

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-001867-MR

BOBBIE LYNN ISON

APPELLANT

v.

APPEAL FROM BOYD CIRCUIT COURT  
HONORABLE MARC I. ROSEN, JUDGE  
ACTION NO. 00-CI-01027

ASHLAND HOSPITAL CORPORATION,  
D/B/A KING'S DAUGHTERS MEDICAL CENTER

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, BUCKINGHAM, AND HENRY, JUDGES.

BARBER, JUDGE: Appellant, Bobbie Lynn Ison (Ison), sued Appellee, Ashland Hospital Corporation, d/b/a King's Daughter's Medical Center (Ashland Hospital), claiming that she was dropped during transportation to the hospital. The Boyd Circuit Court found in favor of the Hospital after a jury trial. We affirm the jury determination and judgment.

Ison requests reversal of the jury verdict in her personal injury claim against the hospital. Ison asserts that the jury was deprived of necessary information upon which to

base its verdict due to an erroneous ruling regarding the admissibility of evidence. She claims that the jury ruled against her due to lack of that information. There is no reversible error in the trial court's ruling on the admissibility of evidence.

Ison was a long term patient at Kings Daughters Medical Center. On a visit to the hospital in November 1999, Ison was assisted by hospital personnel in the transferring from her car to a wheelchair in the hospital parking lot. Ison claims that she was dropped during the transfer and sustained serious physical injury. The record shows that Ison suffers from multiple sclerosis and has limited mobility. On each visit to Kings Daughters Medical Center the hospital provided transporters to remove Ison from her car, and to transfer her to a wheelchair as she was unable to move herself safely from car to wheelchair. During a visit on November 30, 1999, only one transporter was available to assist in the transfer. Ison contends that this individual was unable to safely transfer Ison from her car to the wheelchair. The transporter testified that she asked Ison to wait until a second transporter was available, but that Ison refused to wait. Ison contends that she was not given the option of waiting until two people were available to safely move her.

Due to the progression of her disease, Ison testified by deposition rather than in person at trial. Ison testified that she was too large (at 250 pounds), to be transferred from the car to a wheelchair by one person. She claims that she informed the transporter that additional personnel would be needed to safely make the transfer. Ison stated that the transporter insisted on attempting to move Ison by herself, and dropped her on the pavement. Ison testified that she struck her "hind end" forcibly on the pavement when she fell. She claims to have suffered immediate and severe pain in her lower back due to the fall. Her treating physician testified that he had to treat her for pain in her lower back and legs following the fall.

The transporter, Pat Jarrell, testified that she urged Ison to wait in the car until a second transporter arrived. Jarrell claims that Ison assured her that they did not need to wait for a second transporter, and that she would assist Jarrell in the transfer process. She claimed that Ison did not want to stay in the car any longer, and that she refused to wait for a second transporter to help with the transfer. Jarrell claimed that Ison lost her balance in the process, and slowly slid to the ground along Jarrell's leg. Jarrell testified that there was no sudden fall or impact. Ison's medical records reveal an immediate claim of pain by Ison after the fall, and show that

Ison requested extensive treatment for pain in her back and leg after the fall.

Ison provided discovery responses to Ashland Hospital showing that her treating physician, Dr. Deitch, attributed the deterioration of her condition to injuries incurred in the fall, rather than to her multiple sclerosis. Dr. Deitch's records were contained in extensive medical records, and were not specifically referenced by Ison as showing a causal link between the fall and the injury. The records do not show when Ison suffered the fracture. The MRI records showing the fracture were not discussed in Ison's medical records until 2002, several years after the fall at Kings Daughters. The medical records subsequent to the fall show that Ison's treating physician treated her for pain and trauma immediately following the injury and during the subsequent weeks, but do not show any specific injury resulting from the fall.

Ashland Hospital Corporation required an examination by its own expert witness. Due to Ison's condition, the hospital had to provide an ambulance to transport her from her home to the office of the hospital's expert witness. The hospital admits that it did not provide a complete copy of Ison's records to Dr. Graulich, its expert witness, for review. The hospital omitted records containing Dr. Deitch's notes regarding the compression fracture, or his opinion that the

fracture was causally related to the fall. Ashland Hospital contends that it did not know of these records, and that the records were too distant in time from the fall to show a causal link.

