

July 2023
MPT-1 File

Dobson v. Brooks Real Estate Agency

Burton & Mendel LLP
Attorneys at Law
2024 Kendall Avenue
Bristol, Franklin 33726

MEMORANDUM

To: Examinee
From: Samantha Burton
Date: July 25, 2023
Re: Dobson v. Brooks Real Estate Agency

Our firm is representing Peter Dobson in litigation against Brooks Real Estate Agency. Mr. Dobson slipped and fell on ice that the Brooks Agency failed to remove from the sidewalk in front of its building. He suffered a broken leg, a broken arm, and a concussion as a result of the fall, and ultimately missed three months' work.

The trial is in four weeks. I intend to file a motion *in limine*, that is, a pretrial motion seeking a ruling on the admissibility of certain evidence. As you know, the Franklin Rules of Evidence are identical to the Federal Rules of Evidence.

I need you to prepare the argument section of the brief in support of the motion *in limine*, setting forth our position regarding each of the following items of evidence:

(1) Anticipated trial testimony by Doris Gibbs describing an interaction she had with Mr. Dobson, her neighbor. We need to seek a pretrial ruling that her testimony is inadmissible.

(2) The deposition testimony of the emergency room physician who examined Mr. Dobson after his fall and gave deposition testimony in connection with a separate case arising out of the same injuries. The physician has since died. We need to seek a pretrial ruling that the deposition testimony is inadmissible in our case.

(3) The insurance policy on the property of the Brooks Real Estate Agency. In the course of discovery, Brooks has claimed that it does not control the sidewalk and therefore was not responsible for clearing it of ice. We want to introduce the insurance policy on the property showing that the agency is insured against liability resulting from conduct occurring on the sidewalk.

Be sure to follow the attached guidelines for writing persuasive briefs. Draft only the "legal argument" section; another associate will draft the statement of facts and caption.

Burton & Mendel LLP
Attorneys at Law

OFFICE MEMORANDUM

To: All Associates
From: Samantha Burton
Date: September 5, 2019
Re: Guidelines for Persuasive Briefs in Trial Courts

The following guidelines apply to briefs filed in support of motions in trial courts.

I. Captions [omitted]

II. Statement of Facts [omitted]

III. Legal Argument

Your legal argument should make your points clearly and succinctly, citing relevant authority for each legal proposition. Do not restate the facts as a whole at the beginning of your legal argument. Instead, integrate the facts into your legal argument in a way that makes the strongest case for our client.

Use headings to separate the sections of your argument. Your headings should not state abstract conclusions but should integrate the facts into legal propositions to make them more persuasive. An ineffective heading states only: "The court should not admit evidence of the victim's character." An effective heading states: "Evidence of the victim's character for violence should be excluded because the defendant has not raised a claim of self-defense."

In the body of your brief, analyze applicable legal authority and persuasively argue how both the facts and the law support our client's position. Supporting authority should be emphasized, but contrary authority should also be cited, addressed in the argument, and explained or distinguished.

Do not assume that we will have an opportunity to submit a reply brief. Be sure to anticipate and respond to opposing arguments in the body of your brief. Structure your argument in such a way as to highlight your case's strengths and minimize its weaknesses.

TRANSCRIPT OF INTERVIEW WITH PETER DOBSON

January 11, 2023

Att'y Burton: Hello, Mr. Dobson. I understand you would like to retain our firm to handle a negligence action for you.

Dobson: Yes, I suffered some pretty bad injuries. I was in the hospital for two days and out of work for three months.

Burton: What happened?

Dobson: I was here in Bristol. It was a snowy day, but the sidewalks looked clear. I must have slipped on some ice, and I fell. I broke my arm and my leg and had a concussion.

Burton: I am so sorry.

Dobson: It has been a long recovery and very painful.

Burton: When did your fall and injuries occur?

Dobson: Last winter, on February 18, 2022.

Burton: Could you give me a few more details?

Dobson: Sure. I was walking from my house on Maple Grove Way and going to the grocery store on Oaklawn. My route took me down Elm Street. There was some snow on the ground but not a lot of it. I was walking on the sidewalk. I was walking carefully since it was winter. All of a sudden, my legs shot out from under me, and I was on the ground. And I hurt—a lot! It turns out there was ice on the sidewalk, and I slipped and fell on it. Luckily another person saw me fall and called 911. The ambulance came and took me to the hospital. Now I am finally recovered and I need your help.

Burton: Before we talk more about your injuries, I understand this is not the only lawsuit you filed related to this incident.

Dobson: That is correct. The City of Bristol is my employer. I sued the City after it denied me more time away from work and other accommodations for my injuries. My lawyer in that case is Robert Chen. I can put you in touch with him.

Burton: Thank you. I assume that I have your permission to speak with attorney Chen.

Dobson: Of course.

Burton: And again, what were your injuries?

Dobson: I had a broken arm, a broken leg, and a concussion.

Burton: Do you know who owns the property adjacent to the sidewalk on which you fell?

Dobson: Yes, it is owned by the Brooks Real Estate Agency.

Burton: So we may be able to file a negligence action, alleging that Brooks Real Estate Agency breached its duty of care by not keeping the sidewalk clear of ice, and that as a result of its negligence, you sustained multiple injuries. We may be able to claim as damages the medical costs you incurred, your lost wages for the time you were off work, and your pain and suffering.

Dobson: That sounds great. Just let me know what you need from me.

Burton: We will be in touch soon.

