

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

KRISTINE SMOTHERMAN,

Appellant,

v.

CASS REGIONAL MEDICAL CENTER,

Respondent.

DOCKET NUMBER WD78111

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 10, 2015

APPEAL FROM

The Circuit Court of Cass County, Missouri
The Honorable William B. Collins, Judge

JUDGES

Division Three: Ellis, P.J., and Mitchell and Witt, JJ.

CONCURRING.

ATTORNEYS

Mark E. Parrish and Joshua A. Sanders, Independence, MO
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Attorneys for Appellant,

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Attorneys for Respondent.



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

KRISTINE SMOTHERMAN,)
)
) **Appellant,**)
v.) **OPINION FILED:**
) **November 10, 2015**
CASS REGIONAL MEDICAL CENTER,)
)
) **Respondent.**)

WD78111

Cass County

Before Division Three Judges: Joseph M. Ellis, Presiding Judge, and Karen King Mitchell and Gary D. Witt, Judges

Kristine Smotherman appeals a verdict in favor of Defendant, Cass Regional Medical Center. Smotherman alleged that she slipped and fell on soap while on the Medical Center's property and was injured due to the Medical Center's negligence. Smotherman argues that the trial court should have granted a new trial due to juror misconduct because a juror researched the weather on the day of the accident and determined that the forecast was for substantial snowfall, and that such extraneous information caused prejudice.

REVERSED AND REMANDED.

Division Three holds:

1. Generally, a verdict may not impeach by violating the sanctity of the jury room, meaning that jurors are not allowed to testify as to partiality or misconduct that occurred during deliberations, or motives that induced or operated to produce the verdict.
2. There are two exceptions to the general rule against jurors impeaching their verdict—jurors can testify about: (1) ethnic or religious bias or prejudice expressed during deliberations; or (2) that a juror independently gathered evidence outside the courtroom. The second exception applies here.

3. It is misconduct for a juror to engage in extraneous research of facts relevant to the trial. If a party is prejudiced by juror misconduct, he or she is entitled to a new trial.
4. Once it is established that a juror has gathered extraneous evidence, prejudice will ordinarily be presumed, entitling the movant to a new trial. The burden is on the respondent in such a case to overcome the presumption of prejudice.
5. In determining whether prejudice resulted from a juror obtaining extraneous evidence, the most important factor is the materiality of the evidence. Immaterial evidence is not prejudicial.
6. Here, the extraneous evidence was material. The issue at trial was whether Smotherman slipped in the bathroom, and, if so, whether she slipped on soap. The extraneous evidence offers another plausible explanation for her fall that, if believed, could have relieved the Medical Center of liability as the case was instructed.
7. That the extrinsic evidence was communicated by a single comment communicated to some but not all jurors does not overcome the presumption of prejudice.
8. The remaining jurors' statements that they were not affected by the extraneous evidence does not overcome the presumption of prejudice. The presumption is quite strong, and the statements of the jurors minimizing the effect of the misconduct are entitled to very little weight because of the common tendency of jurors to minimize the effect of misconduct. A juror may have no awareness of the unconscious influence of the extrinsic evidence.

Opinion by: Karen King Mitchell, Judge

November 10, 2015

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