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SIXTH DIVISION  
February 2, 2018

No. 1-16-2740  
2018 IL App (1st) 162740-U

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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LA DONNA MUNDEN, Independent	)	
Administrator of the Estate of JON MUNDEN,	)	
Deceased,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
VIJAY H. VOHRA, M.D.,	)	No. 10 L 10241
	)	
Defendant-Appellee,	)	
	)	
LANCE YAPOR, M.D.; CONTINENTAL	)	Honorable
ANESTHESIA, LTD., a corporation; MADISON	)	Donald J. Suriano,
SAMPLE, M.D.; and JASON MOORE, C.R.N.A.,	)	Judge Presiding.
	)	
Defendants.	)	
	)	

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JUSTICE CONNORS delivered the judgment of the court.  
Justices Cunningham and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in barring evidence that defendant failed his board certification examination for internal medicine where plaintiff introduced evidence that he was not board certified; the trial court did not abuse its discretion in allowing “cumulative” evidence that defendant read the EKG correctly; plaintiff was not denied a fair trial by defense counsel’s comments during closing argument; and plaintiff was not prejudiced or denied a fair trial by the cumulative effect of trial court errors and defendant misconduct.

¶ 2 This appeal stems from a wrongful death case brought by plaintiff LaDonna Munden, the independent administrator of the estate of her husband, Jon Munden (Munden), who died shortly after surgery that was performed at Resurrection Hospital in Chicago. Plaintiff sued several defendants including Dr. Vijay H. Vohra. Following a jury trial, one of the doctors, Wesley Y. Yapor, M.D., was found liable, but the remaining defendants were found not liable. Plaintiff now appeals the finding of no liability as to defendant Dr. Vohra.

¶ 3 BACKGROUND

¶ 4 On November 24, 2008, Munden died after surgery involving an anterior discectomy. Plaintiff filed suit against: Dr. Yapor for failing to order a full cardiac work-up, including a consultation with a primary care physician and/or a cardiologist before surgery; Dr. Vohra for allegedly failing to identify and report T-wave inversions in multiple leads on an EKG that was taken on November 21, 2008; and Dr. Madison Sample and CRNA Jason Moore for failing to cancel surgery to allow for a full cardiac work-up, failing to do an adequate pre-operative airway exam, failing to place an arterial line before surgery so that blood pressure could be adequately monitored, failing to utilize minimum narcotics during the anesthetic, and failing to admit Munden to the intensive care unit after surgery. At the close of trial, judgment was entered in favor of plaintiff against Dr. Yapor, but against plaintiff in favor of the other defendants, including Dr. Vohra. We only address those facts relevant to Dr. Vohra and his role in reading the electrocardiogram (EKG), as he is the only defendant in this appeal.

¶ 5 Prior to trial, defense counsel filed a motion *in limine* to bar any evidence regarding Dr. Vohra's board certification. Defense counsel noted that Dr. Vohra "is not board certified in either internal medicine or cardiology." Plaintiff's counsel argued that it was relevant because "Dr. Vohra took his internal medical boards, flunked them, and ---." The trial court stated, "I don't

think that's admissible. But it's admissible that he's not board certified." The trial court stated, "I don't think that's admissible that he flunked the boards." The trial court went on to state, "I will allow evidence that he was not board certified, but no further discussion about it that the reason why he's not board certified is that he flunked the board."

¶ 6 During trial, when Dr. Vohra was testifying on his own behalf, defense counsel asked him, "Do you believe that when you read this EKG, you read it carefully?" To which Dr. Vohra responded, "Yes." Defense counsel then asked, "Do you believe you read it correctly?" To which Dr. Vohra responded, "Yes." Thereafter, plaintiff's counsel requested a sidebar. During the sidebar, plaintiff's counsel stated that he believed defense counsel "has just allowed us to go into the board certification" by asking Dr. Vohra if "he read that correctly. That is the same as standard of care testimony even though it is not the same words. That is an opinion of an expert, that he read it correctly." The trial court denied plaintiff's request for a limiting instruction.

