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JOHN DOE ET AL. *v.* FRANK E. CARREIRO, SR.
(AC 25350)

Lavery, C. J., and Gruendel and Peters, Js.*

Argued September 27, 2005—officially released April 4, 2006

(Appeal from Superior Court, judicial district of New London, Hon. D. Michael Hurley, judge trial referee.)

Averum J. Sprecher, for the appellant (defendant).

Stephen M. Reck, for the appellees (plaintiffs).

Opinion

GRUENDEL, J. The defendant, Frank E. Carreiro, Sr., appeals from the judgment of the trial court, rendered after a trial to the court, awarding the two minor plaintiffs, John Doe and Tom Doe,[1] damages for his sexual abuse of them and for intentional infliction of emotional distress. On appeal, the defendant claims that (1) the court improperly admitted the opinions of two expert witnesses, through their written reports and testimony, on the ultimate issue in the case and (2) the admissions were harmful error. We conclude that the court improperly permitted one expert witness to state her opinion concerning the credibility of John Doe, but that the error was harmless. We disagree with the defendant's remaining evidentiary claims and affirm the judgment of the trial court.

The plaintiffs brought a five count complaint alleging sexual assault, intentional infliction of emotional distress, negligent infliction of emotional distress, negligence and violation of privacy. The defendant, who at the time of the trial was in prison in Arizona for a conviction unrelated to this case, did not attend the trial or offer any evidence.[2] The court found in favor of the plaintiffs on the counts of sexual assault and intentional infliction of emotional distress, and awarded John Doe $1860 in economic damages and $250,000 in noneconomic damages. In addition, the court awarded the estate of Tom Doe $50,000 in noneconomic damages.

The court found that "[t]he evidence supports the claims of the plaintiffs that they were sexually, physically and mentally abused by the defendant by being forced to perform perverse sexual acts with him and with other children over a period of several years." In reaching that determination, the court made the following factual findings. John Doe first met the defendant when he was seven years old and stayed at his uncle's house. The defendant was his uncle's landlord and friend. John Doe and his half brother, Tom Doe, often would visit the uncle to play with the uncle's five children. The defendant often would baby-sit or visit with the uncle's children while John Doe and Tom Doe were visiting.

When John Doe was seven, the defendant began showing him, Tom Doe and some of the other children pornographic magazines in a trailer behind the uncle's house. The defendant told the children not to tell anyone about the magazines. Soon thereafter, the defendant instructed the children to walk around naked in his trailer and, on one occasion, sat with John Doe and touched the boy's penis. At other times, the defendant also instructed the children, including both John Doe and Tom Doe, to perform perverse sexual acts. The defendant told the children not to discuss what they

were doing. The children continued to meet with the defendant until John Doe was eleven, when John Doe and Tom Doe also began having sexual contact with each other, apart from their sexual contact with the defendant. At that time, Tom Doe told his mother about the defendant's acts, and the mother reported her child's allegations to the police. This civil action was then filed.

The defendant claims that the court improperly admitted written reports from the plaintiffs' expert witnesses and permitted them to testify as to their opinions on the minor victims' credibility. The defendant argues that the court's rulings were incorrect in two respects. First, he argues that the court admitted written reports and expert testimony that buttressed the minor plaintiffs' claims that they were victims of abuse by the defendant. Second, he argues that the court permitted the expert witnesses to state their opinions about the boys' credibility.

Our standard of review of a trial court's evidentiary rulings is well established. The trial court has wide discretion in deciding the admissibility of evidence. *Catalano* v. *Falco*, 74 Conn. App. 86, 88, 812 A.2d 63 (2002). ''The trial court's ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion. . . . We will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion.'' (Internal quotation marks omitted.) *Forcier* v. *Sunnydale Developers, LLC*, 84 Conn. App. 858, 864, 856 A.2d 416 (2004).[3]

''Expert witnesses cannot be permitted to invade the province of the [trier of fact] by testifying as to the credibility of a particular witness or the truthfulness of a particular witness' claims.'' *State* v. *Iban C.*, 275 Conn. 624, 634, 881 A.2d 1005 (2005). ''[E]ven indirect assertions by an expert witness regarding the ultimate issue in a case can serve inappropriately to validate the truthfulness of a victim's testimony.'' Id., 635. ''It is a fundamental rule of appellate procedure in the review of evidential rulings, whether resulting in the admission or exclusion of evidence, that an appellant has the burden of establishing that there has been an erroneous ruling which was probably harmful to him.'' (Internal quotation marks omitted.) *Forcier* v. *Sunnydale Developers, LLC*, supra, 84 Conn. App. 864. The defendant has not met that burden.

