

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000135-MR

SHERI L. COMPTON

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE DOUGLAS M. STEPHENS, JUDGE
ACTION NO. 02-CI-02099

ST. ELIZABETH MEDICAL CENTER,
INC.

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND GUIDUGLI, JUDGES.

BUCKINGHAM, JUDGE: Sheri L. Compton appeals from a judgment of the Kenton Circuit Court entered in favor of St. Elizabeth Medical Center, Inc., following a jury trial on Compton's medical negligence claim. The issue on appeal is whether the trial court committed prejudicial error in allowing St. Elizabeth to use a PowerPoint presentation and a hospital bed as demonstrative evidence during the trial. Finding no prejudicial error, we affirm.

Compton was admitted into St. Elizabeth on February 10, 2002, after she had begun to go into labor prior to delivering her child. She underwent epidural anesthesia, and her legs were placed in calf supports attached to a birthing bed designed to facilitate deliveries. At one point in the delivery, Compton's calf missed the calf support and dropped, allegedly causing her to suffer a stretched sciatic nerve.

Compton filed a civil complaint against St. Elizabeth in the Kenton Circuit Court. A jury trial was held in December 2003, and the jury returned a verdict in favor of St. Elizabeth. Compton's appeal herein followed.

St. Elizabeth's attorney used a PowerPoint presentation during the trial. Compton's argument is that the trial court abused its discretion in allowing St. Elizabeth to use PowerPoint during the trial because her attorney did not receive a copy of the PowerPoint presentation pursuant to its discovery request concerning demonstrative exhibits. Compton specifically objects to the manner in which the PowerPoint presentation was used. She claims that it was used to show "bullet points" of arguments to the jury and was not used merely as an aid to show records or documents. In response, St. Elizabeth argues that "PowerPoint is nothing more than a high-tech blackboard."

"[A]buse of discretion is the proper standard of review of a trial court's evidentiary rulings." Goodyear Tire and Rubber Co. v. Thompson, 11 S.W.3d 575, 577 (Ky. 2000). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." Id. at 581.

The use of blackboards or other visual aids rests in the sound discretion of the trial court. See Meglemry v. Bruner, 344 S.W.2d 808, 809 (Ky. 1961), overruled in part by Nolan v. Spears, 432 S.W.2d 425 (Ky. 1968). We agree with St. Elizabeth that the use of PowerPoint is sometimes similar to the use of a blackboard in a trial. In this case Compton has not identified any PowerPoint slide that did not accurately depict an exhibit or that did not accurately summarize an argument made by St. Elizabeth based on the evidence. We find no abuse of discretion by the trial court in allowing St. Elizabeth to use PowerPoint as a visual aid for the jury's better understanding of the evidence and St. Elizabeth's arguments.

Also, St. Elizabeth brought a hospital bed similar to the one used by Compton during the delivery of her child into the courtroom. The bed was used during both the direct examination and the cross-examination of Robin Centner, a nurse who assisted with the delivery. The essence of Compton's argument concerning the use of the bed as a demonstrative

exhibit by St. Elizabeth is that Compton's attorney did not find out until four days before the trial that the bed would be used, that St. Elizabeth took the bed away so that her attorney did not have the opportunity to use it to question other expert witnesses, and that the color photos of the bed were never produced prior to trial for her attorney's use although they were requested during discovery.

Compton's attorney was advised in correspondence from St. Elizabeth's attorney over one year before the trial that a bed similar to the one used by Compton during her delivery would be available for inspection. Compton's attorney never inspected or photographed the bed, nor was a motion to compel discovery as to the bed or the photographs ever filed. The bed was listed in St. Elizabeth's trial brief, as well as in Compton's exhibit list, as an exhibit to be used at trial.

We conclude that Compton's attorney had adequate notice that the bed would be used at trial and that the court did not abuse its discretion in allowing St. Elizabeth to do so. Furthermore, we reject Compton's argument that the bed was not available for use by her attorney in the direct and cross-examination of other expert witnesses. The bed was apparently in the courthouse at all times during the trial, and there is no indication that Compton's attorney ever requested that it be brought back into the courtroom for later use.

We discern no error or abuse of discretion by the trial court in its ruling concerning St. Elizabeth's use of PowerPoint or the hospital bed. If there was any error, we deem it to be harmless because we fail to see how Compton was prejudiced.

The judgment of the Kenton Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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