The buyers' depositions show that none of the above requirements were met. On the contrary, one of the buyers, Mr. Armstrong, testified that the only thing he asked about the water system was where the well was actually located and the only thing the agents' representative said concerning the well was that it was located somewhere around the kitchen window. He assumed from what he observed on the property, not from anything said, that the well would be adequate for his needs.

One of the buyers, Mrs. Armstrong, testified that all the agents' representative said about the well was that there was a drilled well, approximately a hundred plus feet, and she pointed out its location. Neither of the buyers mentioned anything about a "perk test" or any misrepresentations made by the agents. Their deposition testimony meets none of the elements of misrepresentation listed in *Glanski* and *Shane.* What buyers seem to be claiming is an implied contract that agents know or have reason to know of the condition of the property and a duty to communicate such knowledge to the buyers. There is no such duty. *Henry v. Babecki,* 65 D. & C.2d 4, 15 (Phil. Cty. 1974).

For purposes of summary judgment, we will assume that the well was shallow and had a propensity for going dry and that Simpson Associates knew of this condition. Even if we assumed the well was shallow, had a propensity for going dry and that agents knew it, the agents had no duty to disclose this knowledge to the plaintiffs. The agents would be under a duty to disclose this condition only if were latent and could prove dangerous "to life, limb or to the general health or safety of the purchaser and his family." *Shane v. Hoffman,* supra at 185, 537-38; *Quashnock v. Frost,* 299 Pa. Super. 9, 19, 445 A.2d 121, 128 (1982).

While we certainly recognize that home buyers like the Armstrongs may be dissatisfied with their purchase because the house is imperfect, we can find no reason why the agents would be liable to them. There is no suggestion why a shallow well or one with a propensity for going dry would prove dangerous to plaintiffs' health or safety. In the absence of any evidence or implication that the condition of the well was a latent, dangerous condition there is no duty to disclose by the agent. *Gozen v. Henderson-Dewey & Associates, Inc.,* 312 Pa. Super. 242, 245, 458 A.2d 605, 607 (1983).

The only evidence before us, plaintiffs' deposition testimony, shows that no misrepresentations were made to the buyers by the agents. In the absence of any affidavits or depositions presented by the buyers, we have no choice but to find that there is no genuine issue of material fact and grant the agents' motion for summary judgment.

ORDER OF COURT

November 29, 1985, defendant Simpson Associates' motion for summary judgment is granted.

PETERS v. RECTOR, ETAL. C.P. Franklin County Branch, No. A.D. 1983 - 262

Medical Malpractice - Voir Dire Exam

1. Voir dire is limited to ascertaining whether or not a juror has formed a fixed opinion.

2. Voir dire examination is not intended to provide a better basis on which to exercise peremptory challenges.

3. Neither party may inquire of a prospective juror his present impressions or opinions.

Terry S. Hyman, Esquire, Counsel for Plaintiff
S. Walter Foulkrod, III, Esquire, Counsel for Defendant, Stader
Christopher W. Matson, Esquire, Counsel for Defendant, Rector.

OPINION AND ORDER

KELLER, J., December 17, 1985:

This medical malpractice action arose out of the alleged negligent treatment of a fracture of the right distal femur of the plaintiff which was treated initially by one of the defendants and subsequently by the other. A jury was selected on March 12, 1985. The plaintiff's contention, that voir dire of prospective jurors was improperly restricted, was preserved for review by timely objections made prior to voir dire and immediately following voir dire at side bar conference. The case proceeded to trial on March 18, 1985. On March 21, 1985, a twelve member jury returned a unanimous verdict in favor of the defendants. Plaintiff's motion for new trial was timely filed. Counsel for the plaintiff and the defendants submitted briefs and presented oral arguments at the October Argument Court. The matter is ripe for disposition.

The plaintiff asserts that she was not assured a fair and impartial jury because the scope of voir dire was unduly limited. Specifically, the plaintiff complains that the court erred in not allowing her to ask any juror, who responded that he or a member of his immediate family had been treated by Dr. Rector, the following questions:

5. (a) The identity of the person who was treated by the defendant.
   (b) How long were they treated?
   (c) For what condition?
   (d) Would anything about your experience with defendant Rector cause you to require more evidence to bring back a verdict against him, than you would require against a doctor whom you did not know?