I

We first address the defendant's claim that the court improperly admitted the written reports of the two expert witnesses because they contained opinions concerning the ultimate issue in the case. The following additional facts and procedural history are relevant to the defendant's claim.

After John Doe and his mother had testified, the plaintiffs' counsel called Jessica Seiferman as an expert witness. Seiferman had been a coordinator for the Norwich Sexual Assault Crisis Service, and had counseled both John Doe and Tom Doe after they disclosed the defendant's sexual abuse of them. The defendant objected to Seiferman's testifying as an expert because, he asserted, she had not been disclosed as an expert witness as required by Practice Book 13-4 (4).[4] The plaintiffs' counsel responded that he gave notice to the defendant of Seiferman's testimony in his prior answers to interrogatories and requests for production, and offered into evidence as exhibit seven the interrogatory answers and appended office notes of Seiferman and of Rebecca Bowen, the plaintiffs' second expert witness. Bowen, who was head counselor at Northeast Clinical Specialists, LLC, had also counseled both minor plaintiffs after they disclosed the defendant's sexual abuse of them.

The defendant's counsel did not object to the admission of the interrogatories, but did object to the experts' office notes. In his objection, he stated, ''I'm going to object to anything but the interrogatories that Your Honor looked at and now has.'' The court overruled the objection, noting, ''I think that's significant if you're complaining about lack of information [about the expert witnesses' disclosure]. The fact that he has additional information there, I think is significant, and it's appropriate that it be part of the exhibit.'' The court then admitted exhibit seven into evidence, which included the attached office notes of both Seiferman and Bowen.

Counsel's objection to the admission of exhibit seven was insufficient to preserve it properly for review. Our Supreme Court has stated: ''[T]he standard for the preservation of a claim alleging an improper evidentiary ruling at trial is well settled. This court is not bound to consider claims of law not made at the trial. . . . In order to preserve an evidentiary ruling for review, trial counsel must object properly. . . . In objecting to evidence, counsel must properly articulate the basis of the objection so as to apprise the trial court of the precise nature of the objection and its real purpose, in order to form an adequate basis for a reviewable ruling. . . . Once counsel states the authority and ground of [the] objection, any appeal will be limited to the ground asserted. . . .

''These requirements are not simply formalities. They serve to alert the trial court to potential error while there is still time to act. . . . Assigning error to a court's evidentiary rulings on the basis of objections never raised at trial unfairly subjects the court and the opposing party to trial by ambush.'' (Internal quotation marks omitted.) *State* v. *Cabral*, 275 Conn. 514, 530–31, 881 A.2d 247, cert. denied, U.S. , 126 S. Ct. 773, 163 L. Ed. 2d 600 (2005).

In making his objection to the admission of exhibit seven, the defendant's counsel did not state any sufficient basis for it and certainly did not state the claim that the defendant now makes on appeal, which is that the reports contained the experts' opinions on what he characterizes as the ultimate issue in the case.[5] We will not reverse a trial court's decision on the basis of an evidentiary ruling when the objection was not clearly made before the trial court. We therefore find that exhibit seven, containing the interrogatories and notes of both expert witnesses, was admitted into evidence properly.[6]

Following the admission of exhibit seven and subsequent testimony of Seiferman, the plaintiffs' counsel offered Seiferman's notes as exhibit six. The defendant's counsel objected, stating: "It has a substantial number of conclusions as to the ultimate issues in this case, and these written conclusions verify or tend to verify and validate the credibility of the person giving the information or the person about whom the information is given." The court overruled the objection.

The plaintiffs then called their second expert witness, Bowen, and requested that the court admit into evidence, as exhibit four, her written notes from interviews with the minor plaintiffs. The defendant's counsel objected to the admission, stating that "[the record] contains material that attempts to validate or tends to validate. It's full of conclusions . . . . It has conclusions and material in there that goes to the ultimate question for Your Honor." The court overruled the objection, and the record was admitted as exhibit four.

