

STATE OF MICHIGAN
COURT OF APPEALS

JACQUELINE BROWN,

Plaintiff-Appellant/Cross-Appellee,

v

MID MICHIGAN MEDICAL CENTER and DR.
JAMES S. BICKNELL,

Defendants-Appellees/Cross-
Appellants.

UNPUBLISHED
November 15, 2012

No. 303687
Midland Circuit Court
LC No. 09-005330-NH

Before: CAVANAGH, P.J., and HOEKSTRA and SHAPIRO, JJ.

PER CURIAM.

In this medical malpractice case, plaintiff appeals as of right the trial court's order denying her motion for a new trial. Defendants cross appeal, challenging the trial court's denial of sanctions and its denial of a directed verdict. For the reasons stated in this opinion, we affirm.

Plaintiff alleged that defendants' failure to provide adequate medical care caused her to lose most of her small bowel. The jury returned a verdict of no cause for action. After the jury returned its verdict, plaintiff informed her attorney that she believed she knew one of the jurors. Plaintiff executed an affidavit, where she stated that she met the juror in the late spring or early summer of 2007 at a coffee shop, and that he asked for her telephone number, which she declined to provide. Plaintiff further stated in her affidavit that it was possible she met the juror at an Alcoholics Anonymous meeting. Plaintiff's attorney conducted an investigation regarding plaintiff's claims and learned that the juror volunteered to become the foreperson and that the jury was initially split four to three in favor of defendant, and the juror who plaintiff claimed she knew was in the majority. Counsel further learned that the juror graduated from a religious school, planned to attend medical school, and lived with his aunt who applied for a job as a registered nurse with, and was eventually hired by, defendant Mid Michigan Medical Center. None of these details were disclosed during voir dire, and the juror denied knowing any of the parties or prospective witnesses during voir dire. Plaintiff's counsel also provided an affidavit, wherein he stated that had all the information regarding the juror been disclosed during voir dire, he would have excused the juror for cause or by way of a peremptory challenge. Accordingly, plaintiff's counsel filed a motion for a new trial. Plaintiff's counsel attached the affidavits to the motion, and argued that a new trial was required because he would have excused the juror, the

juror was potentially biased, the juror failed to disclose relevant information during voir dire, and the juror's presence on the jury likely prejudiced plaintiff's case.

In response, defendants argued that plaintiff's motion for a new trial was frivolous, and moved for sanctions. Defendants attached an affidavit executed by the juror to their response. The juror swore that he did not know plaintiff and never concealed any relationship with plaintiff because he did not know her. He specifically denied ever asking her for her telephone number. He stated that he had no knowledge about plaintiff prior to the trial, and that he has never attended an Alcoholics Anonymous meeting. The juror stated that he disclosed that he graduated with a pre-medical degree from Indiana Wesleyan in his preliminary juror questionnaire. Further, he stated that his aunt did not work for defendants at the time of the trial and he was unaware of any employment application made by his aunt to defendants at the time of the trial.

The trial court denied plaintiff's motion for a new trial and also denied defendants' request for sanctions, finding that while plaintiff failed to present sufficient evidence to warrant a new trial, the motion itself was not frivolous because it provided a "sufficient basis for the court to have to take a look at it." The trial court further noted that the motion was not frivolous because plaintiff made specific allegations regarding juror misconduct and it was not frivolous for plaintiff's counsel "to come forward with information that he feels was appropriate for reviewing the integrity of the decision by the jury." Finally, the trial court noted that the fact that it ultimately denied plaintiff's request for a new trial did not render the motion frivolous.

First, we address plaintiff's argument that the trial court erred by denying her motion for a new trial. We review a trial court's decision whether to grant a new trial for an abuse of discretion. *Bynum v ESAB Group, Inc*, 467 Mich 280, 283; 651 NW2d 383 (2002). An abuse of discretion standard recognizes that there is often "no single correct outcome; rather, there will be more than one reasonable and principled outcome." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). A trial court does not abuse its discretion when it selects a reasonable and principled outcome. *Id.* When reviewing the trial court's factual findings, we apply a clearly erroneous standard of review. *Bynum*, 467 Mich at 283. "A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made." *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003).

