IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

KRISTIE L. ANGSTADT,	)	C.A. NO. 04C-02-041 (RBY)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
NORMAN M. LIPPMAN, D.D.S.,	)	
	)	
Defendant.	)	

O R D E R

This is the Court's decision on Plaintiff's Motion for Reargument.

This is a dental malpractice action filed by Plaintiff, Kristi L. Angstadt against Defendant, Norman M. Lippman, D.D.S. Presently before the Court is Plaintiff's Motion for Reargument, filed pursuant to Super. Ct. Civ. R. 59(e). Plaintiff seeks reargument of the portion of the Court's March 30, 2006 Order that denied Plaintiff's request for a new trial based on juror misconduct. Plaintiff asserts now, as she did in the Motion for a New Trial, that she did not receive a fair trial, because one of the jurors did not accurately respond to the *voir dire* questions. For the following reasons, Plaintiff's motion is **DENIED**.

Under Rule 59(e), if a party's motion for a new trial is denied, the party may move the Court for reargument. However, usually, a motion for reargument will be denied, unless the movant can demonstrate that the Court "overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as would affect the outcome of the decision."[1] Moreover, the

---

[1] *Monsanto v. Aetna*, 1994 WL 46726, at *2 (Del. Super.) (*quoting Wilshire Restaurant Group, Inc. v. Ramada, Inc.*, 1990 WL 237093, at *1 (Del. Ch.)); *Miles, Inc. v.*

motion must be denied if the "motion for reargument represents a mere rehash of arguments already made at trial and during post-trial briefing."[2]

Plaintiff now claims, as she did in her original Motion for a New Trial, that she was denied a fair trial, because, apparently, Juror #5 failed to respond affirmatively to the following two *voir dire* questions in the negative:

(1) Do you know the attorneys in this case or any other attorney or employee in their firms?

(2) Have you or any member of your family ever made a claim or had a claim made against you for personal injuries?

A jury trial in this matter resulted in a defense verdict. At some point, Plaintiff's counsel performed a "conflict check" to determine whether any of the jurors had a previous, presumably adverse, relationship with his law firm. That investigation revealed that, nearly two years ago, Juror #5 had been sent a letter of representation from a member of Plaintiff's counsel's law firm. The letter advised Juror #5 of the firm's intention to pursue representation on behalf of a client who was involved in an automobile accident, allegedly caused by a vehicle thought to be owned by Juror #5. Based on that letter alone, Plaintiff now claims that Juror #5 breached his oath as a juror.

In the Motion for Reargument, Plaintiff does not make any new claims. In the decision denying Plaintiff's Motion for a New Trial, this Court determined that Plaintiff's claims that Juror #5 falsely answered the *voir dire* questions were

---

Cookson America, Inc., 677 A.2d 505, 506 (Del. Ch. 1995).

[2] *Miles, Inc.*, 677 A.2d at 506.

unsupported, and not a proper basis for disqualifying Juror #5. Plaintiff makes no new factual arguments in her Motion for Reargument, but relies on the Delaware Supreme Court's decision in *Ortiz v. State*[3] to affirm the significance of *voir dire* in her right to a fair trial. Plaintiff's reliance on *Ortiz* is inconsequential.

In *Ortiz*, the defendant appealed his conviction for first degree murder and sentence of death, claiming that he was denied a fair trial, because the trial court denied his request to submit supplemental *voir dire* to the prospective jurors.[4] In its decision affirming the decision of the trial court, the Supreme Court recounted the importance of *voir dire* as a means to "ascertain the impartiality of a prospective juror."[5] The Supreme Court did not announce any protocol that applies to the present issue. The Ortiz Court quite properly pointed out that voir dire is available to ascertain whether or not a juror would be impartial. Indeed, the Court affirmed the broad discretion of the trial court in "determining how and to what extent to conduct *voir dire*."[6]

More on point, this Court has addressed the issue of whether even a juror who allegedly answered *voir dire* questions untruthfully engaged in misconduct.[7] In *Thompson*, plaintiffs in a medical malpractice action sought a new trial after receiving second-hand information that two jurors made statements during the trial about their

---

[3] 869 A.2d 285, 291 (Del. 2005).

[4] *Id.* at 290.

[5] *Id.* at 291.

[6] *Id*.

[7] *Thompson v. Papastavros Associates*, 729 A.2d 874 (1998).

beliefs that it was "not right to sue people".[8] Plaintiffs claimed that these statements demonstrated that the two jurors gave false responses to *voir dire* questions about their bias or prejudice against awarding money damages.[9]

In denying plaintiffs' motion, the Court noted that "Delaware law strongly disfavors a juror's impeachment of the verdict once the jury has been discharged."[10] Accordingly, the Court has "broad discretion in deciding whether a case must be retried or a juror summoned and investigated due to alleged exposure to prejudicial information or improper outside influence. "[11] In addition, when asserting a claim of juror misconduct, the complaining party bears the burden to demonstrate that "there is a reasonable probability of juror taint of an inherently prejudicial nature, [and that] a presumption of prejudice should arise that [the party's] right to a fair trial has been infringed upon."[12] To rise to a level of "inherently prejudicial," the juror misconduct must consist of "egregious circumstances."[13] As such, the juror's *voir dire* answers will not be questioned, unless there is evidence that the juror deliberately lied.[14]

The *Thompson* Court held that, without any evidence that the jurors deliberately lied in their answers to *voir dire*, the validity of the jury's verdict fell

---

[8] *Id.* at 877.

