MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ROY DALBEY,

Appellant,

v.

HEARTLAND REGIONAL MEDICAL CENTER and ASHOK GOKHALE, M.D.,

Respondents.

DOCKET NUMBER WD83602

Date: April 6, 2021

Appeal from:
Buchanan County Circuit Court
The Honorable Daniel F. Kellogg, Judge

Appellate Judges:
Division One: Alok Ahuja, P.J., Thomas H. Newton, and Thomas N. Chapman, JJ.

Attorneys:
H. William (Bill) McIntosh, Kansas City for appellant
Michael Rudd, Kansas City; Jeffrey L. Dunn, Timothy C. Sansone, St. Louis; Brian L. Burge, Jana Von Richards, Overland Park, KS for respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT

ROY DALBEY, Appellant,
v.
HEARTLAND REGIONAL MEDICAL CENTER and ASHOK GOKHALE, M.D., Respondents.

WD83602 Buchanan County

Before Division One Judges: Alok Ahuja, P.J., Thomas H. Newton, and Thomas N. Chapman, JJ.

Roy Dalbey suffered permanent brain damage as the result of a brain aneurysm which ruptured on the night of December 1-2, 2011. Dalbey had previously been to the emergency room at Heartland Regional Medical Center in St. Joseph in the early morning of November 6, 2011, when he was treated by Dr. Ashok Gokhale. At the conclusion of the November 6 visit, Dr. Gokhale diagnosed Dalbey with gastritis or peptic ulcer disease, and discharged him with a prescription for a medication to decrease gastric acid secretion, and a recommendation that Dalbey obtain an endoscopy.

Dalbey sued Dr. Gokhale and Heartland in the Circuit Court of Buchanan County. He alleged that Dr. Gokhale had been negligent in failing to order a CT scan of Dalbey's head during his November 6, 2011 emergency room visit. Dalbey contended that, if a CT scan had been ordered at that time, it would have revealed his brain aneurysm, and/or a small "sentinel bleed" from the aneurysm which was a harbinger of its later rupture. Dalbey claimed that the findings of a CT scan would have led to further medical treatment before the aneurysm ruptured, and would have prevented him from suffering massive hemorrhaging and brain damage on December 1-2, 2011. Dalbey submitted a claim of liability against Heartland based solely on its vicarious liability for Dr. Gokhale's negligence.

Following a nine-day trial, a jury returned a verdict in favor of Dr. Gokhale and Heartland. Dalbey appeals.

AFFIRMED.

Division One holds:

Dalbey argues that the circuit court erroneously quashed a trial subpoena which he had served on Heartland, asking it to designate a corporate representative

to testify to a variety of topics. Even if this circuit court erred by quashing the subpoena, Dalbey was not prejudiced. The subpoena topics all related to Heartland's vicarious liability for Dr. Gokhale's actions. Because the jury found that Dr. Gokhale was not negligent, the vicarious liability issue became moot.

Dalbey argues that he was prevented from serving a trial subpoena on Heartland's corporate representative. But the record reflects that Dalbey had multiple opportunities to serve the subpoena, but chose not to. Moreover, the circuit court never ruled on Heartland's motion to quash the subpoena. Because the propriety of the corporate representative subpoena raised different issues than the Heartland subpoena, it would not have been futile for Dalbey to serve the corporate representative subpoena, despite the court's quashing of the Heartland subpoena.

Dalbey argues that the circuit court erroneously prevented him from presenting testimony from two family members, who contended that, on December 2, 2011, after Dalbey's brain aneurysm ruptured, Dr. Gokhale and Heartland representatives spontaneously denied that Dalbey's condition on December 2 had any relationship to his earlier November 6, 2011 emergency room visit. The alleged statements were not "admissions" by Dr. Gokhale or Heartland, because the statements were fully consistent with the position defendants took at trial. Further, the statements were not relevant to contradict Dr. Gokhale's testimony, to establish the defendants' "consciousness of guilt," or to support a claim of spoliation of evidence based on Heartland's failure to preserve video of Dalbey's entry to the hospital on November 6.

Finally, Dalbey argues that the circuit court erroneously prohibited him from cross-examining a defense expert as to whether Dr. Gokhale had violated the standard of care. But in a voir dire examination, the defense expert denied that he knew the standard of care applicable to an emergency room physician and internist like Dr. Gokhale. Because the defense expert claimed that he did not have relevant standard-of-care opinions to provide, the circuit court did not err in preventing cross-examination on this issue. Further, because Dalbey was able to elicit testimony from the expert that he would have ordered a CT scan under the circumstances to which Dalbey's witnesses testified, Dalbey was not prejudiced by any limitations on his cross-examination of the expert.

Opinion by: Alok Ahuja, Judge April 6, 2021

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