

SUPREME COURT OF OHIO

Oberlin v. Akron General Medical Center

91 Ohio St. 3d 169 (Ohio 2001) · Decided March 28, 2001

SUMMARY

The Ohio Supreme Court held that evidence showing an expert witness was defending a pending medical malpractice action involving a similar alleged injury was admissible to demonstrate bias, prejudice, or motive to misrepresent. The court concluded that the trial court improperly excluded cross-examination concerning the expert’s malpractice case under Ohio Evidence Rules 403(A), 611(B), and 616(A), reversed the appellate judgment, and ordered a new trial.

CASE DETAILS

|                       |                                                                                                                                                                   |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Ohio                                                                                                                                             |
| WRITING FOR THE COURT | Pfeifer, J.; Moyer, C.J.; Douglas, J.; Resnick, J.; Cook, J.; Lundberg<br>Stratton, J.; F.E. Sweeney, J.                                                          |
| JURISDICTION          | Ohio                                                                                                                                                              |
| DECIDED               | March 28, 2001                                                                                                                                                    |
| DISPOSITION           | reversed_and_remanded                                                                                                                                             |
| PROCEDURAL POSTURE    | Discretionary appeal from an appellate judgment affirming the exclusion of cross-examination evidence concerning the defense expert's pending malpractice action. |
| STANDARD OF REVIEW    | Abuse of discretion; the Supreme Court held that the trial judge abused her discretion in excluding the bias-related cross-examination.                           |
| PRECEDENTIAL VALUE    | Published Ohio Supreme Court opinion; binding precedent in Ohio.                                                                                                  |
| PARTIES               | Robert C. Oberlin v. Akron General Medical Center                                                                                                                 |

TOPICS

- impeachment
- evidence
- medical malpractice
- appellate procedure
- standard of review

PRACTICE AREAS

- Evidence
- Medical malpractice
- Appellate procedure

QUESTIONS PRESENTED

1. Whether evidence that a testifying medical expert is defending a pending malpractice action involving a similar medical error is relevant and admissible to show bias, prejudice, or motive to misrepresent.
2. Whether the probative value of that bias evidence was substantially outweighed by the danger of unfair prejudice under Ohio Evid.R. 403(A).

## HOLDINGS

1. Evidence that an expert witness is a defendant in a pending malpractice action alleging a medical error similar to the one at issue is probative and admissible to prove the expert's bias, prejudice, or motive to misrepresent.
2. The evidence of Vrabec's pending malpractice action was not unfairly prejudicial within the meaning of Evid.R. 403(A), and the trial court abused its discretion by excluding the cross-examination.

## KEY QUOTATIONS

*“We hold that evidence that an expert witness is a defendant in a pending malpractice action alleging a medical error similar to the one at issue is probative and is admissible to prove bias, prejudice, or motive to misrepresent.” (91 Ohio St. 3d at 171)*

*“The fact that the expert is simply involved in a pending malpractice action is not.” (91 Ohio St. 3d at 173)*

## FACTUAL BACKGROUND

In December 1994, Gregory Hill, D.O., performed thumb joint fusion and bone graft surgery on Robert C. Oberlin at Akron General Medical Center using a pneumatic tourniquet that remained inflated for two hours and twenty-four minutes. Oberlin claimed that the prolonged inflation caused permanent injury, including reflex sympathetic dystrophy. Hill's expert, Gregory Vrabec, was himself a defendant in a pending Canadian malpractice action involving orthopedic surgery on a patient's left arm and an injury to the left ulnar nerve causing reflex sympathetic dystrophy. Oberlin sought to cross-examine Vrabec about that action to show bias, but the trial court excluded the evidence.

## PROCEDURAL HISTORY

Oberlin sued or pursued a medical-malpractice claim arising from permanent injury allegedly caused by excessive tourniquet inflation during thumb surgery. The trial court excluded cross-examination of defense expert Gregory Vrabec concerning his own pending Canadian malpractice action, finding that unfair prejudice outweighed probative value. The appellate court affirmed under Evid.R. 403(A). The Supreme Court of Ohio allowed a discretionary appeal, reversed, and ordered a new trial.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The appellate judgment was reversed and the cause was remanded for a new trial.

## CASES CITED

- Beck v. Cianchetti, 1 Ohio St. 3d 231, 236, 1 OBR 253, 257, 439 N.E.2d 417, 421 (1982)
- Ede v. Atrium S. OB-GYN, Inc., 71 Ohio St. 3d 124, 642 N.E.2d 365 (1994)

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