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## 2000 Survey of Rhode Island Law: Cases: Civil Procedure

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**Civil Procedure.** *Burns v. Connecticut Mutual Life Insurance Co.*, 743 A.2d 566 (R.I. 2000). Plaintiff brought suit against his disability insurance company for wrongful termination of benefits. He further sued his insurance agent alleging negligence resulting in the termination of his benefits. The court dismissed the case against the insurance agent as barred by the statute of limitations under Rhode Island General Laws section 9-1-14.1. The court then entered a final judgment in favor of the insurance company as a sanction against the plaintiff for failing to abide by court-ordered discovery and for making misrepresentations to the court as to the existence of the requested material pursuant to Rhode Island Superior Court Rule of Civil Procedure 37 (b)(2)(C).

#### FACTS AND TRAVEL

In *Burns v. Connecticut Mutual Life Insurance Co.*,<sup>1</sup> the plaintiff, Mr. Alan F. Burns (Burns) originally brought suit arguing that Connecticut Mutual Life Insurance Company (Conn. Mutual) wrongfully terminated his benefits from a disability policy issued on October 4, 1988.<sup>2</sup> Burns further alleged that his insurance salesman, H. Randell Howard (Howard), was negligent in not informing Burns that he was ineligible for the disability insurance when it was issued.<sup>3</sup> The superior court dismissed both causes of action.<sup>4</sup> Burns then appealed the superior court's dismissal of his claim against Howard due to the running of the statute of limitations pursuant to Rhode Island General Laws section 9-1-14.1.<sup>5</sup> Burns further appealed the dismissal of his claim against Conn.

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1. 743 A.2d 566 (R.I. 2000).

2. *See id.* at 567.

3. *See id.*

4. *See id.*

5. *See id.* Section 9-1-14.1 of the Rhode Island General Laws states, in pertinent part:

**Limitations on Malpractice Actions.**

Notwithstanding the provisions of §§ 9-1-13 and 9-1-14, an action for medical, veterinarian, accounting, or insurance or real estate agent or broker malpractice shall be commenced within three (3) years from the time of the occurrence of the incident which gave rise to the action; provided, however, that:

(2) In respect to those injuries or damages due to acts of medical, veterinarian, accounting, or insurance or real estate agent malpractice which could not in the exercise of reasonable diligence be discoverable at the time of the occurrence of the incident which gave rise to the action, suit shall be commenced within three (3) years of the time that the act or acts

Mutual under Rhode Island Superior Court Rule of Civil Procedure 37 (b)(2)(C)<sup>6</sup> for his failure to comply with court ordered discovery in a timely manner, and deliberately deceiving the court as to the existence of the documents requested by Conn. Mutual.<sup>7</sup>

#### ANALYSIS AND HOLDING

##### *Statute of Limitations*

On August 26, 1988, Burns consulted with Howard for the purchase of a disability insurance policy that was subsequently issued on October 4, 1988.<sup>8</sup> The October 4th policy contained numerous errors as to Burns' criminal record, earned income, severity of previous injuries and his physical job duties.<sup>9</sup> Despite wording on the front of the policy stating "READ YOUR POLICY CAREFULLY" and a statement telling the insured that the policy is issued based upon the information contained on the application form (which was attached to the policy), Burns contended that Howard is responsible for the misinformation.<sup>10</sup> Burns further argued that he first became aware of the errors in 1993.<sup>11</sup> Burns commenced his action against Howard on June 7, 1993.<sup>12</sup>

On appeal, Burns contended that the statute of limitations as laid out in Rhode Island General Laws section 9-1-14.1 should start to run at the time he was first aware of Howard's alleged negligence in 1993 and not at the actual occurrence in 1988.<sup>13</sup> The supreme court upheld the motion justice's determination that the

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of the malpractice should, in the exercise of reasonable diligence, have been discovered.

R.I. Gen. Laws § 9-1-14.1 (1956) (1997 Reenactment).

6. Rule 37 of the Superior Court Rules of Civil Procedure states, in pertinent part:

An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or a final judgment dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

R.I. Super. Ct. R. Civ. P. 37(b)(2)(C).

