

APPELLATE CASE NOTES

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EVIDENCE OF ACCIDENTS INVOLVING SIMILAR PRODUCTS BY SAME MANUFACTURER ADMISSIBLE

STOKES V. NATIONAL PRESTO INDUSTRIES, INC.

In a decision that reaffirms the guiding principles for the discovery and admissibility of other similar accidents, the Missouri Court of Appeals for the Western District granted a new trial after the trial court excluded evidence of similar accidents involving other models of deep fryers made by the same manufacturer. In *Stokes v. National Presto Industries, Inc.*, 2005 WL 831363 (Mo. App. W.D.), the court held that evidence of substantially similar accidents was not to be limited to accidents involving the exact model of a product. Rejecting the “single product” idea used by the trial court, the Western District held that the key in analyzing the admissibility of other accidents is the similarity of the incidents.

RELEVANT FACTS

Joel Stokes was severely burned when, as a 13-month-old toddler, he pulled an overhanging electric cord and dumped hot oil on himself while his grandmother, Diane Scheu, was cooking with a Kitchen Kettle deep fryer. Stokes’ parents sued the deep fryer’s manufacturer, National Presto Industries, Inc., for products liability and negligence, and his grandmother for negligence in Jackson County Circuit Court. The claim against National Presto was that the deep fryer should have been equipped with rubber feet to keep it from sliding easily across a counter and with an electrical cord that would release easily when pulled by a child. At trial, Stokes attempted to introduce evidence concerning the history of pullover accidents involving children and National Presto’s Kitchen Kettle, FryBaby, FryDaddy and GranPappy units. The trial judge did not allow evidence of other pullover accidents involving similar deep fryers manufactured by National Presto, limiting the evidence to incidents involving the Kitchen Kettle. The most significant difference in the other fryers was the capacity.¹ The trial court had declared it

was confining the evidence to the “single product rule” or “one product idea” and restricted evidence of previous incidents to those involving Kitchen Kettle units. The jury returned a verdict for National Presto but against Stokes’ grandmother for \$500,000.² The Western District agreed to hear Stokes’ appeal against National Presto.³

On appeal, Stokes argued that the circuit court erred in excluding evidence concerning substantially similar pullover accidents involving similar deep fryers manufactured by National Presto and evidence regarding Presto’s correspondence with the Consumer Products Safety Commission and Underwriter’s Laboratory about the danger of its deep fryers. Stokes also argued that the trial court erred in denying discovery of claims and lawsuits that arose after his injury. National Presto rebutted that the circuit court had permitted Stokes to prove three incidents involving Presto’s Kitchen Kettle model. It also argued Stokes was not excluded from presenting evidence from the Consumer Product Safety Commission demonstrating deep fryers susceptibility to hot oil spills caused by children pulling on the cords and evidence of more than 100 incidents involving deep fryers and children, including three deaths and 40 serious injuries. *Stokes*, WL 831363 at 2.

LEGAL ANALYSIS

The *Stokes* Court began by stating that the proper standard on appeal for evaluating the admissibility of evidence is abuse of discretion⁴ and even if the trial court abuses its discretion in excluding the evidence, the reviewing court should not reverse unless the abuse had a “material effect on the trial.” *Stokes*, WL 831363 at 2. Judge Spinden, writing the unanimous opinion, noted that “[e]vidence of accidents similar to that suffered by plaintiff generally is admissible in

negligence and products liability actions,” with the decisive factor being the “similarity of the incidents.” *Stokes*, WL 831363 at 2, citing *Thorton v. Gray Automotive Parts Company*, 62 S.W.3d 575, 583 (Mo. App.2001). In *Stokes*, the Western District held that the circuit court abused its discretion by applying the wrong standard of law when it focused on the single product rule to restrict evidence of previous incidents.⁵ The standard concerning admissibility of other incidents is the similarity of the incidents. To be sufficiently similar, the accidents must be (1) of like character, (2) occur under substantially the same circumstances, and (3) result from the same cause. Citing *Thorton*, the court reasoned “[t]he similarity of the accident at issue and the previous incident must be sufficiently close to avoid undue prejudice and confusion.” *Stokes* WL 831363 at 2. If the prior incidents were similar to the one leading to Stokes’ injury, the trial court should have permitted Stokes to present evidence of them.