A review of the record reveals that Seiferman's and Bowen's office records, admitted as exhibits six and four, respectively, were exactly the same as the records admitted as part of exhibit seven. We thus find that exhibits four and six, regardless of the propriety of their admission, were merely cumulative of the properly admitted exhibit seven. "It is well recognized that any error in the admission of evidence does not require reversal of the resulting judgment if the improperly admitted evidence is merely cumulative of other validly admitted testimony." (Internal quotation marks omitted.) *Fink* v. *Golenbock*, 238 Conn. 183, 211, 680 A.2d 1243 (1996). The court therefore could properly weigh the evidence contained in the experts' reports in making its decision.

II

We next address the defendant's claim that the court improperly permitted the plaintiffs to elicit from the two expert witnesses testimony that the minor plaintiffs were victims of abuse by the defendant. Specifically, the defendant argues with respect to his claim that the experts improperly were permitted to testify as to their conclusions that the boys were victims of sexual abuse

by the defendant, thus indirectly vouching for the boys' credibility and directly asserting opinions about the ultimate issue in the case in contravention of the holding of *State* v. *Grenier*, 257 Conn. 797, 806, 778 A.2d 159 (2001). We emphasize that our analysis does not diminish the holding of *Grenier,* which was that an expert witness' assertion regarding a victim's credibility, whether direct or indirect, constitutes impermissible testimony. Rather, in analyzing the facts of this particular case, we review the content of the experts' office notes contained in exhibit seven and the testimony of John Doe and his mother because this evidence was before the court properly prior to the testimony of both expert witnesses.

Bowen's records include notes of counseling sessions she had with John Doe and Tom Doe, both individually and together, beginning in June, 2002. The notes regarding John Doe reflect that, beginning in his first session, he provided detailed information about the sexual abuse he and his brother had experienced and identified the defendant as the abuser. The notes relate, in great detail, the sexual activity that the defendant caused the minor plaintiffs and other children to engage in, either with him or in his presence. They include a reference that, while waiting in a car for a court session, John Doe ''saw [the defendant] walking by and saw [the] back of his head.'' Finally, they include the course of Bowen's treatment of John Doe.[7] Bowen's records regarding Tom Doe include her report that he was seven or eight years old when the sexual abuse began, and that the defendant had threatened him with violence and performed oral sex on him.[8]

Seiferman's notes contained in exhibit seven relate only to Tom Doe. The notes are sparse because Seiferman did not ''believe in putting a whole lot of things down.'' Prepared on a preprinted form headed ''Intake-Rape Crisis Services,'' the notes list Tom Doe's correct name, and reflect that there was a child sexual assault and that it was committed by a friend or acquaintance known to the victim.

In sum, the contents of both experts' notes clearly portrayed John Doe and Tom Doe as victims of sexual abuse by the defendant. As discussed, the notes were admitted into evidence properly as exhibit seven. Further, the testimony of the experts was essentially a verification and review of their written notes.[9] Indeed, at certain points in their direct examinations, both Seiferman and Bowen read directly from the same notes that already had been properly offered into evidence. Because the direct examination of the two experts covered essentially the same material found in their notes, we need not review each specific objection in detail. The testimony of both experts was cumulative of other evidence properly before the court.

We also conclude that the court properly could con-

sider the testimony of John Doe and his mother. At trial, John Doe testified that he and Tom Doe were counseled by Seiferman and Bowen as a result of the sexual abuse by the defendant. Specifically, during direct examination, John Doe was asked without objection, ''[W]hat counselors did you see as a result of what [the defendant] did?'' John Doe replied, ''Rebecca Bowen and I went to Jessica. I can't remember her last name, but I went to her a few times.'' On cross-examination, John Doe was asked by the defendant's attorney to state who had told him that the sexual behavior he displayed toward his half brother was at least partially due to the abuse he suffered from the defendant. He replied that he had been told that by his counselors, in particular Bowen. Thus, Bowen's opinion that John Doe had displayed sexual behavior toward Tom Doe as a result of his abuse by the defendant was already before the court when Bowen stated that opinion on direct examination.

After John Doe testified, the plaintiffs' mother, Jane Doe, testified about the defendant's sexual abuse of her sons. During direct examination, Jane Doe was asked without objection, ''Now, when did you first learn that [the defendant] was abusing your children?'' She responded, ''I believe it was in May, 2002.'' Jane Doe continued her testimony by discussing the sexual abuse that her sons had reported to her.