¶ 7 Plaintiff had previously called Dr. Vohra as an adverse witness, during which the following colloquy took place between plaintiff's counsel and Dr. Vohra:

"Q. Doctor, is it true that you are not board certified in internal medicine?"

A. That's true.

Q. Is it true that you are not board certified in cardiology?

A. That's true.

Q. Is it true that in order to be board certified in internal medicine, there is a test to pass?

A. Yes.

\* \* \*

Q. Do you need to be board certified to be a member of the American College of Cardiology?

A. To my understanding, yes.

Q. Okay. You are not member of the American College of Cardiology; is that true?

A. Yes.”

¶ 8 Plaintiff’s expert witness, Dr. Shadoff, testified that Dr. Vohra was negligent for failing to identify and report T-wave inversions in multiple leads on the EKG and failing to suggest the T-wave inversions were indicative of cardiac ischemia.

¶ 9 Dr. Fintel, an expert witness for Dr. Yapor, testified at trial that in his opinion, Dr. Vohra had acted properly in leaving the T-waves unreported.

¶ 10 Before defendant’s expert witness, Dr. Alexander, was to testify, plaintiff filed an amended motion *in limine* seeking to bar Dr. Alexander from testifying as to the correctness of defendant’s EKG reading as it would be cumulative evidence since the jury had already heard such testimony from both defendant and Dr. Fintel. The trial court denied the motion.

¶ 11 Dr. Alexander then testified that Dr. Vohra accurately interpreted the EKG, and that he believed Dr. Vohra made it clear that Munden had prior myocardial infarction shown on the EKG. Dr. Alexander disagreed with Dr. Shadoff’s criticisms of Dr. Vohra’s reading of the EKG.

¶ 12 At the close of evidence, the jury found that Dr. Vohra was not negligent in reading the EKG. Plaintiff filed a posttrial motion with respect to Dr. Vohra only, arguing that she should have been allowed to introduce evidence of Dr. Vohra’s failure to pass his board examinations in internal medicine, and that the trial court had abused its discretion in allowing three experts to

testify as to the propriety of Dr. Vohra's conduct. Plaintiff's posttrial motion was denied, and plaintiff now appeals.

¶ 13

¶ 14

#### ANALYSIS

¶ 15 On appeal, Munden contends that that: (1) the trial court abused its discretion in excluding evidence that Dr. Vohra failed to pass his board examinations for internal medicine; (2) the trial court abused its discretion in denying plaintiff's amended motion *in limine* resulting in cumulative evidence for the defense; (3) plaintiff was denied a fair trial by defense counsel's improper closing argument; (4) plaintiff was substantially prejudiced by the trial court's misapprehension of the law and Dr. Vohra's pattern of misconduct; and (5) plaintiff was denied a fair trial by the misapprehension of the law and Dr. Vohra's pattern of misconduct.

¶ 16

#### Motion *in Limine*: Board Examinations

¶ 17 The first issue on appeal is whether the trial court abused its discretion in excluding evidence of Dr. Vohra's failure to pass the board examinations for internal medicine.

¶ 18 Our standard of review of a trial court's decision to grant or deny a motion *in limine* is the abuse of discretion standard. *Schmitz v. Binette*, 368 Ill. App. 3d 447, 452 (2006). "A trial court abuses its discretion only if it 'act[s] arbitrarily without the employment of conscientious judgment, exceed[s] the bounds of reason and ignore[s] recognized principles of law \* \* \* or if no reasonable person would take the position adopted by the court.'" *Schmitz*, 368 Ill. App. 3d at 452 (quoting *Popko v. Continental Casualty Co.*, 355 Ill. App. 3d 257, 266 (2005)). The trial court is also vested with the discretion to determine the relevance and admissibility of evidence, including expert testimony. *Simich v. Edgewater Beach Apartments Corp.*, 368 Ill. App. 3d 394, 411 (2006). A trial court's determination as to whether a person is qualified to testify as an

expert witness will not be disturbed absent an abuse of that discretion. *Gill v. Foster*, 157 Ill. 2d 304, 317 (1993). In determining whether there has been an abuse of discretion, this court does not substitute its judgment for that of the trial court, or even determine whether the trial court exercised its discretion wisely. *DiCosola v. Bowman*, 342 Ill. App. 3d 530, 536 (2003).

