

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MARK SILVESTRO and PAM SILVESTRO,

Plaintiffs-Appellants,

v

SPARTA HEALTH CENTER, INC., and SALLY  
KLIPHUIS, M.D.,

Defendants-Appellees.

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UNPUBLISHED  
November 5, 1996

No. 177159  
LC No. 92-079646-NH

Before: Doctoroff, C.J., and Hood and Bandstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right a June 28, 1994 judgment of no cause of action based on a special jury verdict that defendant Sally Kliphuis, M.D., was not professionally negligent. We affirm.

We have reviewed plaintiffs' claim in the context of the offer of proof made at trial regarding the purpose of Sandra Ostrander's testimony on what Pam Silvestro told her that she said to Dr. Kliphuis about the rectal bleeding. MRE 103(a)(2). As the proponent of this disputed evidence, the burden was on plaintiffs to establish a proper foundation for admission. *People v Burton*, 433 Mich 268, 304 n 16; 445 NW2d 133 (1989); *In re Brock*, 193 Mich App 652, 669; 485 NW2d 110 (1992), rev'd on other grounds 442 Mich 101; 499 NW2d 752 (1993).<sup>1</sup>

A statement offered to show that it was made, rather than to prove the truth of the matter asserted, is not hearsay. MRE 801(c). Plaintiffs claim that the Ostrander testimony, i.e., that Pam had told Ostrander that Pam had told her doctor about the rectal bleeding, was offered to show that the statement by Pam to Ostrander was made. However, if that was the purpose, this evidence would be irrelevant to any fact of consequence to this action. See MRE 401; MRE 402; *People v Fisher*, 449 Mich 441, 452, n 12; 537 NW2d 577 (1995). What Pam told Ostrander has nothing to do with defendant's knowledge of the rectal bleeding. The only possible relevant purpose of the evidence proposed here was to establish the truth of the matter asserted in the out of court statement, i.e., that Pam told defendant Kliphuis about the rectal bleeding, the central issue in the case. The Ostrander testimony was inadmissible hearsay unless plaintiffs could establish the existence of a hearsay exception.

On appeal, plaintiffs have abandoned arguments made at trial regarding possible hearsay exceptions. We conclude that the trial court did not abuse its discretion excluding this testimony and thereafter instructing the jury not to consider “anything that Miss Ostrander testified about what Miss Silvestro may or may not have said to the doctor, based on anything that you heard from Miss Ostrander, because I’m going to strike that testimony.” *Gore v Rains & Block*, 189 Mich App 729, 737; 473 NW2d 813 (1991).

We affirm.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Richard A. Bandstra

<sup>1</sup> In this regard, we note that there are circumstances where evidence of consistent statements may be admissible for the nonhearsay purpose of supporting a witness’ credibility but only to rebut a charge of recent fabrication or improper motive. MRE 801(d)(1)(B). At trial, plaintiff did not argue that the evidence was admissible for this purpose, perhaps because there was an inadequate foundation for application of MRE 801(d)(1)(B) at the time the Ostrander testimony was offered. Further, on appeal, plaintiff does not argue that this evidentiary rule is applicable.