

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**CANDY ZIOLKOWSKI,**

**Appellant-Respondent,**

**v.**

**HEARTLAND REGIONAL MEDICAL CENTER,**

**Respondent-Appellant,**

**DIANE MUNFORD and MEDICAL STAFFING NETWORK, INC.,**

**Respondent-Appellant.**

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DOCKET NUMBER WD70708 Consolidated with WD70745 and WD70766

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**Date: August 10, 2010**

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Appeal from:

Buchanan County Circuit Court

The Honorable Randall R. Jackson, Judge

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Appellate Judges:

Division One: Lisa White Hardwick, Presiding Judge, James M. Smart, Jr. and Alok Ahuja, Judges

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Attorneys:

Sophie Woodworth, Esq., Thomas F. Ralston, Esq., Anne Schiavone, Esq., and Richard H. Ralston, Esq., Kansas City, MO, for appellant.

Mariam A. Decker, Esq., Bruce Farmer, Esq., Columbia, MO and Sean T. McGrevey, Esq., Overland Park, KS, for respondent.

**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**COURT OF APPEALS -- WESTERN DISTRICT**

**CANDY ZIOLKOWSKI**

**Appellant-Respondent,**

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Buchanan County

Before Division One Judges: Lisa White Hardwick, Presiding Judge, James M. Smart, Jr. and Alok Ahuja, Judges

Candi Ziolkowski, the plaintiff below, is HIV infected. On the afternoon of May 28, 2006, she severely injured her right arm, and sought medical treatment at Heartland Regional Medical Center. Ziolkowski underwent surgery to treat her injury, and was transferred in the early morning of May 29 to an inpatient room on the hospital floor.

Defendant Diana Munford, R.N., was Ziolkowski's nurse after her arrival on the floor. Ziolkowski alleges that Nurse Munford disclosed her HIV-positive status to visitors in her hospital room, in violation of § 191.656, RSMo.

The case was tried to a jury. The jury returned a verdict which found in favor of Nurse Munford on Ziolkowski's claim against her. Because of this finding, the jury did not answer questions on the verdict form asking whether Munford was liable for punitive damages, or whether Heartland was responsible for Munford's conduct. The circuit court entered judgment for all defendants in accordance with the jury's verdict.

Ziolkowski appeals, arguing that two of the trial court's evidentiary rulings were erroneous and justify a new trial, alone or together.

**AFFIRMED.**

### **Division One holds:**

The first evidentiary ruling Ziolkowski challenges is the trial court's exclusion of the testimony of nurse Kimberley Barron, who became the Patient Advocate for Heartland on June 7, 2006, and spoke with Ziolkowski shortly thereafter concerning her complaints regarding the disclosure of her HIV status.

Ziolkowski argues that Barron's testimony would be relevant both to the question of whether Nurse Munford in fact made inappropriate disclosures of Ziolkowski's HIV-positive status, and to whether Heartland should be held liable for punitive damages. As to Munford's underlying liability, Ziolkowski asserts that Barron's testimony would establish that the nurses at Heartland had a lax attitude towards the disclosure of confidential patient information (thus making Ziolkowski's claims more plausible), and that Heartland engaged in a "cover-up" in response to Ziolkowski's allegations (indicating its awareness that inappropriate disclosures had in fact occurred). Ziolkowski failed to argue either of these grounds for admissibility to the trial court, however. As the proponent of Barron's testimony, Ziolkowski had the obligation of identifying to the trial court the grounds on which Barron's testimony was admissible, and she is limited on appeal to the grounds she asserted below. We therefore refuse to consider Ziolkowski's current arguments that Barron's testimony was relevant to whether inappropriate disclosures in fact occurred.

As to purported relevance to punitive damages, the jury did not address the defendants' liability for punitive damages, because it found in Munford's favor on Ziolkowski's underlying claim. Ziolkowski cannot establish reversible error by contending that Barron's testimony was relevant to an issue the jury never reached.

Ziolkowski also challenges the trial court's ruling allowing the defendants to cross-examine and impeach her based on the record of later medical treatment she received, in which she reported the cause of her May 28 arm injury in a manner inconsistent with her deposition and trial testimony. Despite Ziolkowski's contention that the cause of her May 28 injury was immaterial, the recent decision in *Mitchell v. Kardesch*, No. SC90370, 2010 WL 2513791 (Mo. banc June 15, 2010), holds that prior inconsistent statements are material if they affect a witness' credibility. Here, that was plainly the case. Moreover, given that a litigant's credibility is always in issue, there was no need that she have "opened the door" on the specific subject matter of the inconsistent statement during direct examination. Finally, because the record does not provide any basis to disagree with the trial court's ruling, we reject Ziolkowski's claim that she did not stipulate to the evidentiary foundation of the records of the later medical treatment.

Ziolkowski argues, finally, that the cumulative effect of the erroneous rulings she challenges justifies a new trial. We cannot find cumulative error sufficient to warrant reversal where (1) the challenged evidentiary rulings were not erroneous; (2) the challenged rulings could not have prejudiced Ziolkowski, and/or (3) Ziolkowski failed to preserve her objections to those rulings by contemporaneous objections at trial.

**Opinion by: Alok Ahuja, Judge**

August 10, 2010

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