

Discussion

In *Ake v. Oklahoma*, 470 U.S. 68 (1985), the U.S. Supreme Court delineated the principle of “a fair and accurate adjudication of criminal cases” (*Ake*, p 83), which requires a defendant to have access to appropriate resources to build an effective defense, to include “access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense” (*Ake*, p 83). *Ake* required that the “defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial” (*Ake*, p 83). In federal court, the CJA provides government funding for certain indigent defendants who require the involvement of a mental health expert. In Mr. Martinez’s case, he failed to satisfy this requirement.

In the 1930s, the U.S. Supreme Court began to explore the constitutional right of an indigent defendant to have access to court-appointed counsel. In *Powell v. Alabama*, 287 U.S. 45 (1932), the Court ruled that indigent defendants charged with a capital crime must have access to assigned counsel. In *Johnson v. Zerbst*, 304 U.S. 458 (1938), the Court established the indigent defendant’s right to counsel in all federal cases. It was not until the 1960s, in *Gideon v. Wainwright*, 372 U.S. 335 (1963), that the Court established that indigent criminal defendants facing state charges had a constitutional right to assigned counsel. These decisions provided no funding for court-appointed attorneys, let alone expert witnesses or investigators.

The CJA of 1964 established a comprehensive system for payment of assigned counsel and public defenders for indigent defendants in federal criminal proceedings. The CJA also provided funding for other services required for adequate representation, including investigators, interpreters, and expert witnesses. In 2014, the Administrative Office of the U. S. Courts reported that nearly 90 percent of federal criminal defendants were aided by counsel or experts funded by the CJA (United States Courts: Criminal Justice Act: At 50 Years, a Landmark in the Right to Counsel. Available at: <https://www.uscourts.gov/news/2014/08/20/criminal-justice-act-50-years-landmark-right-counsel>. Accessed December 26, 2019). As utilization of the CJA has grown over the decades, ongoing challenges have arisen regarding funding. Inadequate funding may result in a higher threshold for approval of hiring experts to assist

indigent defendants and attack the integrity of the criminal justice system.

Mental Capacity and Tolling the Statute of Limitations

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Plaintiff Claims Insanity as Means to Toll the Statute of Limitations on Civil Case

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In *In re Mirapex Products Liability Litigation*, 912 F.3d 1129 (8th Cir. 2019), Marc Mancini appealed the decision of the District Court for the District of Minnesota that granted summary judgment. The district court found that the facts did not support his claims that the statute of limitations on his product liability was tolled by his insanity and that ongoing use of the product represented a separate and distinct “continuing violations” claim. The United States Court of Appeals for the Eighth Circuit upheld the district court’s ruling.

Facts of the Case

Marc Mancini, PhD, was a full-time college professor and chair of his department; in 2008, Dr. Mancini earned more than \$57,000 as a travel industry speaker and consultant. During that period, he also owned and managed two rental properties. Dr. Mancini was given a diagnosis of mild idiopathic Parkinson’s disease in June 2004. In January 2006, his neurologist, Dr. Mark Lew, prescribed the medication pramipexole (known as Mirapex), which is manufactured by defendant Boehringer Ingelheim Pharmaceuticals and approved by the Food and Drug Administration for treating adults with movement disorders and Parkinson’s disease.

Dr. Mancini reported to Dr. Lew on January 3, 2008, that he experienced increased compulsive behavior and gambling after taking the medication.

After hearing this, Dr. Lew informed him of the possible association between the prescribed medication and compulsive behavior. On April 23, 2008, the medical record demonstrates that Dr. Mancini reported continued gambling and other compulsive behavior. Following that visit, Dr. Lew documented that he reported “that this is controlled, and he does not have any significant problems” (*In re Mirapex*, p 1131). The record also indicated that Dr. Mancini was resistant to decreasing the dose of the medication as recommended by Dr. Lew at that time. Dr. Mancini continued to take the medication until July 2010. Three days later, he saw Dr. Lew, who noted an increase in his tremors, but nonetheless directed him to stay off the Mirapex. Dr. Lew documented that he had reviewed with Dr. Mancini over the five years of treatment that the medication was potentially associated with compulsive behavior and that Dr. Mancini “flat out” denied any significant problems associated with the medication.

This case involves one of many related suits against the manufacturer of Mirapex. In more than 250 cases filed in multiple federal district courts, plaintiffs claimed to have been damaged by the medication. The Judicial Panel on Multidistrict Litigation determined that these cases involved common questions of fact and transferred all the cases to the District of Minnesota for coordinated pretrial proceedings. As a result, Dr. Mancini, a resident of California, brought his claim to the District of Minnesota, where California law nonetheless applied. Dr. Mancini’s first argument was that he was “insane” (under a civil law definition) at the time he was taking Mirapex, and that the two-year statute of limitations to initiate civil litigation therefore was tolled in July 2010. Tolling is the legal doctrine that allows for the pausing or delay of the commencement of the period of time in which a lawsuit must be started. California law states, “If a person entitled to bring an action . . . is, at the time the cause of action accrued . . . insane, the time of the disability is not part of the time limited for the commencement of the action” (Cal. Civ. Proc. Code § 352(a) (2014)). The district court ruled that Mr. Mancini did not meet the burden of proof that he was insane under California’s Code of Civil Procedure.