Burton & Mendel LLP
Attorneys at Law

FILE MEMORANDUM

From: Samantha Burton
Date: January 13, 2023
Re: Dobson v. Brooks Real Estate Agency

Following my initial interview with Peter Dobson, and with his permission, I contacted Robert Chen, the attorney who represents Dobson in his suit against the City of Bristol. Here is what I learned from Attorney Chen: The suit against the City is a disability discrimination claim related to Dobson's employment by the City. After the accident (which is also the basis of our negligence claim against Brooks Real Estate Agency), Dobson believed that the City was not accommodating him appropriately. Dobson hired Chen, and Chen then filed suit on behalf of Dobson alleging discrimination under Franklin's Disability Act. Essentially, Dobson's claims against the City are that he was not given sufficient time away from the office and was not given other accommodations to which he was entitled given the severity of his injuries. The City has defended against the action, claiming that Dobson's injuries did not require the accommodations Dobson sought. The source and causation of Dobson's injuries are not at issue in that case, as they are in Dobson's claims against the Brooks Real Estate Agency. Discovery has been completed, and a trial date has been set.

Attorney Chen suggested I review Dr. Miller's deposition in *Dobson v. City of Bristol*. Dr. Miller treated Dobson when he was admitted to the hospital for his injuries. At the deposition, Dr. Miller testified about the extent of Dobson's injuries and the adequacy of the limited accommodations the City made for him. Chen made the strategic decision not to examine Dr. Miller about her opinion about the extent of the injuries because his focus at the deposition was on the level of accommodations given to Dobson. Chen, in an attempt to attack Dr. Miller's credibility, instead focused his examination of Dr. Miller on prior malpractice lawsuits against her. Dr. Miller died after the deposition but before trial.

Burton & Mendel LLP
Attorneys at Law

FILE MEMORANDUM

From: Roger Cole, Investigator
Date: January 25, 2023
Re: Conversation with Doris Gibbs, information about Dr. Miller, and information about Brooks Real Estate Agency

At your request, I have investigated certain matters in the Peter Dobson case.

First, I had a conversation with Doris Gibbs. Ms. Gibbs was on the list of potential witnesses supplied by the Brooks Real Estate Agency's lawyer in the Dobson matter, so I wanted to find out what information she might have about the case.

Ms. Gibbs was more than happy to speak with me. She told me that she was a neighbor of Mr. Dobson. She brought food over to the Dobsons' home shortly after Mr. Dobson was released from the hospital. She also visited several times while Mr. Dobson was at home recovering from his injuries.

Soon after Mr. Dobson had regained the use of his arm and leg and was able to leave his home, he and his wife invited Ms. Gibbs and her wife out to dinner to thank Ms. Gibbs for her generosity during Mr. Dobson's recovery. Of course, the question of how Mr. Dobson was injured came up at that dinner.

During dinner, after they had each had a beer, Ms. Gibbs said to Mr. Dobson: "We have all been clumsy before. I bet that you were trying to get to the store quickly. And I would guess, like most of us, you were on your phone at the time." She said that she didn't say this in an accusatory way, but only as a statement of fact and of understanding. She told me that she had fallen several times when not looking where she was going or when distracted. According to Ms. Gibbs, Mr. Dobson failed to respond to the statement she made at the dinner. She said that she thought he was listening—he set his drink down and looked at her while she was speaking. She also said that there was the usual background sound of conversation in the restaurant. After she made the statement, no one said anything for about a minute. After that, the couples chatted about other things. The dinner concluded amicably.

Ms. Gibbs says she knows nothing else about Mr. Dobson's fall. She was not there when the accident occurred and has no personal knowledge about anything related to it.

Second, I confirmed that Dr. Lena Miller died of a heart attack on November 17, 2022. Her obituary was in the *Centralia Herald*, and I found her death certificate in the County Office of Vital Records. I put a copy of the death certificate in the client's file.

I reviewed the deed for the building on Elm Street occupied by Brooks Real Estate Agency and confirmed that it is owned by Brooks Real Estate Agency. And, finally, I reviewed the insurance policy for the building. The property insurance on the building explicitly covers sidewalks adjacent to the property.

DEPOSITION OF DR. LENA MILLER

Taken on September 22, 2022, in the case of PETER DOBSON v. CITY OF BRISTOL

Plaintiff Peter Dobson is represented by attorney Robert Chen. Defendant City of Bristol is represented by city attorney Tanya Lopez.

* * * * *

Att'y Lopez: Dr. Miller, did you examine Mr. Dobson at the hospital on the day of the accident and were you able to review his medical records in preparation for this deposition?

Dr. Miller: Yes. I'm not his regular doctor, but I was on call at the emergency room when he was admitted.

Lopez: What was your diagnosis at the time you examined him?

Miller: Based on the X-rays and MRI imaging, I determined that Mr. Dobson had broken his arm and his leg. But they were both hairline fractures.

Lopez: What does that mean?

Miller: It means that he should not have been incapacitated for very long. He should have been able to walk on the leg after a couple of weeks with a walking cast. His arm might have been in a sling but for no more than six weeks. Depending on his job, he would have needed to be off work for no more than six weeks.

Lopez: What about the concussion?

Miller: It didn't look that serious. He should have been fully recovered in less than a week.

Lopez: What about pain and suffering?

Miller: My observation is that he was not in that much pain. He should have been fine with some ibuprofen and rest.

Lopez: Do you think he is asking for more time away from work than he really needs?

Miller: In my opinion, yes.

[Direct examination on adequacy of accommodations omitted.]

Lopez: I have no further questions. Any cross-examination?

Att'y Chen: Dr. Miller, you have been sued for malpractice on five occasions, is that not true?

Dr. Miller: Yes—I settled all of them only because my insurance company told me to.

[Cross-examination by Att'y Chen on adequacy of accommodations omitted.]

Att'y Chen: Thank you, Dr. Miller. I will ask the rest of my questions at trial.