¶ 19 In the case at bar, the trial court, during the hearing on motions *in limine*, allowed evidence regarding whether Dr. Vohra was board certified, but excluded from evidence that he failed his internal medicine board examinations. The testimony that plaintiff takes issue with occurred during the following exchange between defense counsel and Dr. Vohra during direct examination of defendant at trial:

“Q. One last question. Do you believe that when you read this EKG, you read it carefully?

A. Yes.

Q. Do you believe you read it correctly?

A. Yes.”

¶ 20 Plaintiff contends that Dr. Vohra was improperly testifying as an expert regarding the standard of care, which opened the door for plaintiff to inquire whether he had failed the internal medicine boards. In support of this proposition, plaintiff relies on *Rockwood v. Singh*, 258 Ill. App. 3d 555, 557 (1993). In *Rockwood*, the court stated, “Generally, when a physician sued for malpractice testifies as an expert, evidence as to his age, practice, and like matters relating to his qualifications as an expert is admissible.” *Id.* The court then stated, without relying on any case law, “In such cases, the failure to pass board certification examinations is relevant and admissible.” *Id.* The court in *Rockwood* found that the defendant did not provide the jury information such as routine procedures in the operating room and opinions as to a reasonable

degree of medical certainty as to the plaintiff's condition and subsequent injuries. *Id.* Because the defendant's testimony was not used to show the standards of medical care associated with such surgery, but rather was used to relate to the jury what occurred before, during, and after the surgery, "the circuit court correctly barred reference to defendant's board certification status." *Id.*

¶ 21 Contrarily, in the case before us, reference to Dr. Vohra's board certification status was not barred. In fact, the trial court specifically found that whether he was board certified was relevant and admissible. The only evidence barred was any reference to the fact that Dr. Vohra failed his board examinations for internal medicine. We believe the case of *McCray v. Shams*, 224 Ill. App. 3d 999 (1992), is applicable to this case. In *McCray*, the court found that the failure to inform the jury that Dr. Shams did not pass the board certification examination for internal medicine was proper where the jury was in fact informed that Dr. Shams was not board certified. *Id.* at 1004. According to the plaintiff's expert, the standard of care was the same for board-certified physicians as for nonboard-certified physicians, so "the lack of certification in this cause was not a material issue." *Id.* The court further stated that "the material issue is whether Dr. Shams was board certified, the actual reason for why he was not so certified is of limited significance," thus "the trial court did not err in granting defendant's motion *in limine*." *Id.* Similarly, in *O'Brien v. Meyers*, 196 Ill. App. 3d 457, 462-64 (1989), the court stated:

"Matters going to schooling and licensing are in a different category, we believe, because of their attenuate relevance to the medical opinion in issue. Also, there is a practical consideration of where to draw the line. Should juries be allowed to consider the school rank of a witness, or the fact that he or she failed a course? Few would argue that the answer to that question should be no. \*\*\*Accordingly, we find that, on the facts before us, Defendants should not have been allowed to

inform the jury of her history of failing the Illinois exam. What scant probative value this information had was outweighed by its prejudicial impact.”

¶ 22 We agree with the analysis in *McCray* and *O’Brien*, and similarly find that because the jury in this case was informed that Dr. Vohra was not board certified, the reason for the lack of certification was of limited significance, and the trial court did not abuse its discretion in barring such evidence. Moreover, we note that plaintiff’s counsel elicited from Dr. Vohra on cross-examination that not only was he not board certified, but also that certification in internal medicine requires passing a test, and that Dr. Vohra did not have a membership in the American College of Cardiology.