We conclude that the court properly admitted the testimony of John Doe and his mother, Jane Doe, on the issue of whether John Doe was sexually abused by the defendant. On direct examination, both John Doe and Jane Doe were asked questions, without objection, that implicated the defendant as the source of John Doe's sexual abuse. The court therefore properly could consider the inference and the testimony of John Doe and Jane Doe that the defendant had sexually abused John Doe and Tom Doe. Therefore, the challenged testimony by the expert witnesses was cumulative of evidence properly before the court.

III

We next turn to the defendant's claim that the expert witnesses improperly were permitted to testify as to their opinions regarding the credibility of the two boys' reports to them that they had been sexually abused by the defendant.

Both this court and the Supreme Court have consistently held that no witness, expert or lay, may give testimony of the witness' opinion of the credibility of another person. ''It is the trier of fact which determines the credibility of witnesses and the weight to be accorded their testimony.'' *State* v. *Carter*,196 Conn. 36, 45, 490 A.2d 1000 (1985). Our Supreme Court has repeatedly asserted that an expert may not testify regarding the credibility of a particular victim. See, e.g.,

State v. *Iban C.*, supra, 275 Conn. 635; *State* v. *Grenier*, supra, 257 Conn. 806; *State* v. *Ali*, 233 Conn. 403, 432, 660 A.2d 337 (1995); *State* v. *Borrelli*, 227 Conn. 153, 173–74, 629 A.2d 1105 (1993).

A claim that the court improperly admitted the testimony of an expert, however, is an ''evidentiary impropriety [that is] not constitutional in nature . . . [and thus] the defendant bears the burden of demonstrating harm.'' *State* v. *Grenier*, supra, 257 Conn. 806–807.

''[B]efore a party is entitled to a new trial because of an erroneous evidentiary ruling, he or she has the burden of demonstrating that the error was harmful. . . . The harmless error standard in a civil case is whether the improper ruling would likely affect the result.'' (Internal quotation marks omitted.) *Dockter* v. *Slowik*, 91 Conn. App. 448, 467–68, 881 A.2d 479, cert. denied, 276 Conn. 919, 888 A.2d 87 (2005). In this case, we determine that the defendant has not satisfied this standard.

As a preliminary matter, we note that there is no support in the record for the defendant's assertion that the experts were asked specifically to state their opinions regarding the reports to them by both John Doe and Tom Doe that the defendant had sexually abused the boys. No such question was asked of either expert regarding Tom Doe, and neither expert opined that he had been truthful in his reports to her.

Regarding John Doe, however, Bowen was asked the following question: ''Based on your training and experience, was it your impression that he was telling the truth?'' Bowen answered, ''Yes.'' The defendant had made clear his objection to the question. Because our rules of evidence do not permit any witness, lay or expert, to testify regarding another witness' credibility, it was improper for the court to admit her opinion into evidence.

We find, however, that the error was harmless in this case. In *State* v. *Grenier*, supra, 257 Conn. 797, the alleged victim was five years old at the time of the alleged sexual assault. There was no physical or medical evidence that she had been sexually abused, and she was unable to identify the defendant in court as her abuser. ''[T]he state's case was not particularly strong.'' Id., 808. ''The improper testimony . . . struck at the heart of the central—indeed, the only—issue in the case, namely, the relative credibility of [the alleged victim] and the defendant. Id. Those weaknesses are not present in this case.

John Doe testified at length on direct and cross-examination. He was fourteen years old at the time of trial. His testimony did not exhibit any confusion about what had been done to him and his half brother, and he clearly identified the defendant as his abuser. The court was able to assess his credibility for itself.[10] In addition,

the boys' mother testified about the abuse that they had suffered at the hands of the defendant. Her testimony was consistent with the testimony of her son, John Doe. The court was able to evaluate her credibility for itself, as well, and the testimony of John Doe in light of the testimony of his mother. Moreover, because the defendant did not testify at all, the relative credibility of the victim and defendant was not at issue. Finally, the court had before it the properly admitted reports and testimony of the two experts, which provided the court with a factual basis for its conclusions apart from the improperly admitted opinion testimony regarding John Doe's credibility. The plaintiffs' case was strong, and the one improper ruling does not require reversal of the judgment and a new trial.