[9] *Id.*

[10] *Id.* at 878 (citations omitted).

[11] *Id.* at 879 (citations omitted).

[12] *Id.* (*quoting Massey v. State*, 541 A.2d 1254, 1257 (Del. 1988)).

[13] *Id.*

[14] *Id.*

within the scope of Delaware Rules of Evidence 606(b). Rule 606(b) codifies the law's disfavor of juror impeachment by precluding a juror from testifying about the validity of a verdict regarding any matter that was on the juror's mind which influenced the juror "to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith."

Assuming for the moment the very unlikely possibility that Juror #5 had any recall whatsoever of ever even having received the letter referred to by Plaintiff's counsel, can Plaintiff legitimately put forth the position that Juror #5 knew the attorney signing it? Presumably, since Plaintiff does not exhibit any response from Juror #5, Juror #5 most likely did one of two things (assuming he ever received it): either he discarded it or he forwarded it to his carrier. Certainly, no evidence or inference suggests anything more. Thus, Juror #5 "knew" an attorney in Plaintiff's counsel's firm in the way one "knows" the signer of the cover letter in the Clearing House sweepstakes entries. That, in this Court's view, is no significant knowledge at all. It is hardly knowledge to support a claim of misconduct. And, again, even that is based upon the most thinly grounded of assumptions.

Next is Plaintiff's assertion that Juror #5 falsely denied having had a claim made against him. Once more referencing the aforesaid letter, the language alleges that Juror #5's vehicle had been in an accident; that the letter writer represented another person allegedly in the same accident; and that, absent a response from Juror #5's carrier (not even soliciting a response from Juror #5), the letter writer would "protect [his] client." Would that indicate to the presumed recipient, first, that he was the subject of a claim for personal injuries against him; and second, to such an

extent of indelibility that he would recall that nearly two years later with the specificity to support a theory that Juror #5 had misconducted himself in not coming forward during voir dire? In this Court's view, such a position is woefully undemonstrated.

Plaintiff argues that the Banther[15] case concepts and holdings require the granting of a new trial in the instant case. Banther was a capital murder case, which, to the extent pertinent to this case, involved the participation of a juror who failed to respond to voir dire questions. In Banther, the juror was the forelady, who was at the time the subject of open criminal charges, was purportedly using cocaine, and was mentally unfit. While the totality of those circumstances was noted relative to her having been a proper juror, we can disregard it all for these purposes, presuming that a new trial was based only upon her failure to respond to the question of her having been the victim of a violent crime.

The Court views the impact and awareness level of one's having been the victim of a violent crime as different in kind from having received a letter to forward notice of a possible claim to one's insurance carrier. Thus, the requisite deliberate nature of an effort to deceive the jury selection process is entirely absent. As cases cited in Banther (at footnote 31) indicate, dishonesty rather than factual accuracy must exist; simple forgetfulness does not create lack of impartiality; memory failure is not dishonesty. While none of the foregoing is sufficient to provide for a new trial, here we have even far less. Here, we have only a letter which, if it made any impact

---

[15] *Banther v. State*, Del Supr., 823 A 2d 467 (2003). .

at all, requested the recipient to contact his carrier, since the sender wanted to "protect his client."

As Thompson[16] makes clear, nothing along those lines would reverse Delaware's strong disfavor of a juror's impeachment long after any remedial measures (for example, the simple replacement with a then-available alternate) could be pursued.

In the present matter, Plaintiff has failed utterly to demonstrate that Juror #5 deliberately lied relative to the voir dire process in any way which would concern his potential bias or prejudice. Plaintiff's counsel's late discovery that his firm apparently sent Juror #5 a letter of representation, nearly two years in the past about some potential claim, fails to provide any basis for recalling the juror and questioning the juror's truthfulness. The Court is satisfied that Juror #5 did not engage in any misconduct, but instead properly discharged his civic duty.

CONCLUSION

Plaintiff has not demonstrated that this Court's denial of the Motion for a New Trial overlooked any legal precedent or misapprehended any law or facts in this matter. Plaintiff also fails to make any new arguments that were not presented and disposed of in the Court's denial of the Motion for a New Trial. Accordingly, Plaintiff's Motion for Reargument is **DENIED.**

---

[16] *Thompson v. Papastavros Associates, 729 A. 2d 874 (1998).*

Angstadt v. Lippman
C.A. No. 04C-02-041 (RBY)

SO ORDERED this 2nd day of May, 2006.

/s/ Robert B. Young
J.

oc: Prothonotary
cc: Counsel
Opinion Distribution