MCR 2.611(A)(1)(b) allows a party to move for a new trial based on jury bias or misconduct. *Hunt v CHAD Enterprises, Inc*, 183 Mich App 59, 63; 454 NW2d 188 (1990). Jurors are "presumed to be qualified and competent to serve." *Id.* at 64. Therefore, as the moving party, plaintiff had the burden to prove otherwise. *Id.* In *Hunt*, this Court held that "[a] moving party must present actual proof of prejudice on the part of that juror or establish that the moving party would have challenged for cause or otherwise dismissed the juror in question had the truth been revealed prior to trial." *Id.*

In this case, plaintiff did not offer any evidence showing that the juror was untruthful or biased. She did not establish that the juror knew her or misrepresented that he did not know her. While his aunt was a registered nurse, the juror indicated he did not have a family member "in the medical profession" during voir dire because at that time his aunt was unemployed. Even if the juror should have disclosed that his aunt was a registered nurse, plaintiff has not shown how

this nondisclosure actually prejudiced her, nor has she shown that the juror would have been excused had he revealed that his aunt was an unemployed registered nurse. Plaintiff retained other members on the jury who had relatives working in the medical profession. Further, although defendant Mid Michigan Medical Center employed the juror's aunt after the trial, there was no evidence that the juror knew of any employment application or pending employment. Given these facts, we conclude that the trial court did not clearly err by finding that plaintiff's allegations of knowing the juror were vague and denied by the juror, or in concluding that there was no showing that the juror's ability to sit fairly and impartially was affected by his aunt ultimately obtaining employment with defendant. Thus, plaintiff has failed to demonstrate any actual prejudice or proof that the juror would have been dismissed. Accordingly, the trial court did not abuse its discretion by denying the motion for a new trial.

Next, we address defendants' argument on cross appeal that the trial court erred by denying their motion for sanctions. Defendants argue that sanctions were required because plaintiff's motion for new trial was frivolous. A trial court's determination to impose sanctions for the filing of a frivolous document is reviewed for clear error. *Guerrero v Smith*, 280 Mich App 647, 677; 761 NW2d 723 (2008). "A decision is clearly erroneous when, although there may be evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *Id.*

Under MCR 2.114, an attorney has an affirmative duty to conduct a reasonable inquiry into the factual and legal basis of a document before that document is signed. MCR 2.114(D)(2); *Guerrero*, 280 Mich App at 677. The rule defines "document" as "all pleadings, motions, affidavits, and other papers," and requires that an attorney sign all documents. MCR 2.114(A) and (C)(1). The signature of an attorney constitutes certification that the document is well grounded in fact and in law. MCR 2.114(D)(2). MCR 2.114(E) requires the imposition of sanctions for violation of the signature rule. MCR 2.114(E) provides:

(E) Sanctions for Violation. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

MCL 600.2591 provides that "if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action." The statute states that an action is "frivolous" if "[t]he party's legal position was devoid of arguable legal merit." MCL 600.2591(3)(a)(iii). MCR 2.114(F) provides that a party pleading a frivolous claim or defense is also subject to costs as provided in MCR 2.625(A)(2), which provides that "if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591."

We conclude that the trial court did not clearly err by denying defendants' motion for sanctions based on its conclusion that plaintiff's motion was not frivolous. Defendants' argument is that plaintiff did not have a reasonable basis to believe that the facts underlying the

juror misconduct claim were true. As the trial court noted, plaintiff's allegations were sufficient for the trial court to examine the allegations. Although the juror denied all the allegations, it does not automatically render plaintiff's allegations false. Rather, the issue of credibility was for the trier of fact to decide. The fact that plaintiff's arguments were not successful does not mean that they were frivolous. See *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003) (noting the fact that plaintiff's claims were unsuccessful did not automatically render the claims frivolous). The parties presented affidavits that provided conflicting versions of the facts. There was a reasonable legal basis for a new trial if plaintiff's allegations were true; however, the trial court ultimately made a credibility determination and denied plaintiff's motion for a new trial. The trial court's subsequent denial of defendants' motion for sanctions was not clear error under these circumstances.

Defendants also argue that the trial court erred by denying their motion for a directed verdict. Since we affirm the denial of plaintiff's motion for a new trial, we decline to address this issue.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Douglas B. Shapiro