At trial Ashland Hospital filed a motion in limine asking the court to preclude the treating physician, Dr. Deitch, from testifying to the causal relationship between the fall and the spinal fracture. Ashland Hospital contended that it was surprised by Dr. Deitch's statement that the fall and the fracture were related. Ashland Hospital argued that it was compromised in its ability to cross-examine Dr. Deitch due to this "surprise" evidence. The court ruled that the doctor's testimony would be so limited. Ison contends that the trial court's ruling excluding this evidence was in error. Ison notes that the hospital was in possession of all relevant medical records at all times prior to trial, and it was the hospital's error in failing to properly review the records and prepare for trial.

Dr. Deitch's records of 08/09/02 state that Ison "has a history of a fall several years ago. MRI here was consistent with a T vertebral fracture." Earlier records contain notes regarding treatment of Ison's pain following the fall. Ashland Hospital propounded a discovery request to Ison asking whether she had been advised by any physician "that the acts and

failures to act by KDMC . . . failed to meet the standards of medical care. . . ." Ison responded to this request noting:

Subject to further discovery, Dr. S. Douglas Deitch has attributed the deterioration of Plaintiff's condition to her injuries sustained [in the fall].

Ison's discovery responses did not specifically reference the MRI findings of a cervical fracture. Ashland Hospital took an extensive discovery deposition of Dr. Deitch. The causal link between the fall and the spinal fracture was not discussed in that deposition.

Ashland Hospital notes that it took Dr. Deitch's deposition prior to the transcription of the August, 2002 medical records noting that Ison had sustained a cervical fracture. Ashland Hospital admits that the complete records were provided to it by Ison, but claims that it had no duty to be aware of the information contained "somewhere in the voluminous Joint Exhibits containing Ison's medical records. . . ."

The records showing the spinal fracture were shown to Dr. Graulich during his deposition by defense counsel. At that time Ashland Hospital became aware of the spinal fracture. Dr. Graulich testified that the records did not change his opinion that Ison's pain was caused by the multiple sclerosis and not by the fall. Ison claims that Ashland Hospital was aware of the

medical evidence showing a cervical spine fracture long before trial and that those records were relevant and admissible at trial. Ison asserts that Ashland Hospital had a duty to be familiar with the medical records contained in the Joint Exhibit filed by Ison and the hospital. Ison argues that Ashland Hospital was on notice of the fall, the resulting pain, and the fracture, and knew or should have known of Dr. Deitch's records regarding the link between the fall and resulting pain and the spinal fracture. She asserts that for this reason, the ruling on admissibility was in error.

Relevant medical records are clearly admissible. Baylis v. Lourdes Hospital, Inc., 805 S.W.2d 122, 123 (Ky. 1991). The purpose of pretrial discovery is to eliminate surprise, and to achieve a fair search for the truth. LaFleur v. Shoney's, Inc., 83 S.W.3d 474, 478 (Ky. 2002). Ashland contends that it was unfairly surprised by Dr. Deitch's proffered testimony. The court found that Ison had ample opportunity to make her claim of a causal link known to Ashland Hospital, and that she failed to do so. The court ruled that permitting such testimony at trial would be unfair to Ashland.

Ashland Hospital asserts that because Dr. Deitch was not listed as Ison's expert witness, he could not testify regarding his opinion as to the link between the cervical fracture and the fall. Ison did not list Dr. Deitch as an

expert witness who would testify at trial. Dr. Deitch was identified as her treating physician. In response to interrogatories requesting the identity of her expert witnesses, Ison responded that the identity of such witnesses was not yet known. Ison never provided an expert witness to show the claimed causal link between the fall and the fracture. Ison did not list Dr. Deitch as an expert witness prior to trial. Kentucky law holds that where a physician is not identified as an expert in discovery, he can only testify to facts learned and opinions formed during first hand observation of the patient. Charash v. Johnson, 43 S.W.3d 274, 280 (Ky.App. 2000). The court ruled that Dr. Deitch could not testify to the claimed causal link. No abuse of discretion has been shown by Ison.

The standard of review of a court's decision as to admissibility of evidence is whether the court abused its discretion in making the ruling. Goodyear Tire & Rubber Co. v. Thompson, 11 S.W.3d 575, 577 (Ky. 2000). An abuse of discretion is shown by proving that the court acted in a way that is unfair, arbitrary, unreasonable or unsupported by sound legal practice. Commonwealth v. English, 993 S.W.2d 941, 945 (Ky. 1999). Ison has failed to make such a showing. The court evaluated the evidence and the discovery responses filed by Ison, and determined that it would unfairly prejudice the hospital to permit unlimited testimony by Dr. Deitch. This

ruling was not an abuse of discretion. For this reason, the court's decision is upheld.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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