

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Robert Smith, Administrator v. Carolyn Clark, M.D. and Cabell Huntington Hospital, Inc.

No. No. 17-1086, Supreme Court of Appeals of West Virginia (June 10, 2019)

SUMMARY

This document is a dissenting opinion in a medical-malpractice appeal. Justice Hutchison, joined by Justice Workman, argues that the circuit court committed reversible error by excluding the plaintiff's nursing standard-of-care expert and failing to remove a prospective juror with an ongoing business relationship with defense counsel. The dissent contends that these errors substantially prejudiced the plaintiff and warranted a new trial.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Hutchison
JURISDICTION	West Virginia
DECIDED	June 10, 2019
DOCKET	No. 17-1086
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dissent from the majority's decision upholding the jury's verdict in a medical malpractice action.
STANDARD OF REVIEW	Admission or exclusion of evidence is reviewed for abuse of discretion. Whether a prospective juror should be excused for bias or prejudice is also reviewed under the trial judge's sound discretion, but probable bias must be resolved in favor of excusing the juror.
PRECEDENTIAL VALUE	nonprecedential dissenting opinion
PARTIES	Robert Smith, Administrator v. Carolyn Clark, M.D., Cabell Huntington Hospital, Inc.

TOPICS

[expert testimony](#)[evidence](#)[medical malpractice](#)[civil procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by excluding the plaintiff's nursing standard-of-care expert after the plaintiff's obstetrical expert made an unsolicited statement about nursing care.
2. Whether the circuit court abused its discretion by refusing to strike Juror No. 82 for cause based on her longstanding and ongoing business relationship with the hospital's defense counsel.
3. Whether the evidentiary and juror-selection errors caused substantial prejudice warranting a new trial.

HOLDINGS

1. In the dissent's view, the circuit court abused its discretion by excluding the plaintiff's nursing standard-of-care expert rather than curing the obstetrical expert's unsolicited statement with an instruction to the jury.
2. In the dissent's view, the circuit court abused its discretion by refusing to remove Juror No. 82 for cause because her longstanding and ongoing business relationship with the hospital's defense attorneys created a probability of bias.

KEY QUOTATIONS

"Because it is clear to me that prejudicial error occurred and substantial justice was not done, I would have granted the plaintiff a new trial." (at 1)

"A simple curative instruction would have remedied the situation with little or no risk of unfair prejudice to the defendants." (at 5)

"When determining whether a prospective juror should be removed from the jury panel, the trial court must consider 'the totality of the circumstances . . . and where there is a probability of bias the prospective juror must be removed from the panel for cause.'" (at 7)

"Together, these errors caused substantial prejudice to the plaintiff and warranted a new trial." (at 8)

FACTUAL BACKGROUND

The plaintiff's obstetrical expert, Dr. Roberts, unintentionally testified that both the obstetrician and the hospital nursing staff failed to meet the applicable standard of care. The circuit court declined to give a curative instruction and excluded the plaintiff's designated nursing expert, Patricia Spier, R.N., leaving Dr. Roberts to address nursing care despite his lack of specialized research or experience concerning nursing policies. The court also retained Juror No. 82, who had a longstanding and ongoing pickup-and-delivery business relationship with the hospital's defense law firm, forcing the plaintiff to use a peremptory strike against her.

PROCEDURAL HISTORY

The circuit court limited each side to one obstetrical standard-of-care expert and one nursing standard-of-care expert. After the plaintiff's obstetrical expert made an unsolicited statement concerning nursing care, the court excluded the plaintiff's nursing expert and required the obstetrical expert to address both medical and nursing

standards of care. The court also refused to remove Juror No. 82 for cause despite her longstanding business relationship with the hospital's defense counsel. The majority upheld the jury's verdict, while Justice Hutchison dissented and would have granted a new trial.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Justice Hutchison would have reversed the judgment and granted the plaintiff a new trial; no remand was ordered by the dissent.

CASES CITED

- *McInarnay v. Hall*, 241 W. Va. 93, 818 S.E.2d 919, 924 (2018)
- *State ex rel. Weirton Med. Ctr. v. Mazzone*, 214 W. Va. 146, 155, 587 S.E.2d 122, 131 (2002)
- *Casto v. Martin*, 159 W. Va. 761, 230 S.E.2d 722 (1976)
- *State v. Huffman*, 141 W. Va. 55, 87 S.E.2d 541 (1955)
- *State v. Rector*, 167 W. Va. 748, 280 S.E.2d 597 (1981)
- *State v. Oldaker*, 172 W. Va. 258, 304 S.E.2d 843 (1983)
- *State v. Corey*, 233 W. Va. 297, 310 n.22, 758 S.E.2d 117, 130 n.22 (2014)
- *Rice v. Henderson*, 140 W. Va. 284, 83 S.E.2d 762 (1954)
- *O'Dell v. Miller*, 211 W. Va. 285, 288-91, 565 S.E.2d 407, 410-13 (2002)
- *West Virginia Department of Highways v. Fisher*, 170 W. Va. 7, 289 S.E.2d 213 (1982)
- *State v. Newcomb*, 223 W. Va. 843, 679 S.E.2d 675 (2009)
- *State v. Miller*, 197 W. Va. 588, 476 S.E.2d 535 (1996)