

SUPREME COURT OF MISSOURI

Elizabeth Mitchell, et al. v. Milton Kardesch, M.D.

313 S.W.3d 667 (Mo. banc 2010) · No. SC 90370 · Decided June 15, 2010

SUMMARY

The Supreme Court of Missouri held that the trial court erred by prohibiting plaintiffs in a medical malpractice wrongful-death action from cross-examining the defendant physician about a false sworn interrogatory answer concerning prior medical-license suspensions. The court concluded that the evidence was relevant to the physician's character for truthfulness and that extrinsic evidence, including the interrogatory answer and deposition, could be admissible when highly probative of credibility on material issues. The court reversed the judgment for the physician and remanded for a new trial.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Laura Denvir Stith
JURISDICTION	Missouri
DECIDED	June 15, 2010
DOCKET	SC 90370
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed after a jury returned a verdict for Dr. Kardesch on all counts in their wrongful-death medical-malpractice action. After the court of appeals issued a decision, the Supreme Court of Missouri granted transfer and considered whether the trial court improperly restricted impeachment evidence and whether the evidence was sufficient to support submission of the case to the jury.
STANDARD OF REVIEW	Evidentiary rulings are reviewed for abuse of discretion. Reversal for evidentiary error requires a showing of prejudice. The court also reviewed the sufficiency argument under the standards requiring judgment as a matter of law only when no genuine issue of material fact exists or reasonable minds could reach only the movant's conclusion, viewing the evidence and reasonable inferences in the light most favorable to the nonmoving party.

PRECEDENTIAL VALUE	Published en banc opinion of the Supreme Court of Missouri; binding Missouri precedent, including a partial overruling of <i>State v. Wolfe</i> and its progeny.
PARTIES	Elizabeth Mitchell, Mitchell's two minor children v. Milton Kardesch, M.D.

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by prohibiting cross-examination of Dr. Kardesch about his false sworn interrogatory answer and deposition admissions concerning the suspension of his medical licenses.
2. Whether extrinsic evidence, including the interrogatory answer and deposition, was admissible to impeach Dr. Kardesch's character for truth and veracity when he denied or disputed the prior statements.
3. Whether the evidentiary error was prejudicial and whether the plaintiffs' expert evidence was sufficient to create a jury question on breach of the medical standard of care and causation.
4. Whether *State v. Wolfe* and cases following it should continue to be followed to the extent they prohibit cross-examination about specific acts relevant to a witness's character for truth and veracity.

HOLDINGS

1. A witness testifying on the stand may be cross-examined about specific instances of the witness's own conduct that are relevant to the witness's character for truth and veracity, even if the subject of the inquiry is not independently material to the substantive issues in the case, subject to the trial court's discretion to limit or exclude the evidence to prevent undue prejudice.
2. Extrinsic evidence concerning a witness's character for truth and veracity may be admitted when its probative value and relevance to credibility substantially outweigh its prejudicial effect and the risk of distracting the jury, even if the evidence concerns a matter collateral to the substantive issues.
3. The trial court abused its discretion by entirely prohibiting plaintiffs from asking Dr. Kardesch about his false answer concerning suspension of his medical licenses and from using the answer and deposition as impeachment evidence.
4. The evidentiary error was prejudicial, and the plaintiffs presented sufficient expert evidence to submit breach of the standard of care and causation to the jury.

KEY QUOTATIONS

“It has long been the rule in Missouri that on cross-examination a witness may be asked any questions which tend to test his accuracy, veracity or credibility” (at 669)

“The adoption of ad hoc exceptions in cases such as Long and Roberts, however, indicates that the better rule, and one that would provide more consistent guidance, would be to recognize that the real issue to be decided by the trial court is whether admission of the extrinsic evidence would be more probative or more prejudicial.” (at 682)

FACTUAL BACKGROUND

Ruben Mitchell experienced chest-related symptoms on October 11, 2001, and his wife contacted his internist, Dr. Milton Kardesch. The parties disputed what information Mrs. Mitchell conveyed and whether Dr. Kardesch directed her to take Ruben to an emergency room; Ruben did not go to one that day. An October 22 thallium stress test showed a depressed ejection fraction, but Dr. Kardesch did not disclose the abnormality or promptly refer Ruben for specialist treatment. Ruben suffered a myocardial infarction on October 25 and died on October 26, 2001, after complications from emergency cardiac treatment. During the litigation, Dr. Kardesch admitted in a deposition that he had falsely answered an interrogatory asking whether any professional license had ever been suspended or revoked.