The single goal in permitting the questioning of prospective jurors is to provide the accused with a competent, fair, impartial and unprejudiced jury. *Starr v. Allegheny General Hospital,* 305 Pa. 214, 451 A.2d 499 (1982).

> The law recognizes that it would be unrealistic to expect jurors to be free from all prejudices, a failing common to all human beings. We can only attempt to have them put aside those prejudices in the performance of their duty, the determination of guilt or innocence. We do not expect a tabula rose but merely a mind sufficiently conscious of its sworn responsibility and willing to attempt to reach a decision based solely on the facts presented, assiduously avoiding the influence of irrelevant factors. *Commonwealth v. England,* 474 Pa. 1, 375 A.2d 1292 (1977) quoting *Commonwealth v. Johnson,* 452 Pa. 130, 136, 305 A.2d 5, 8 (1973).

The transcript demonstrates that the prospective jurors understood the necessity of fairness:

> Ms. Swarthout: Joan Swarthout. I did receive treatment from Dr. Rector, but I could be fair.
>
> THE COURT: The next lady.
>
> Mrs. Strang: Barbara Strang. I was treated by Dr. Rector, and I could be fair.
>
> Ms. Alleman: Ruth Alleman, for Dr. Rector; but I could be fair.
>
> THE COURT: The gentleman back here.
>
> Mr. Shearer: Thomas Shearer. I'll be fair.
>
> THE COURT: The lady over here.
>
> Ms. Peckman: Barbara Peckman. My father was treated, but I would be fair.
>
> (N.T. pp. 16-17

The identity of the persons treated by Dr. Rector was disclosed throughout the voir dire examination. The Court further inquired whether any prospective juror or member of his immediate family had ever had surgery or been placed in traction for a leg fracture. Receiving an affirmative reply, we inquired:

> If you were called to serve upon this jury, do you feel that notwithstanding the fact that your son had a fracture of his ankle that you could still well and truly try the case and render your verdict based solely upon the evidence presented, the arguments of counsel, and the charge of the Court?

Ms. Plummer: I believe I could, sir.

THE COURT: Yes, ma'am.

Ms. McCleary: Margaret McCleary. I had hip surgery.

THE COURT: What would your answer to the question be?

Ms. McCleary: I could be fair.

THE COURT: Thank you. Anybody else? . . .

Mr. Baer: William Baer. I've had a hip fracture.

THE COURT: What would your answer to the question be, sir?

Mr. Baer: I'm not sure. Probably could not be.

Mr. Baer was excused. (N.T. pp. 19-20)

Much of the information that the plaintiff requested was elicited; all of the information necessary to assure an impartial jury was extracted by the extensive voir dire.

Voir dire is limited to ascertaining whether or not a juror has formed a fixed opinion. *Commonwealth v. Englund,* 474 Pa. 1, 375 A.2d 1292 (1977). The plaintiff's questions 5 (a) and (d) would not necessarily elicit responses relevant to whether or not the prospective juror had formed a fixed opinion.

Plaintiff complains that,

"Equally important, denial of Plaintiff's proposed voir dire questions deprived plaintiff of the information necessary for her to intelligently exercise her peremptory challenges."

Voir dire examination is not intended to provide a better basis on which to exercise peremptory challenges.[1] *Bohner v. Stine,* 316 Pa. Super. 426, 463 A.2d 438 (1983); *Commonwealth v. Englund,*

[1]The case which the plaintiff cites as being contrary to this position is a criminal case grappling with the insidiousness of racial prejudice: *Commonwealth v. Christian,* 480 Pa. 131, 489 A.2d 545 (1978). It has little application to the case at bar.

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JOHNSON: First and final account, statement of proposed distribution and notice to the creditors of Thomas B. Steiger, Jr., Executor of the Estate of Mary S. Johnson, late of the Borough of Mercersburg, Franklin County, Pennsylvania, deceased.

LENSBOWER: First and final account, statement of proposed distribution and notice to the creditors of Darlene V. Sprow, Administratrix of Estate of George H. Lensbower, Jr., late of Marion, Franklin County, Pennsylvania, deceased.

RINGER: First and final account, statement of proposed distribution and notice to the creditors of Robert L. Ringer, Executors of the Estate of Millard A. Ringer, late of Waynesboro, Franklin County, Pennsylvania, deceased.

