

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

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RENDERED: JUNE 25, 2009

NOT TO BE PUBLISHED

Supreme Court of Kentucky

2006-SC-000890-DG

FINAL
DATE 7/16/09 Kelly Klaber D.C.
APPELLANT

JONATHAN E. HODES, M.D.

V.

ON APPEAL FROM COURT OF APPEALS
CASE NO. 2005-CA-002095-MR
JEFFERSON CIRCUIT COURT NO. 01-CI-002245

DEBRA IRELAND

APPELLEE

AND

2007-SC-000823-DG

DEBRA IRELAND

CROSS-APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
CASE NO. 2005-CA-002095-MR
JEFFERSON CIRCUIT COURT NO. 01-CI-002245

JONATHAN E. HODES, M.D.

CROSS-APPELLEE

MEMORANDUM OPINION OF THE COURT

REVERSING

In this medical negligence action involving spinal surgeries performed upon plaintiff Debra Ireland in 2000 by defendant neurosurgeon Jonathan E. Hodes, M.D., after a week-long trial in September of 2005 judgment was entered pursuant to a 10-2 defense verdict. On Ms. Ireland's appeal presenting three evidentiary issues, the Court of Appeals panel perceived no abuse of trial court discretion on two of the issues but reversed regarding the third issue and

remanded for retrial. Having granted both the motion by Dr. Hodes for discretionary review and Ms. Ireland's cross-motion, upon careful consideration of the record we perceive no abuse of the trial court's sound discretion and therefore reverse the Court of Appeals opinion and reinstate the Jefferson Circuit Court judgment entered on the jury verdict.

Tragically, the 2000 spinal decompression surgery left Ms. Ireland with cauda equina syndrome. The question at trial thus was whether that result was the product of medical negligence, which was the opinion of Ms. Ireland's expert, orthopedic surgeon Dr. Robert Winter. In contrast, Dr. Hodes and his expert Stanford University Professor of Neurosurgery Dr. Lawrence Shuer testified that the surgery was performed well within the standard of care and that cauda equina syndrome was a known and accepted risk of the decompression surgery as recognized in the informed consent signed by Ms. Ireland. Although Ms. Ireland continues to contest the admission of her informed consent into evidence, on that point we agree with the Court of Appeals panel's assessment of the trial court's exercise of sound discretion in that evidentiary ruling regarding relevance to the defense.

We also perceive no abuse of trial court discretion regarding the two remaining points of dispute, both of which involve cross-examination of Dr. Winter during his hours of testimony criticizing the allegedly "not sufficiently extensive" spinal decompression surgery. The sole issue upon which the Court of Appeals panel reversed and remanded for retrial related to disciplinary charges involving Dr. Winter's licenses to practice medicine in Minnesota and Wisconsin. Relying primarily upon Morrow v. Stivers, 836 S.W.2d 424 (Ky. App. 1992), the appellate panel opined that the cross-examination concerned "a collateral matter that is irrelevant to an issue in the case." The current circumstances, though, significantly differ from Morrow, in which the trial

court did not permit proof regarding discipline imposed upon the plaintiff's dental expert for allegedly passing hepatitis to patients. Here, by contrast, the permitted cross-examination was grounded upon witness credibility and interpretations of what constitutes the "practice of medicine" and licensure "restrictions."

Dr. Winter's testimony during direct examination effectively opened the door to the ten minutes of cross-examination regarding his Minnesota and Wisconsin medical licenses under KRE 607, 608(b) and 611(b) as relevant evidence on cross-examination involving witness credibility and "character for untruthfulness" as to the status of these licenses and the expert's alleged full retirement over a decade earlier. Thus, when Dr. Winter on direct examination testified not only that he was licensed to practice medicine in Minnesota and in fact had done so within a week of his September 2005 trial testimony but also that he "never had any restrictions" on his medical license, the trial court within sound discretion permitted cross-examination concerning the expert's Minnesota and Wisconsin medical licenses as impacted by previous disciplinary actions and purported retirement. In fact, as reflected in Dr. Winter's 1995 "Stipulation" resolving a pending formal complaint before the Wisconsin Medical Examining Board based upon 1993 disciplinary action against him in his home state of Minnesota, the Wisconsin Board agreed to dismiss the disciplinary complaint upon then-62-year-old Dr. Winter's assurance that he was "fully retiring from the practice of medicine and surgery in the state of Minnesota effective 6/1/95 and will not be engaging in the practice of medicine or surgery after the date of his retirement" plus the voluntary surrender of his registration (which he further promised never to attempt to renew) to practice medicine and surgery in Wisconsin. Although redirect examination established that the 1993 probationary restrictions upon

Dr. Winter's Minnesota license were related to sexual misconduct with a female patient in the 1980s and had been lifted upon his completion of a year of counseling plus payment of a fine prior to restoration to "unconditional status" in March of 1995, the trial court did not abuse sound discretion in permitting the cross-examination in this context under all the circumstances of this case.

Similarly, the trial court acted well within sound discretion in permitting relevant cross-examination concerning unrelated spinal surgical complications experienced by Dr. Winter in his surgical practice of orthopedics. In that regard, we again agree with the Court of Appeals panel.

The Court of Appeals opinion reversing and remanding is reversed and the Jefferson Circuit Court judgment entered on the jury verdict hereby is reinstated.

All sitting. All concur.

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