We find additional support for our conclusion in this court's decision in *In re Noel M.*, 23 Conn. App. 410, 580 A.2d 996 (1990). In that case, as in this one, the court was the trier of fact and, therefore, had the task of determining the credibility of a neglected child. We note that in court trials, judges are expected, more so than jurors, to be capable of disregarding incompetent evidence. See *Ghiroli* v. *Ghiroli*, 184 Conn. 406, 408–409, 439 A.2d 1024 (1981).

In light of all these considerations, we find that the court's error in permitting one expert witness to testify as to her opinion of the credibility of one of the plaintiffs was harmless.

The judgment is affirmed.

In this opinion PETERS, J., concurred.

* The listing of judges reflects their status on this court as of the date of oral argument.

[1] The plaintiff Tom Doe died prior to trial in an unrelated incident. Jane Doe, the boys' mother, was appointed executrix of the estate of Tom Doe and was substituted as a plaintiff at trial. The last names of the victims and their mother are omitted to protect the identity of the victims, in keeping with the spirit of General Statutes § 54-86e. See *State* v. *Iban C.*, 275 Conn. 624, 627 n.2, 881 A.2d 1005 (2005).

[2] The defendant has not challenged on appeal the court's decision to proceed with the trial in his absence.

[3] In addition to requesting that this court review his claims under the abuse of discretion standard of review, the defendant asks this court to review his claims pursuant to the plain error doctrine. See Practice Book § 60-5. "The plain error doctrine is reserved for truly extraordinary situations where the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . A party cannot prevail under plain error unless it has demonstrated that the failure to grant relief will result in manifest injustice." (Internal quotation marks omitted.) *State* v. *Smith*, 275 Conn. 205, 240, 881 A.2d 160 (2005). Because the defendant's claims here do not present the type of extraordinary situation that warrants plain error review, we decline to review them according to this standard.

[4] The defendant has not challenged on appeal the court's decision to permit Seiferman to testify as an expert witness.

[5] On appeal, the defendant relies on *State* v. *Grenier*, 257 Conn. 797, 778 A.2d 159 (2001), in which our Supreme Court drew a "distinction between admissible expert testimony on general or typical behavior[al] patters of minor victims and inadmissible testimony directly concerning the particular victim's credibility." (Internal quotation marks omitted.) Id., 806. We note that the defendant did not cite to *Grenier* or any authority in any of his objections during trial and did not bring that case or any related case to

the court's attention prior to the conclusion of evidence.

[6] The dissent questions whether the reports were actually admitted as part of exhibit seven. We have examined exhibit seven and conclude that the reports were part of it. Our conclusion is buttressed by the fact that some time after the reports were admitted, the defendant's counsel noticed that the court was reading them and objected. The colloquy was as follows:

''[The Defendant's Counsel]: Judge Hurley, may I interrupt a moment and be heard on one thing, if I may, Your Honor?

''The Court: Go ahead.

''[The Defendant's Counsel]: Your Honor, I believe—Your Honor is reviewing an exhibit, but I believe that the exhibit contains substantive material that will, to some extent, either come before Your Honor or be excluded based upon the admissibility of it, and I'm not by any means casting any aspersion, but I just wanted to mention it, Your Honor, that Your Honor may be reading material that is going to be excluded from evidence itself, but has substance—

''The Court: Counsel, please, don't direct the court how to conduct a case. That's an outrageous thing for counsel to say. I'm reviewing something that is a full exhibit corresponding to the testimony of the witness so that I can follow that witness' testimony.''

There is nothing in the record that would suggest that the experts' reports were not part of exhibit seven.

[7] Bowen's notes taken during sessions with John Doe and Tom Doe together state that the ''boys used [the] time to discuss the similarities and differences regarding their sexual abuse by [the defendant].'' The notes also state that Tom Doe reported details connected to his sexual abuse, and that he was still very angry about this abuse and did not feel supported at home.

[8] Bowen's notes taken during sessions with Tom Doe alone also state that he concurred with John Doe's report that the defendant had sexually abused John Doe and the other children, and added that the defendant had sexually abused him as well.

[9] In his brief, the defendant acknowledges that ''the plaintiffs' attorney began his direct examination using Bowen's oral testimony to completely reiterate what she had written in her notes . . . .''

[10] The dissent expresses concern that the trial court did not make a specific finding that John Doe was credible. The defendant has not challenged the trial court's finding, however, so that question is not properly before us.