

Recent Cases of Interest

By: Brett A. Purtzer; Oct 2003

Two recent decisions, one civil and one criminal, may significantly impact practitioners in the way they handle certain cases. Because of their significance, we all need to be aware of their impact so we can properly advise our clients when the following issues arise.

State v. DeVincentis, 74 P.3d 119 (2003), a Division I sex case accepted by the Supreme Court, dealt with the issue of whether evidence of prior sexual misconduct, under the common scheme or plan exception to ER 404(b), required evidence showing a unique or atypical method of committing the offense, or conversely, whether there only need be a showing of sufficient similarities to suggest a common scheme or plan. DeVincentis resolved the split between Court of Appeals Division I and II, as Division II held that the common scheme or plan exception required that similarities be atypical or unique to the way a crime is committed. Division I held that the exception required only substantial similarities between the acts. The Supreme Court agreed with Division I, holding that prior acts need only show a pattern or plan with marked similarities to the facts in the case before it.

In its analysis, the court focused on the factors set forth in State v. Lough, 125 Wn.2d 847, 889 P.2d 487 (1995), particularly, whether the offered evidence was “relevant to prove an element of the crime charged or rebutted offense.” The Supreme Court rejected Division II’s requirement that the similarities between the prior bad acts and the facts of the charged crime be unique or uncommon to the way that the crime is typically committed. Rather, the court held that the requirement applied only to the modus operandi exception when trying to prove identity. The court summarized its requirements as follows:

Admission of evidence of a common scheme or plan requires substantial similarity between the prior bad acts and the charged crime. Such evidence is relevant when the existence of the crime is at issue. Sufficient similarity is reached only when the trial court determines that the ‘various acts are naturally to be explained as caused by a general plan...’

Therefore, in order to admit such evidence, the trial court only need to find a level of similarity between the prior acts charged and those of the prior case such that the two incidents were naturally explained as an individual manifestation of a general plan. The court then conducted an ER 403 balancing test and held that the probative value of the testimony outweighed the prejudicial effect.

Attorneys who try sex abuse cases must study DeVincentis as it seemingly allows almost any prior sexual offense or act to be admitted if the trial court determines that there is some commonality between the charged offense and the prior acts.

In Tegman v. Accident & Medical Investigations, Inc., 75 P.3d 497 (2003), the Supreme Court analyzed RCW 4.22.070 regarding damages resulting from the combination of negligent and intentional acts. The court held that pursuant to the aforementioned statute, damages resulting from negligent acts must be segregated from those resulting from intentional acts. In addition, the court held that although negligent defendants are jointly and severally liable for damages resulting from negligence, said defendants are not jointly and severally liable for damages caused by the intentional acts of others. This case is particularly significant in those cases of negligent supervision where the underlying act is an intentional crime such as assault, rape or murder. Under such circumstances, joint and several liability is destroyed to the extent that plaintiffs seek to impose responsibility for the failure to supervise and such failure ultimately results in damages directly caused by the intentional act of one of the defendants.

Tegman analyzes the statutory history surrounding joint and several liability and the cases deciding it. As such, attorneys who are involved in cases involving allegations of both negligent and intentional wrongdoing, must be familiar with Tegman and its impact.

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