

STATE OF MICHIGAN

COURT OF APPEALS

LAURA SHARON and DONALD SHARON,

UNPUBLISHED

June 4, 2002

Plaintiffs-Appellants/Cross
Appellees,

v

No. 230326
Macomb Circuit Court
LC No. 97-005631-NH

WOMEN'S HEALTH SPECIALISTS OF
MACOMB COUNTY, KEVIN FAHEY, M.D.,
and PAUL D. SWEDA, M.D.,

Defendants-Appellees/Cross
Appellants.

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from a judgment of no cause of action entered in this medical malpractice action. Defendants have filed a conditional cross appeal. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Prior to trial, defendants moved to exclude a portion of the video deposition of plaintiffs' expert, Jon Hazen, who presented and dissected a human placenta to demonstrate his testimony as to how the afterbirth should be examined and why it would be obvious that tissue from the organ was missing. The trial court excluded this demonstration evidence as being more prejudicial than probative. Plaintiffs argue that the trial court erred in excluding this evidence. We disagree.

Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by other considerations. MRE 403; *Tobin v Providence Hosp*, 244 Mich App 626, 637-638; 624 NW2d 548 (2001). A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (1999). A trial court's assessment of the probative value and prejudicial effect of evidence is also reviewed for an abuse of discretion. *Williams v Coleman*, 194 Mich App 606, 620-621; 488 NW2d 464 (1992). Any error in the admission or exclusion of evidence is not grounds for reversal unless a party's substantial rights were affected. *Ellsworth, supra* at 188.

Because plaintiffs' claim was based on defendants' failure to remove all the afterbirth upon delivering plaintiffs' child rather than any treatment of the placenta itself, there was a real danger that the jury would be so distracted by the presentation and dissection of an actual human organ that it would be unable to give due consideration to all the evidence presented. Thus, we cannot conclude that the trial court abused its discretion when it excluded the evidence under MRE 403. Further, even if the trial court abused its discretion, we cannot find that the error adversely affected plaintiffs' substantial rights. The critical issue in this case was not what a placenta looked like or what the piece of placental tissue looked like, but whether defendants were negligent in failing to notice that a substantial piece of tissue had been left inside Laura Sharon's body and that plaintiffs were able to demonstrate adequately the size of the tissue fragment with another object.

Because we find that plaintiffs have not established reversible error, defendants' cross appeal is moot.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff