

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

BETTY J. RUPARD, ET AL.,

Appellants

v.

GEORGE PRICA, JR., M.D., ET AL.,

Respondents

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DOCKET NUMBER WD75687

DATE: August 13, 2013

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Appeal From:

Circuit Court of Boone County, MO  
The Honorable Dennis Allen Rolf, Judge

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Appellate Judges:

Division Two  
Thomas H. Newton, P.J., Karen King Mitchell, and Gary D. Witt, JJ.

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Attorneys:

Aaron Smith, Columbia, MO

Counsel for Appellants

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Attorneys:

John Roark, Columbia, MO  
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Counsel for Respondents  
Co-Counsel for Respondents

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

BETTY J. RUPARD, ET AL, Appellants, v.  
GEORGE PRICA, JR., M.D., ET AL., Respondents

**WD75687**

**Boone County**

Before Division Two Judges: Thomas H. Newton, P.J., Karen King Mitchell and Gary D. Witt, JJ.

The Rupards filed suit against Dr. George Prica, Jr., and Columbia Family Medical Group (Defendants) on the Rupards' claim for medical negligence following the death of Mr. John Rupard. A jury trial was held. During voir dire, several jurors were stricken for cause, and both parties made preemptive strikes, but the Rupards did not move to strike Juror 40. At the close of voir dire, both parties stated they had no objection to the panel. The jury was sworn. However, prior to opening arguments, the Rupards moved to strike Juror 40 based on information from the internet that they argued indicated Juror 40 was biased. The trial court denied the motion. The jury found in Defendants' favor, and judgment was entered in accord with the jury verdict. The Rupards appeal.

**AFFIRMED.**

**Division Two holds:**

On appeal, the Rupards argue that the trial court erred by failing to strike Juror 40 for cause based on information from Juror 40's alleged Facebook page and "Accurint" report. They contend the documents suggest that Juror 40 had bias she intentionally failed to disclose during voir dire. Defendants assert that the Rupards did not preserve their claim. Assuming *arguendo* that the Rupards preserved their claim, we find no reversible error.

The trial court ruled that the motion was not timely and found that the Rupards had not presented anything showing that Juror 40 could not be fair and impartial. We agree with the Rupards that the trial court improperly found the Rupards' motion untimely, despite the panel having been sworn. In *Khoury v. ConAgra Foods, Inc.*, we specifically addressed this issue and found that neither case law nor Supreme Court rules on juror nondisclosure "require that *any and all* research—Internet based or otherwise—into a juror's alleged material nondisclosure must be performed and brought to the attention of the trial court *before* the jury is empanelled." 368 S.W.3d 189, 202 (Mo. App. W.D. 2012). We stated that when "there is evidence fairly suggesting intentional nondisclosure to a voir dire question, litigants have a right to bring such alleged nondisclosure to the trial court's attention," despite the jury having been sworn. *Id.*

Here, although the trial court found the motion untimely, the Rupards were not denied their right to bring the matter to the trial court's attention. The record reflects that the trial court considered their motion, that it reviewed their materials without admitting them into evidence, that arguments were made, and that the trial court found the claim unsubstantiated. We see no abuse of discretion in its denial of their claim. While the Rupards contend the trial court erred in refusing to strike Juror 40 based on these materials, they failed to provide these materials for our

review. We assume that matters omitted supported the trial court's decision, and if there is no evidence in the record establishing the appellant's claim, we do not find error. Nothing in the record other than argument supports the Rupards' claim.

The Rupards further argue that the trial court erred because it should have *sua sponte* decided to subject Juror 40 to its own independent examination after their motion. On these facts, we do not agree. The arguments against Juror 40 were tenuous at best, and to accomplish affirmative action, it is incumbent upon the plaintiffs to make known what action they desire the court to take. Counsel did not offer proof as to the foundation of the materials it wished to use to support its claim, did not question the juror, did not request the trial court question the juror, and did not offer proof as to an examination the trial court should have conducted. To now assert on appeal that reversal is required because the trial court erred by not questioning the juror itself asks us to condone sandbagging, which we will not do.

**Opinion by: Thomas H. Newton, Judge**

August 13, 2013

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