

STATE OF MICHIGAN
COURT OF APPEALS

PAUL NORTH and DIANE NORTH,

Plaintiff-Appellants,

UNPUBLISHED
February 10, 2004

v

ST. MARY'S MEDICAL CENTER, and
PERVEZ YUSAF, M.D., and PERVEZ YUSAF,
M.D., P.C.,

No. 243499
Saginaw Circuit Court
LC No. 00-033714-NH

Defendant-Appellees.

Before: Zahra, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

Plaintiffs Paul and Diane North appeal as of right from the trial court's judgment of no cause of action pursuant to a jury verdict. We affirm.

On June 27, 1998, plaintiff Paul North broke his leg while riding a recreational vehicle in Ludington, Michigan. Defendant Dr. Yusaf operated on him and put a plate and screws into his leg. Shortly after returning to work, plaintiff Paul North developed a severe bone infection and defendant Dr. Yusaf had to remove the plate and screws. Plaintiffs subsequently filed this malpractice action against defendants for failure to provide them with sufficient information to make an informed decision regarding treatment options and performing surgery before attempting a less invasive procedure. The jury found defendants free of any negligence.

On appeal, plaintiffs contend that the trial court improperly allowed James Goulet, M.D., to testify as an expert witness for the defense. Specifically, plaintiffs argue that the trial court was required to prohibit Dr. Goulet from providing expert testimony because he was not listed on defendant's witness list in accordance with the court rule. We disagree. This Court reviews a trial court's decision to permit a witness to testify for an abuse of discretion.¹

¹ *Carmack v Macomb County Community College*, 199 Mich App 544, 546; 502 NW2d 746 (1993).

According to plaintiffs, MCR 2.401(I)(2) provides that an improperly listed witness cannot testify except for good cause shown. However, plaintiff ignores the plain language of the rule. MCR 2.401(I) provides, in pertinent part:

(1) No later than the time directed by the court under subrule (B)(2)(a), the parties shall file and serve witness lists. The witness list must include:

(a) the name of each witness, and the witness's address, if known; however, records custodians whose testimony would be limited to providing the foundation for the admission of records may be identified generally;

(b) whether the witness is an expert, and the field of expertise.

(2) The court *may* order that any witness not listed in accordance with this rule will be prohibited from testifying at trial except upon good cause shown.^[2]

Subsection (2) does not require a showing of good cause on defendants' part but, rather, provides a trial court the discretion to exclude an improperly listed witness unless good cause is shown. This rule is clearly permissive. We find no abuse of discretion.

Plaintiffs further maintain that Dr. Goulet was unqualified to give expert testimony because he did not know the standard of care. A review of the record, however, belies this argument. Although there was some initial confusion, Dr. Goulet stated on the record that he knew the standard of care. Accordingly, we find no error.

To the extent plaintiffs argue that the trial court erroneously prevented Dr. Goulet from testifying regarding his personal treating preferences for plaintiff's injury, we disagree. Indeed, even plaintiffs acknowledge that a doctor's personal preference is inadmissible and irrelevant to the standard of care.³ A trial court's refusal to admit inadmissible evidence does not constitute an abuse of discretion.⁴

We need not address plaintiffs' remaining claim concerning the trial court's admission of extrinsic evidence. Because the jury found defendants not negligent, this evidence is irrelevant.

² Emphasis added.

³ *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 493; 668 NW2d 402 (2003); *Carbonell v Bluhm*, 114 Mich App 216, 224; 318 NW2d 659 (1982).

⁴ See *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003).

In any event, we find that the instant evidence was not admitted to attack plaintiff Paul North's credibility but was directly relevant to causation and damages.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper