



**In the Missouri Court of Appeals
Eastern District**

DIVISION FOUR

ALICE GEARY,)	
Individually and as Personal)	ED90452
Representative of the Estate of)	
Phillip Sgroi,)	
)	
Plaintiff/Respondent,)	Appeal from the Circuit Court of
)	the City of St. Louis
vs.)	
)	
SAINT LOUIS UNIVERSITY,)	Honorable Margaret M. Neill
and PAULO BICALHO, M.D.,)	
)	
Defendants/Appellants.)	Filed: November 4, 2008

Appellants Saint Louis University and Paulo Bicalho, M.D. appeal the trial court's judgment entered after a jury verdict in favor of Respondent Alice Geary on her petition for medical negligence for failure to properly diagnose and treat her husband Phillip Sgroi's hip fracture. Appellants claim error in the admission of videotape evidence, the introduction of the existence of liability insurance during *voir dire*, and intentional juror nondisclosure. The trial court's judgment is reversed and the case is remanded for a new trial.

Facts and Procedural History

Sgroi, a Missouri resident, slipped and fell on his side while visiting Oklahoma in December 2001. He was taken to a hospital in Oklahoma City and diagnosed with a left arm fracture and left knee contusion. Upon returning to St. Louis, he was admitted to Saint Louis University Hospital. Thereafter, in January 2002, Sgroi was admitted to two inpatient

rehabilitation centers in St. Louis until his discharge with home health care services. In February, Sgroi was readmitted to Saint Louis University Hospital with complaints of left knee pain. Dr. Bicalho, an orthopedic surgeon, was consulted on February 19, 2002. X-rays of Sgroi's knee were ordered and Dr. Bicalho diagnosed him with left knee pain. In March, when Sgroi's pain persisted, he was readmitted to the hospital, where another x-ray revealed a hip fracture two to four weeks old.

Sgroi and his wife, Alice Geary,¹ filed suit against several defendants alleging medical negligence for failure to diagnose and treat Sgroi's hip fracture. All other defendants were dismissed without prejudice. The case proceeded to trial against Saint Louis University and Dr. Bicalho. Plaintiffs claimed that Dr. Bicalho was negligent in failing to diagnose and treat Sgroi's hip fracture in February 2002 and that Saint Louis University, as Bicalho's employer, was vicariously liable.

At trial, a videotape of a television newscast from 2001 was admitted and played, over Appellants' objection. The videotape features an interview of Sgroi and the healthcare providers who treated him following a stroke in 2000. The healthcare providers discuss Sgroi's extraordinary efforts during rehabilitation. Sgroi speaks about his political aspirations and his quest for universal healthcare. After a jury awarded damages in favor of Sgroi, Appellants filed motions for JNOV, a new trial or amended judgment, which the court denied. This appeal follows.

Appellants assert three points of error. In point I, Appellants argue that the trial court erred in admitting the videotape into evidence. Respondent argues that the videotape is relevant to determine damages because it demonstrated that Sgroi was mobile and communicative before his fall. Appellants argue that the videotape was not practical, instructive, or calculated to assist

¹ Sgroi died in 2007 of unrelated causes and Alice Geary was named personal representative of his estate.

the jury in understanding the case, the audio portion constituted hearsay and was not subject to cross-examination, and the videotape contained inadmissible evidence of Sgroi's good character. Appellants' first point is correct and dispositive, so we need not address the remaining two points.

Discussion

The trial court has broad discretion in ruling on the admission or exclusion of videotape evidence, and its ruling will not be disturbed on appeal absent an abuse of discretion. Gomez v. Construction Design, Inc., 126 S.W.3d 366, 373-74 (Mo. banc 2004)(internal citations omitted). An abuse of discretion occurs when the act is untenable, clearly against reason, and results in an injustice. Id. The decision to admit or exclude a videotape depends on whether it is practical, instructive, and calculated to assist the trier of fact in understanding the case. Id.

In Missouri, videotapes are generally admissible as demonstrative evidence for two purposes: to recreate events at issue and to illustrate physical properties or scientific principles that form the foundation for an expert's opinion. Grose v. Nissan North America, Inc., 50 S.W.3d 825, 830 (Mo.App. E.D. 2001). The newscast videotape was neither practical nor instructive for the jury. The tape did not recreate events at issue or illustrate any principles relied on by the experts. We reject Respondent's premise that the videotape was relevant to determine damages. This record is void of any evidence that Sgroi would have returned to the condition seen in the videotape if Dr. Bicalho had diagnosed his hip fracture in February 2002.

Moreover, in the audio portion of the tape, Sgroi's statements that he wants to run for public office to help others, coupled with his statements about healthcare, are

inadmissible character evidence and highly prejudicial. Generally, character evidence is limited to criminal cases and such evidence is inadmissible in a civil case. Haynam v. Laclede Elec. Co-op., Inc., 827 S.W.2d 200, 205 (Mo. banc 1992), *citing* 1A Wigmore, Evidence § 64 (1983). The prejudicial impact of the video significantly outweighs any probative value. We find that the admission of the videotape was an abuse of discretion, and we reverse for a new trial. Appellants' point I is granted. We need not reach Appellants' points II and III.

Conclusion

The trial court's judgment is reversed and the case remanded for a new trial.

Booker T. Shaw, Presiding Judge

Kathianne Knaup Crane, J.,
Mary K. Hoff, J. concur.