Dr. Mancini’s second argument was that he was entitled to a “continuing accrual claim” because each dose of Mirapex gave rise to a separate claim. This would have resulted in 5,000 distinct and separate

claims against the manufacturer from January 2006 to January 2010. The district court recognized the Supreme Court of California’s longstanding rule regarding continuing accrual that allows for each act of wrongdoing to be treated as an independent actionable wrong with its own recovery timeline. The district court stated that the wrongdoing was not taking the pill. It went on to explain that the wrongdoing ended in early 2008 when Dr. Mancini became aware that Mirapex might be causing his gambling and other compulsive behavior. After April 2008, Dr. Mancini took the Mirapex while being well aware of its potential side effects.

Dr. Mancini’s third argument on appeal was that the district court abused its discretion by denying his motion to stay summary judgment pending discovery as to whether the defendant knew that Mirapex rendered its users unable to understand the nature or effects of their actions.

Ruling and Reasoning

In clarifying the meaning of insanity in this context, the Eighth Circuit Court of Appeals referred to *Hsu v. Mt. Zion Hospital*, 66 Cal. Rptr. 659 (Cal. Ct. App. 1968), which stated that “to find that plaintiff was insane, you must find that she was incapable of caring for her property, or transacting business or understanding the nature or effects of her acts” (*Hsu*, p 666). Here, Dr. Mancini argued that he did not understand or appreciate the nature, effects, or consequences of his acts due to the alleged medication-induced compulsive behavior and impaired ability to make rational decisions. If found insane, the two-year statute of limitations would have tolled. The Eighth Circuit ruled that Dr. Mancini was not insane when the product liability action accrued. The court stated that it was Dr. Mancini’s obligation to provide more than a scintilla of proof that he was insane. The Eighth Circuit also pointed out that the evidence of Dr. Mancini’s business and financial successes in 2008 were undisputed and the record was clear that he demonstrated in 2008 the comprehension and ability to hire an attorney.

Turning to the continuing accrual principle, the Eighth Circuit Court of Appeals agreed with the district court’s finding that wrongdoing was not taking the pill, but rather the wrongdoing accrued in April 2008, when Dr. Mancini was warned that Mirapex might be causing his compulsive behavior yet continued to take the medication. Any injuries resulting

from taking the Mirapex after April 2008 were therefore time-barred.

The Eighth Circuit Court found that the district court did not abuse its discretion by denying Dr. Mancini's motion to stay summary judgment. At the time of the district court's ruling, the case had been pending for more than two years, and nothing prevented the plaintiff from conducting discovery. The Eighth Circuit also stated that numerous other companion cases settled, providing further evidence that Dr. Mancini had had ample time to conduct discovery.

Discussion

California, like other states, presumes mental capacity in civil litigation unless it can be demonstrated that the individual does not meet the standard for mental capacity. In *In re Mirapex*, Dr. Mancini asserted insanity under civil law in an effort to toll his case against the pharmaceutical company. The standard for mental capacity may vary depending on the complexity of the subject at hand. For example, testamentary capacity typically has an extremely low standard. Marital capacity and contractual capacity often require a low standard of mental capacity. In the case of medical decision-making, informed consent functions more akin to contractual capacity where the complexity and risk of the treatment or procedure may factor into the individual's ability to consent. Proving that one lacks mental capacity in civil litigation usually requires testimony from an expert witness. It is incumbent upon experts to be aware of the relevant capacity standard for the specific civil matter about which they will be testifying.

Impeaching a Witness Who Has a Mental Illness

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Court Considers When to Allow Evidence of a Fact Witness' Mental Health History for Impeachment Purposes

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In *Collins v. State*, 571 S.W.3d 469 (Ark. 2019), Ronnie Collins argued that the circuit court abused its discretion by not allowing him to impeach Lakeesha Jackson, a fact witness, with extrinsic evidence of her mental illness. The Arkansas Supreme Court affirmed the lower court's decision.

Facts of the Case

Jonathan Brown was shot and killed inside Larry Bailey's residence on May 8, 2015. Mr. Collins was charged with capital murder and the use of a firearm during commission of the offense.

At Mr. Collins' trial in October 2017, Mr. Bailey testified that he allowed homeless persons to stay in his home. On the night of Mr. Brown's murder, Mr. Brown and four additional people were staying there, including Mr. Collins and his girlfriend, Ms. Jackson. Mr. Bailey testified that he awoke to Mr. Collins and Mr. Brown arguing and he saw Mr. Collins shoot Mr. Brown three times with a pistol. Mr. Bailey saw Mr. Collins and the other individuals leave the house. Mr. Bailey went across the street to call 911. While on the neighbor's front porch, he observed Mr. Collins reenter the house; he heard a fourth gunshot and he saw Mr. Collins exit the house and walk down an alley.

Ms. Jackson testified that, several hours before the shooting, she arrived at Mr. Bailey's residence to find Mr. Collins asleep on a pallet in the kitchen with a .45 pistol resting on his chest. She put the gun on the floor and she went to sleep next to him. She testified that in the morning she heard Mr. Collins and Mr. Brown argue. She observed Mr. Collins walk into the living room, and then she heard multiple gunshots. Ms. Jackson witnessed everyone, including Mr. Collins, leave the house after the shooting. She stated that Mr. Collins returned to the house and she heard one more gunshot.

The medical examiner testified that Mr. Brown had four gunshot wounds, which caused his death.