Troubling the *Stokes* Court as much if not more than the misapplication of the proper admissibility standard, was the prejudicial advantage it awarded National Presto in its closing argument. The Court concluded that National Presto took advantage of the circuit court’s erroneous ruling to unfairly emphasize to the jury the small number of Kitchen Kettle accidents which clearly had a materially prejudicial effect on the trial warranting a new trial:

“Although it [National Presto] knew that Stokes was prepared to introduce evidence of at least 24 other pullover incidents involving National Presto deep fryers, it suggested to the jury that it knew of only three prior incidents, all occurring before National Presto added a warning tag to the Kitchen Kettle units. Because of the circuit court’s erroneous ruling, Stokes’ hands were tied during closing arguments to rebut National Presto’s misleading argument. The circuit court’s erroneous ruling had a materially prejudicial effect on the trial. We, therefore, reverse the circuit court’s judgment and remand for a new trial”.

Stokes, WL 831363 at 3.

In reversing and remanding the National Presto judgment, the Western District required the circuit court to “determine whether or not the other pullover incidents involving Presto’s other deep fryers were substantially similar to Stokes’ accident.”⁶ The court instructed that if the trial court determines that the accidents were substantially similar that Stokes should be allowed to introduce relevant evidence to substantiate the occurrence of the injuries.⁷

The Court further held that to the extent the trial court denied Stokes’ request for discussion of claims and lawsuits involving similar incidents with National Presto’s similar deep fryers after Stokes’ injury, that evidence would be admissible to establish that the product was dangerous. On retrial, the Court directed that Stokes should be allowed to discover claims involving similar incidents with National Presto’s similar deep fryers that occurred after his injury. *Stokes*, WL 831363 at 4.

CONCLUSION

As the *Stokes*’ court recognized, Missouri court’s generally allow other similar incidents into evidence. Evidence of other similar incidents is properly admissible in Missouri trial courts as long as it is similar and relevant to one of the issues at trial. The key to the introduction of other similar incidents is proving that they are “similar.” The injury causing mechanism is essential in analyzing similarity.

Stokes is not only important for reminding us of the general rules concerning admissibility of accidents similar to those suffered by the plaintiff but also that similarity of products opens the door to discoverability of incidents. *Stokes* reaffirms the principle that in Missouri such discovery should not be limited to incidents that occur prior to the date of the plaintiff’s injury. ■

ENDNOTES:

1. The Kitchen Kettle model was a cooker, which could be used not only for deep frying, but also for roasting, braising, blanching, boiling, stewing, steaming, and slow cooking. The unit featured an aluminum pot with a cooking oil fill line, four plastic feet, and a variable electric temperature control, which detached from the heating element. Although its electrical cord detached, detachment required a stronger tug than a young child would typically exert. National Presto manufactured three other units that were designed primarily for deep frying food: the FryBaby, the FryDaddy, and the GranPappy models. They differed only in their capacities, and, like the Kitchen Kettle, they featured an aluminum pot with a cooking oil fill-line and plastic feet. Unlike the Kitchen Kettle, their electrical cords were not detachable. *Stokes*, WL 831363 at 1-2.
2. The circuit court denied Stokes’ post-trial motions concerning defendants’ motions for a new trial, yet ruled in favor of Stokes’ motion for additur against his grandmother in the amount of \$1.5 million. The grandmother declined the additur, forcing a new trial on damages. *Stokes*, WL 831363 at 1.
3. Stokes’ first appeal was dismissed because it was filed before the circuit court had issued a final judgment. *Stokes v. National Presto Industries, Inc.*, 119 S.W.3d 193 (Mo. App. 2003). Stokes dismissed with prejudice his claims against his grandmother allowing the circuit court to enter judgment for National Presto. *Stokes*, WL 831363 at 1.
4. An abuse of discretion occurs when a trial court’s ruling is illogical and so unreasonable and arbitrary that it shocks our sense of justice or indicates a lack of careful, deliberate consideration. Abuses of discretion in excluding evidence should not be reversed unless the abuse had a material effect on the trial. *Stokes*, WL 831363 at 2.
5. The *Stokes* Court noted the circuit court did not disclose the source for the single product rule nor could it find “any courts or experts enunciating such a rule.” *Stokes*, WL 831363 at 2.
6. The Court did not address the issue concerning the exclusion of the correspondence concerning the dangers of National Presto’s deep fryers because it could only issue an advisory opinion, given the record on appeal. *Stokes*, WL 831363 at 4, fn 5.
7. The Court cautioned that it did not want to be interpreted to mean that the circuit court “must allow Stokes to delve into all of the details of the prior incidents involving National Presto’s other products.” The introduction of photographs of injuries, deposition testimony, other lawsuit allegations and other parental testimony may be unduly prejudicial against National Presto but “[w]hat is relevant to Stokes’ proceeding is the occurrence of injuries under similar circumstances.” *Stokes*, WL 831363 at 3.