¶ 23 Cumulative Evidence

¶ 24 Plaintiff’s next argument on appeal is that she was denied a fair trial by the trial court’s denial of her amended motion *in limine* to limit the cumulative evidence of the correctness of Dr. Vohra’s conduct in reading the EKG. Plaintiff filed an amended motion *in limine* after defendant had testified, seeking to bar the testimony of Dr. Alexander, Dr. Vohra’s expert, because the jury had already heard testimony from Dr. Vohra and Dr. Fintel, who both testified that Dr. Vohra had read the EKG “correctly” and “carefully.”

¶ 25 As noted above, a trial court’s decision whether to grant or deny a motion *in limine* will only be reversed if there was an abuse of discretion. *Schmitz*, 368 Ill. App. 3d at 452. When multiple defendants are named in a case, like the case at bar, each defendant is entitled to present an expert in defense of the case. *Tsoukas v. Lapid*, 315 Ill. App. 3d 372, 383 (2000).

¶ 26 Here, Dr. Fintel, an expert witness of one of Dr. Vohra’s co-defendants, testified regarding the EKG, the T-waves, the significance of the T-waves, and the propriety of leaving them unreported. Plaintiff contends that this was exactly what Dr. Vohra’s expert, Dr. Alexander,



was to testify to, and as such, the trial court should have granted her motion *in limine* to bar the cumulative testimony. However, while the trial court has the discretion to bar an expert from testifying if the expert's testimony would be cumulative, plaintiff has not pointed to any authority in Illinois finding an abuse of discretion for failing to bar potentially cumulative testimony of an expert witness. Moreover, defendant is entitled to put on his own defense, and to acquire expert witnesses to testify on his behalf. The fact that a codefendant's expert witness testified in Dr. Vohra's favor should not deprive him of that opportunity. See *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 36 (trial court did not abuse its discretion in allowing defendant doctor to testify on his own behalf, and in allowing two rheumatologists to provide expert testimony, because "different defendants called these experts as witnesses.")

¶ 27

#### Closing Argument

¶ 28 Plaintiff further contends that she was denied a fair trial by defense counsel's inappropriate closing argument. Specifically, plaintiff takes issue with the following statement from defense counsel: "[H]ow many doctors have been in this courtroom telling you that this EKG was read properly." Plaintiff also points to defense counsel's statement that "nobody else agreed with [Dr. Shadoff]", plaintiff's expert. Plaintiff relies on *Maffett v. Bliss*, 329 Ill. App. 3d 562, 576 (2002), for the proposition that errors can be exacerbated and rendered more prejudicial when they are highlighted in closing arguments. However, in *Maffett*, the court found that the trial court's erroneous admission of evidence prejudiced the plaintiffs and denied them a fair trial, and therefore defense counsel's comments during closing arguments on that lack of evidence, "simply heightened that prejudice." See *Maffett*, 329 Ill. App. 3d at 576.

¶ 29 Here, however, the trial court did not erroneously allow or bar any evidence, and thus any comments made by defense counsel that were based on the evidence presented at trial, were not

prejudicial. Defense counsel merely repeated the fact that defendant, as well as two other doctors, testified that Dr. Vohra read the EKG carefully, and that only one doctor, plaintiff's expert, testified that he had not. This did not deprive plaintiff of a fair trial. Plaintiff's reliance on *Lange v. Freund*, 367 Ill. App. 3d 641, 648 (2006), does not persuade us otherwise. In *Lange*, the trial court informed the jury that the number of witnesses was not to be considered conclusive. The appellate court found that in light of the repeated suggestion by the plaintiffs' counsel during closing argument that the number of witnesses testifying in favor of the plaintiffs should decide the case in their favor, it could not find that the trial court misled the jury or prejudiced the plaintiffs with its statement to the jury. *Id.* Here, the trial court did not make any such statement to the jury, and therefore the issue is unlike that of *Lange*. Plaintiff does not cite any cases that hold it is reversible error to highlight the number of witnesses that testified for or against a party in closing argument. Accordingly, we find that defense counsel's closing argument did not deny plaintiff a fair trial.

¶ 30 Because we find that the trial court did not err, and that defendant and his counsel did not commit misconduct, we need not address plaintiff's final two arguments that the cumulative effect of such errors and misconduct prejudiced plaintiff and denied her a fair trial.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 33 Affirmed.