

STATE OF MICHIGAN
COURT OF APPEALS

TERESA REISTERER,

Plaintiff-Appellant,

v

CELENA R. CANTRELL and
CYNTHIA T. CANTRELL,

Defendants-Appellees.

UNPUBLISHED
February 14, 1997

No. 179288
Berrien Circuit Court
LC No. 93-00235

Before: Neff, P.J., and Hoekstra and G.D. Lostracco,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action and the subsequent order of the Berrien Circuit Court denying her motion for a new trial. We reverse the order denying plaintiff's motion for a new trial and remand for further proceedings consistent with this opinion.

Plaintiff filed suit against defendants, alleging that she suffered a serious disfigurement following an automobile accident involving plaintiff and defendant Celena Cantrell. Following a jury trial, the jury returned a verdict which found that although defendant was negligent, plaintiff had not suffered a serious disfigurement. Shortly thereafter, plaintiff moved for a partial new trial¹ on the basis of irregularity in the jury proceedings and juror misconduct. According to plaintiff, one of the jurors brought in pictures of her daughter, who had received facial injuries in an automobile accident, and showed them to the other jurors. The pictures purportedly showed the girl's scars while the stitches were still present and also depicted her "remarkable recovery." After a hearing on the motion, at which no testimony was taken, the trial court found that, even assuming plaintiff's allegations of misconduct were true, evidence of the type of irregularity alleged by plaintiff was not admissible to support a motion for a new trial.

The decision whether to grant or deny a motion for new trial on the basis of juror misconduct is within the discretion of the trial court and will be reviewed on appeal for an abuse of discretion. *Froede v Holland Ladder & Mfg Co*, 207 Mich App 127, 130; 523 NW2d 849 (1994). Here, we conclude

* Circuit judge, sitting on the Court of Appeals by assignment.

that the trial court abused its discretion in denying plaintiff's motion for a new trial without determining whether plaintiff's allegations were true.

We believe that the trial court incorrectly determined that, even if plaintiff's allegations were true, this type of irregularity could not be used to impeach a jury verdict or support a motion for new trial. While it is true that, generally, once a jury has been polled and discharged, its members may not challenge misconduct inherent in the verdict, *Hoffman v Spartan Stores, Inc*, 197 Mich App 289 293; 494 NW2d 811 (1992), quoting *Hoffman v Monroe Public Schools*, 96 Mich App 256; 292 NW2d 542 (1980), it is also true that misconduct on the part of a juror which denies a defendant a fair trial may warrant a new trial, *People v Strand*, 213 Mich App 100, 103; 539 NW2d 739 (1995). Although juror misconduct will not automatically warrant a new trial, a new trial should be granted if the misconduct affected the impartiality of the jury. *Strand, supra* at 103-104.

Here, we believe that the juror's actions of bringing pictures of her daughter for consideration by the other jury members, if true, is potentially the type of misconduct which could affect the impartiality of the jury and warrant a new trial. Accordingly, we remand the case to the trial court so that a hearing may be held to determine the truth of plaintiff's allegations, and if true, for the trial court to determine whether the impartiality of the jury was affected.

To the extent that plaintiff is also arguing that the juror at issue concealed information during voir dire, we decline to address this issue because plaintiff has failed to provide any facts supporting this argument in her appellate brief. We deem this issue abandoned on appeal as being insufficiently briefed. See *Dresden v Detroit Macomb Hospital Corp*, 218 Mich App 292, 300; 553 NW2d 387 (1996).

The order denying plaintiff's motion for a new trial is reversed and the case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Gerald D. Lostracco

¹ Plaintiff, arguing that the issue of liability has already been determined, seeks a partial new trial only on the issue of damages. In support of her argument, plaintiff cites *Dekker v Lubbenhusen*, 114 Mich App 270; 318 NW2d 653 (1982); however, that case is distinguishable from the instant case. Unlike *Dekker*, in the instant case whether plaintiff and/or defendant were negligent was a disputed issue and liability was not clear. Accordingly, we believe that if upon remand plaintiff's allegations of misconduct are substantiated and prejudice is established, a new trial, rather than a partial new trial, would be in order.