

SUPREME COURT OF VIRGINIA

Gross v. Stuart

Gross v. Stuart · No. Record No. 180758 · Decided August 29, 2019

SUMMARY

The Supreme Court of Virginia affirmed a Fairfax County Circuit Court judgment entered on a jury verdict awarding Supen Peze Stuart \$800,000 in a medical malpractice action against Michael Phillip Gross and William Plastic Surgery and Spa Services Company, LLC. The Court held that the trial court did not abuse its discretion by permitting cross-examination of the defense medical expert concerning findings in a Virginia Board of Medicine consent order or by denying mistrial and post-trial motions concerning alleged references to consent. The Court also declined to address a third assignment of error because its resolution of the first two assignments made it unnecessary.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	All the Justices
JURISDICTION	Virginia
DECIDED	August 29, 2019
DOCKET	Record No. 180758
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment entered after a jury verdict for the plaintiff in a medical malpractice action.
STANDARD OF REVIEW	Evidentiary rulings and rulings on motions for mistrial are reviewed for abuse of discretion. A discretionary ruling will not be disturbed absent a clear abuse or a mistake of law. A mistrial or new trial based on an improper remark or question is warranted when the prejudice is overwhelming and cannot be cured by a cautionary instruction.
PRECEDENTIAL VALUE	Published opinion; precedential under Virginia law
PARTIES	Michael Phillip Gross, William Plastic Surgery and Spa Services Company, LLC v. Supen Peze Stuart

TOPICS

- medical malpractice
- expert testimony
- evidence
- appellate procedure
- standard of review

PRACTICE AREAS

medical malpractice

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by permitting cross-examination of the defense medical expert about findings in a professional disciplinary consent order.
2. Whether the circuit court abused its discretion by denying motions for mistrial and post-trial motions based on testimony and closing argument that allegedly injected informed consent into the case.
3. Whether the circuit court erred by refusing to instruct the jury that consent was not at issue.

HOLDINGS

1. The circuit court did not abuse its discretion by permitting Stuart to cross-examine Dr. Pitman about findings in the Virginia Board of Medicine consent order because the evidence was relevant to the basis and weight of his opinions concerning the Virginia standard of care.
2. The circuit court did not abuse its discretion by denying the motions for mistrial and related post-trial motions or by declining to instruct the jury expressly that consent was not at issue, because the challenged testimony and argument were cured by timely instructions to disregard them and were not overwhelmingly prejudicial.

KEY QUOTATIONS

“Therefore, evidence of Dr. Pitman’s adherence to the standard of care in Virginia and the laws governing his practice was relevant to the basis of his opinions and the weight to be accorded to his opinions by the jury.” (3)

“The record demonstrates that in both instances, the circuit court considered the probable effect of the statements, concluded that the statements were not overwhelmingly prejudicial, and that any prejudicial effect could be cured by the instructions given to disregard the statements.” (7)

“An unbounded approach to impeachment in such matters, however, could unfairly prejudice a party and distract the jury.” (8)

FACTUAL BACKGROUND

Stuart underwent a cosmetic blepharoplasty performed by Michael Phillip Gross. She alleged that Gross negligently injured the right levator muscle, leaving her functionally blind in the right eye. At trial, Gross presented Dr. John Pitman as a medical expert, and Pitman testified that Gross complied with the Virginia standard of care. Stuart cross-examined Pitman about adverse findings in a Virginia Board of Medicine consent order concerning Pitman’s medical practice during deployment to Afghanistan. The trial also included testimony and argument that the court determined could imply an informed-consent issue, although Stuart did not assert an informed-consent claim.

PROCEDURAL HISTORY

Stuart sued Dr. Gross for medical malpractice arising from a blepharoplasty that allegedly caused permanent injury to the right levator muscle and functional blindness in her right eye. A jury returned an \$800,000 compensatory-damages verdict for Stuart. The Circuit Court of Fairfax County entered judgment, denied Dr. Gross's post-trial motions, and the Supreme Court of Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Lombard v. Rohrbaugh, 262 Va. 484, 492 (2001)
- Martin v. Lahti, 295 Va. 77, 88 (2018)
- Landrum v. Chippenham & Johnston-Willis Hosps., Inc., 282 Va. 346, 352 (2011)
- John Crane, Inc. v. Hardick, 283 Va. 358, 367 (2012)
- Avent v. Commonwealth, 279 Va. 175, 197-98 (2010)
- Stottlemeyer v. Ghramm, 268 Va. 7, 13 (2004)
- Allied Concrete Co. v. Lester, 285 Va. 295, 308 (2013)
- Lowe v. Cunningham, 268 Va. 268, 272-73 (2004)
- Virginia-Lincoln Furniture Corp. v. Southern Factories & Stores Corp., 162 Va. 767, 781 (1934)