissible boundaries

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> plaintiff acted reasonably in caring for her injuries, keeping in mind, however, that the overriding test is whether the plaintiff acted as a reasonably prudent person, under all the circumstances confronting her.

Id.

[179] *Id.* at 557, 658 N.Y.S.2d at 916.

[180] *Id.* at 558, 658 N.Y.S.2d at 916 (Rosenberger, J., dissenting).

[181] *Id.* at 559, 658 N.Y.S.2d at 917 (Rosenberger, J., dissenting). The trial court's jury charge stated:

> Now, in making your determination as to whether [plaintiff] has acted reasonably to mitigate damage, I will instruct you that under no circumstances are you to consider the validity or reasonableness of her religious beliefs . . . we cannot have a situation in which jurors in passing on the reasonableness of somebody's conduct, pass upon whether their religious beliefs are reasonable or nor reasonable. What is reasonable for [an] adherent of one religion may appear totally unreasonable to someone who has different beliefs, but you may not pass upon the validity of anyone else's beliefs. That is out of bounds for you. You have to accept as a given that the dictates of her religion forbid blood transfusions.
>
> And so you have to determine in assessing the question of damages . . . whether she, Mrs. Robbins, acted reasonably as a Jehovah's Witness in refusing surgery which would involve blood transfusions. Was it reasonable for her, not what you would do or your friends or family, was it reasonable for her given her beliefs, without questioning the validity or propriety of her beliefs.

Id. at 559-60, 658 N.Y.S.2d at 917-18 (Rosenberger, J., dissenting) (quoting Williams v. Bright, 167 Misc.2d at 317, 632 N.Y.S.2d at 763-64).

[182] *Id.* at 560, 658 N.Y.S.2d at 918 (Rosenberger, J., dissenting).

and that plaintiff must not be "subjected to the intrusiveness and indignity" of having the jury determine the reasonableness of her religious beliefs.[183]

The Federal and New York State Constitutions, though not identical in words, are identical in substance concerning the free exercise of religion. As both constitutions mandate the free exercise of religion without discrimination or preference,[184] the Appellate Division, First Department, held that it was error to introduce instructions concerning the validity of religious doctrines.[185]

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[183] *Id.* at 560-63, 658 N.Y.S.2d at 918-19 (Rosenberger, J., dissenting).

[184] *See* U.S. CONST. amend. I; N.Y. CONST. art. I, § 3.

[185] *Robbins*, 230 A.D.2d at 556, 658 N.Y.S.2d at 915 (Rosenberger, J., dissenting).