Robert J. Woods
Clerk Orphans' Court

1-9, 1-16, 1-23, 1-30

supra. The information which plaintiff sought in her questions would be useful only to form a basis for peremptory challenges. We are satisfied that under Pennsylvania law, there is no right to demand such information in a professional malpractice case and that the questions were properly denied by the court.

Similarly, the plaintiff complains that the court erred in refusing her question number six and its subordinate parts which stated:

> 6. Are any of you, or any members of your family personally acquainted with Defendant Rector or had any business or personal dealings with Defendant Rector?
>
> (a) Describe the nature of your or your family member's business or personal dealings with Defendant Rector.
>
> (b) How frequent are such dealings?
>
> (c) How long have you known the Defendant?
>
> (d) Would anything about your experience with Defendant Rector cause you to require more evidence to bring back a verdict against him than you would require against a doctor whom you did not know?

The questions will not reveal whether a prospective juror has formed a fixed opinion. Instead, these questions and anticipated responses are designed solely to aid the plaintiff in the exercise of her peremptory challenges. Such use is inappropriate. *Bohner v. Stine,* supra. The court inquired whether any member of the panel was related to the defendant by blood or marriage, whether any member worked for either defendant and finally, whether, having been introduced to the parties, any prospective jury knew of any reason that would prevent him from being fair and impartial. Question 6 and (a) through (d) were properly refused and the plaintiff was not denied the right to show bias or interest in the veniremen.

The plaintiff also complains that the Court erred in not permitting her to ask several questions relating to bias in connection with malpractice actions against physicians and hospitals.

The questions refused were:

12. Will the fact that the defendants practice medicine in the local area, lead you to require in the local area, lead you to require more evidence to bring back a verdict against Drs. Rector and Stader than you would require to bring back a verdict from outside this area?

19. Have any of you, or any of your immediate family received medical treatment for a life-threatening or serious medical problem? Was there anything about that experience which would cause you to feel personally indebted to the medical profession?

20. Is there anyone here who feels personally indebted to the medical profession for any other reason?

> Neither the commonwealth nor the defendant is entitled on the voir dire of the jury to inquire concerning what the jurors present impressions or opinions are. "The only question . . . is whether they have formed a fixed opinion." *Starr v. Allegheny General Hospital,* supra. quoting *Commonwealth v. McGrew,* 375 Pa. 518, 524, 100 A.2d 457, 470 (1953).

Question twelve alluding to different standards for local and non-local physicians invited confusion. None of the questions would necessarily draw responses signifying fixed opinions.

The plaintiff's underlying concern of possible bias relating to medical malpractice actions was properly addressed during voir dire examination by the Court. The Court inquired whether any prospective juror, or a member of his immediate family, is presently under the continuing care of a doctor. Receiving an affirmative response, the Court probed further:

> I now ask you this question, is there anything about the experiences that you have with members of your family which would prevent you from rendering a just and true verdict based solely on the evidence presented, the arguments of counsel and the charge of the Court? (N.T. p. 23).

The Court also inquired whether any of the prospective jurors or members of their immediate families had ever been employed as a doctor, nurse or hospital worker and whether any of them or their immediate families had ever filed a suit against a doctor or hospital for professional malpractice. The plaintiff's questions were properly denied. The questions asked by the Court adequately protected the plaintiff's right to a fair and impartial jury.

We feel it appropriate to observe that the plaintiff does not contend that the disallowance of her voir dire questions resulted in any prejudice or affected the ultimate verdict of the jury. After carefully reviewing the voir dire proceeding, we are satisfied that the plaintiff was not denied the opportunity to expose possible bias and that the voir dire examination assured the plaintiff a fair and impartial jury.

Parenthetically, we are constrained to observe that the list of jurors was available to plaintiff for an extended time so an investigation of all potential jurors could have been made. Apparently plaintiff sought to substitute the voir dire for a personal investigation.

ORDER OF COURT

NOW, this 17th day of December, 1985, the motion of Anne V. Peters, plaintiff, for a new trial is denied.

Exceptions are granted the plaintiff.

RADBILL V. CHAMBERSBURG HOSPITAL, C.P. FRANKLIN COUNTY BRANCH, A.D. 1985 - 186

Negligence - Duty - Good Samaritan

1. A claim of negligence cannot be predicated on facts in which the law does not impose a duty on the defendant.

2. Where plaintiff alleges defendant did not prescribe a home cardio-respirator monitor in response to a question at a health care class sponsored by defendant hospital, there is no privity between the plaintiff and defendant which might create a duty.