PROCEDURAL HISTORY

Elizabeth Mitchell and her two minor children sued Dr. Kardesch for medical malpractice and wrongful death. The circuit court prohibited plaintiffs from cross-examining Dr. Kardesch about his false sworn interrogatory answer concerning suspension of his medical licenses and from using his deposition and interrogatory answer as extrinsic impeachment evidence. The jury found for Dr. Kardesch on all counts. Following a court of appeals decision, the Supreme Court of Missouri granted transfer, reversed the judgment, and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must conduct a new trial. If a new trial occurs, plaintiffs may cross-examine Dr. Kardesch about his interrogatory answer and, if necessary, impeach him with the answer and his deposition testimony, subject to the trial court's discretion to limit the evidence to avoid jury distraction or undue prejudice.

CASES CITED

- Sandy Ford Ranch, Inc. v. Dill, 449 S.W.2d 1 (Mo. 1970)
- State v. Wolfe, 13 S.W.3d 248 (Mo. banc 2000)
- State v. Freeman, 269 S.W.3d 422 (Mo. banc 2008)
- State v. Forrest, 183 S.W.3d 218 (Mo. banc 2006)
- State v. Anderson, 76 S.W.3d 275 (Mo. banc 2002)
- State v. Reed, 282 S.W.3d 835 (Mo. banc 2009)

- State v. Smith, 996 S.W.2d 518 (Mo. App. 1999)
- State v. Hineman, 14 S.W.3d 924 (Mo. banc 1999)
- Talley v. Richart, 185 S.W.2d 23 (Mo. 1945)
- Lagud v. Kansas City Board of Police Commissioners, 136 S.W.3d 786 (Mo. banc 2004)
- State v. Carothers, 710 S.W.2d 370 (Mo. App. 1986)
- State v. Holden, 278 S.W.3d 674 (Mo. banc 2009)
- Black v. State, 151 S.W.3d 49 (Mo. banc 2004)
- Kearbey v. Wichita Southeast Kansas, 240 S.W.3d 175 (Mo. App. 2007)
- State v. Johnson, 700 S.W.2d 815 (Mo. banc 1985)
- State v. Edwards, 637 S.W.2d 27 (Mo. 1982)
- State v. Gregory, 822 S.W.2d 946 (Mo. App. 1992)
- State v. Long, 140 S.W.3d 27 (Mo. banc 2004)
- Roberts v. Emerson Electric Manufacturing Co., 362 S.W.2d 579 (Mo. 1962)
- State v. Solven, 371 S.W.2d 328 (Mo. banc 1963)
- State v. Pigques, 310 S.W.2d 942 (Mo. 1958)
- State v. Caston, 509 S.W.2d 39 (Mo. 1974)
- ITT Commercial Finance Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371 (Mo. banc 1993)
- Edgerton v. Morrison, 280 S.W.3d 62 (Mo. banc 2009)
- Clevenger v. Oliver Insurance Agency, Inc., 237 S.W.3d 588 (Mo. banc 2007)
- In re Care and Treatment of Spencer, 123 S.W.3d 166 (Mo. banc 2003)
- Glowacki v. Holste, 295 S.W.2d 135 (Mo. 1956)
- State v. Spencer, 472 S.W.2d 404 (Mo. 1971)
- Taylor v. State, 262 S.W.3d 231 (Mo. banc 2008)
- State v. Williams, 87 S.W.2d 175 (Mo. 1935)
- State v. Harlow, 37 S.W.2d 419 (Mo. 1931)

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