

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Edwina Jenkins, Individually and as	:	
Administrator of the Estate of	:	
Thomas Jenkins, Deceased,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 12AP-433
	:	(C.P.C. No. 09CVA-05-7424)
Dr. Smucker, M.D. et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

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D E C I S I O N

Rendered on January 24, 2013

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*Colley Shroyer & Abraham Co., LPA, and David I. Shroyer,*  
for appellant.

*Roetzel & Andress, LPA, Robert B. Graziano and Michael R.*  
*Traven,* for appellees.

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APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Edwina Jenkins, individually and as the administrator of the estate of Thomas Jenkins, is appealing from the trial court's failure to grant a new trial or enter a new verdict in her medical malpractice claim. A single error is assigned:

THE TRIAL COURT ERRED IN DENYING APPELLANT'S  
MOTION FOR JUDGMENT NOTWITHSTANDING THE  
VERDICT OR, IN THE ALTERNATIVE, FOR A NEW TRIAL.

{¶ 2} Motions for new trial and motions for a judgment notwithstanding a verdict are governed by Civ.R. 50(B). In applying the rule to such motions, the trial court must construe the evidence presented at trial most favorably to the nonmoving party and find that reasonable minds can only reach a conclusion different from the jury's verdict. *See Texler v. D.O. Summers Cleaners & Shirt Laundry Co.*, 81 Ohio St.3d 677 (1998).

{¶ 3} As an appellate court, we can overturn the trial court's ruling on such motions only if we find the trial court to have abused its discretion. *See Rohde v. Farmer*, 23 Ohio St.2d 82 (1970).

{¶ 4} Counsel for Edwina Jenkins and the estate argues that the jury verdict was improperly influenced by a part of the closing argument made on behalf of the defendant physician. An objection was made at the time of the argument and the objection was sustained. The trial court judge then admonished the jury to disregard the improper statements.

{¶ 5} When a trial court judge gives such admonitions, the jury is presumed to have heard them and to have followed them. *See Pang v. Minch*, 53 Ohio St.3d 186 (1990).

{¶ 6} The trial court was well within its discretion to refuse to grant a new trial based upon the improper argument of counsel which led to the admonition to the jury.

{¶ 7} On appeal, the argument is also made that a new trial should be granted because during voir dire a juror expressed views that could be construed as biased in favor of the physician, but the trial judge refused to sustain a challenge for cause. The juror was subsequently removed through the use of a peremptory challenge.

{¶ 8} The record does not demonstrate that the jury verdict could or would have been different if this juror had been removed by a peremptory challenge, as opposed to a challenge for cause. Not all the peremptory challenges were used. The trial court did not abuse its discretion in failing to grant a new trial based upon its ruling that the juror should not be removed for cause.

{¶ 9} The standard for evaluating a motion for new trial based upon the evidence presented at trial is set forth above. Only a portion of the transcript of the trial is present in the record on appeal. Given the strict standard applicable here, we cannot say the trial

court abused its discretion in failing to grant a new trial based upon the weight of the evidence.

{¶ 10} The final argument presented claims that the trial court gave an incorrect charge to the jury on the subject of foreseeability. The charge given tracks the charge requested by counsel for the estate at trial and parallels the instruction in Ohio Jury Instruction No. 401.07. We cannot find the trial judge abused his discretion in failing to grant a new trial based upon the giving of the jury instructions.

{¶ 11} The sole assignment of error is overruled.

{¶ 12} The only assignment of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

SADLER and CONNOR, JJ., concur.

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