

Flawed Vetting Of Jurors Warrants Med Mal Retrial, Court Says

Law360 (July 16, 2019, 10:35 PM EDT) -- A Pennsylvania appellate court said Tuesday that the widow of a man who died from a leg amputation should get a new trial because the lower court mistakenly allowed two jurors who admitted bias against medical malpractice plaintiffs.

The Superior Court ordered a new trial for Ann Smith, the widow of Dale Smith, because the trial judge ruled on whether to strike the jurors despite not being in court during jury selection.

"As the trial judge was not present to hear the juror[s'] tone of voice and see the juror[s'] demeanor, we cannot know whether the jurors truly could be fair and impartial," the court said.

The appellate court said that a state precedential decision in 2017 found that judges can't deny jury challenges without having personally seen and evaluated the juror face to face.

In her suit, Ann Smith said her husband received poor care from his doctor, Marc Cordero, who worked at University of Pittsburgh Medical Center.

The two jurors at issue were Juror 25, who believed that juries "award too much money in malpractice cases," and Juror 45, who "believe[d] in caps" on awards, according to the appeals court's recap of the case.

The trial judge did strike one juror in that same proceeding, Juror 37, who believed that there "should be a maximum on jury awards" because they allegedly dissuade doctors from practicing, and said that she had known OB/GYNs in her town who wouldn't deliver babies because of the malpractice risk.

Dale Smith suffered from leg wounds and ulcers, according to the court, and went to Cordero for help. Ann Smith says the wounds were arterial but that Cordero misdiagnosed them as venous. Because of this misdiagnosis, according to the plaintiff, Dale Smith's leg was amputated. It is unclear what year these events happened.

Ann Smith says the amputation "caused a series of events that ultimately resulted" in her husband's death, the appeals court's recap said. Further details were not immediately available.

Representatives for the parties were not immediately available for comment.

Judges Jack A. Panella, Victor P. Stabile and Maria McLaughlin sat on the panel for the Superior Court.

Smith is represented by Andrew Spirt and Benjamin Isser of Golomb & Honik PC.

Cordero and UPMC are represented by George Kachulis and Rebecca Maziarz of Dickie McCamey & Chilcote PC.

The case is Smith v. Cordero et al., case number 1166 WDA 2018, in the Superior Court of Pennsylvania.

--Editing by Aaron Pelc.

For a reprint of this article, please contact reprints@law360.com