7. See *Burns*, 743 A.2d at 568.

8. See *id.* at 567.

9. See *id.*

10. *Id.*

11. See *id.*

12. See *id.*

13. See *id.*

three-year statute of limitations began October 4, 1988.<sup>14</sup> Both courts believed that with minimal effort Burns would have been aware of any errors in his policy when he first received it.<sup>15</sup>

*Dismissal Under Superior Court Rule of Civil Procedure  
37(b)(2)(C)*

Burns also appealed the superior court's entry of final judgment against him for untimely compliance with the court ordered discovery.<sup>16</sup> Burns contended "that dismissal was a drastic remedy, unsuited to his alleged misconduct . . ." <sup>17</sup> The court disagreed and pointed to the inconsistency between Burns' testimony that the requested records were destroyed when his computer hard drive stopped working and his wife's deposition testimony that there existed a file cabinet full of potentially relevant documents.<sup>18</sup> The supreme court acknowledged the harshness of the penalty but affirmed the propriety of the action.<sup>19</sup>

#### CONCLUSION

When a plaintiff has reasonable notice of potential damages from another's negligence, the statute of limitations will start to run from the moment the complaining party should reasonably have known of the negligent act and not necessarily when the alleged negligent act is actually discovered. Further, entrance of a final judgment against a party pursuant to Rhode Island Superior Court Rule of Civil Procedure 37(b)(2)(C) is an appropriate outcome when a party has misrepresented the existence of information requested in discovery.

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14. *See id.* at 567-68.

15. *See id.*

16. *See id.* at 568.

17. *Id.*

18. *See id.*

19. *See id.*

**Civil Procedure.** *Mark v. Congregation Mishkon Tefiloh*, 745 A.2d 777 (R.I. 2000). Plaintiffs in their individual capacities and as co-executors of the decedent's estate brought this action against the defendant religious organization and defendant cemetery operator seeking punitive damages for the sale of decedent's grave sites. Defendant religious organization moved to strike plaintiffs' claims for punitive damages. The superior court denied the motion and defendants filed a writ of certiorari with the Rhode Island Supreme Court. In its decision, the Rhode Island Supreme Court confined the holding of *Palmisano v. Toth*<sup>1</sup> to its specific facts, and determined that an evidentiary hearing is not necessary unless a plaintiff makes an inquiry into the health of defendant's finances.

#### FACTS AND TRAVEL

In 1967, an alleged contract was created between Haskel Mark (decedent) and defendant Congregation Mishkon Tefiloh (Congregation).<sup>2</sup> This contract was for the purchase of two cemetery plots in Lincoln Cemetery in Warwick.<sup>3</sup> Plaintiff Harold Mark (Harold or plaintiff) contends that from 1967 through 1992, the decedent paid a fee for care of these two gravesites to Chased Schell Amess Association (Association), the Association that operates the cemetery.<sup>4</sup> Upon the decedent's death in 1992, Harold contacted the Association to arrange an opening of one of the plots.<sup>5</sup> In his attempt to make that arrangement, Harold discovered the plot had been resold by the Congregation in 1991.<sup>6</sup> Because decedent had to be buried expeditiously due to his religious beliefs, an alternate site was purchased by the Mark family outside the Congregation's designated area.<sup>7</sup>

Plaintiffs filed suit on July 22, 1994, naming both the Congregation and the Association as defendants.<sup>8</sup> During the pending litigation, Marion Mark, the decedent's widow, passed away and was buried next to her husband at the alternative gravesite.<sup>9</sup> Subse-

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1. 624 A.2d 314 (R.I. 1993).

2. See *Mark v. Congregation Mishkon Tefiloh*, 745 A.2d 777, 778 (R.I. 2000).

3. See *id.*

4. See *id.*

5. See *id.*

6. See *id.*

7. See *id.* at 778-79.

8. See *id.* at 779.

9. See *id.*

quently, defendant Congregation filed a motion for partial summary judgment on certain claims asserted by plaintiffs, which was denied without prejudice by the motion justice with regard to the plaintiffs' claims for punitive damages on October 21, 1998.<sup>10</sup> A subsequent motion to strike plaintiffs' claims for punitive damages was made by defendant Congregation on October 21, 1998.<sup>11</sup> This motion was denied.<sup>12</sup> The motion justice ruled that the defendant was not entitled to an evidentiary hearing on a motion to strike in accordance with *Palmisano*; because plaintiff made no effort to discover defendant's financial assets, there was no right to a hearing.<sup>13</sup> On January 7, 1999, the Congregation's petition for writ of certiorari was granted by the Rhode Island Supreme Court.<sup>14</sup>

#### BACKGROUND

The severe restrictions of punitive damages under Rhode Island law are well-established. In *Palmisano*, the Rhode Island Supreme Court enunciated that a "party seeking punitive damages has the burden of producing 'evidence of such willfulness, recklessness or wickedness, on the part of the party at fault, as amount[s] to criminality, which for the good of society and warning to the individual, ought to be punished.'"<sup>15</sup> Additionally, the standard in Rhode Island for the imposition of punitive damages is:

rigorous and will be satisfied only in instances wherein a defendant's conduct requires deterrence and punishment over and above that provided in an award of compensatory damage. An award of punitive damages is considered an extraordinary sanction and is disfavored in the law, but it will be permitted if awarded with great caution and within narrow limits.<sup>16</sup>

Furthermore, the trial justice is responsible for determining whether the party seeking punitive damages has met this standard for an award of punitive damages once that standard has been met within the discretion of the fact finder "to determine

10. *See id.*

11. *See id.*

12. *See id.*

13. *See id.*

14. *See id.*

15. *Palmisano*, 624 A.2d at 318 (quoting *Sherman v. McDermott*, 329 A.2d 195, 196 (1974)).

16. *Id.*

whether and to what extent punitive damages should be awarded."<sup>17</sup>

The *Palmisano* court, however, recognized the burden that discovery of personal finances places on the defendant against whom punitive damages are sought.<sup>18</sup> Thus, the Rhode Island Supreme Court promulgated a rule which requires a plaintiff to "make a prima facie showing that a viable claim exists for the award of punitive damages before discovery of a defendant's financial information may be undertaken," and "prescribed a hearing procedure to be followed in situations in which hearings are deemed necessary."<sup>19</sup> The evidentiary hearing established, however, is not required in every case.<sup>20</sup> It is only necessary when plaintiff intends to investigate defendant's net worth.<sup>21</sup>

#### ANALYSIS AND HOLDING

Despite assertions by defendant Congregation that the standard set forth in *Palmisano* entitles them to an evidentiary hearing, the Rhode Island Supreme Court stated that it was not the court's intention that an evidentiary hearing was required in every case where a plaintiff asserts a claim for punitive damages.<sup>22</sup> The hearing was adopted as a balancing procedure and a plaintiff is required to clear that hurdle only if he intends to investigate the defendant's financial net worth during the pretrial discovery stage.<sup>23</sup> Similarly, if a defendant's financial worthiness were a matter of public record or of some other obvious nature, a hearing would also be deemed unnecessary.<sup>24</sup> In the instant case, the presiding justice acted properly in denying defendant Congregation's motion to strike and refusing to require a hearing to determine the viability of plaintiff's claim for punitive damages.<sup>25</sup> The supreme court denied defendant Congregation's petition for certiorari,

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17. *Mark*, 745 A.2d at 779-80 (quoting *Palmisano*, 624 A.2d at 318).

18. *See id.* at 780

19. *Id.* (citing *Palmisano*, 624 A.2d at 320).

20. *See id.*

21. *See id.*

22. *See id.* at 781.

23. *See id.*

24. *See id.*

25. *See id.*

quashed the previously issued writ and affirmed the order of the superior court.<sup>26</sup>

#### CONCLUSION

In *Mark v. Congregation Mishkon Tefiloh*, the Rhode Island Supreme Court reiterated that the procedure created in *Palmisano* requiring a plaintiff to make a prima facie showing of entitlement to punitive damages applies only when a plaintiff has made a demand for discovery of a defendant's financial condition. Additionally, the holding set forth in *Palmisano* is confined to its specific facts and will not be extended further.

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26. *See id.*