

STATE OF MICHIGAN
COURT OF APPEALS

GINA MARCHEWKA,

Plaintiff-Appellant,

v

GEORGE ASH, D.D.S., M.S.,

Defendant-Appellee.

UNPUBLISHED

May 30, 1997

No. 190493

Macomb Circuit Court

LC No. 92-1280-NH

Before: Holbrook, Jr., P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action, entered pursuant to a jury verdict in this medical malpractice action. The trial court denied plaintiff's motion for a new trial. We affirm.

Plaintiff first contends that she was denied a fair trial because of the trial judge's demonstrated bias. We disagree. Appellant was entitled to an impartial decisionmaker who had not prejudged the issues. *Cain v Dep't of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996). After reviewing each of the cited instances of alleged bias or partiality in context, we find that the trial judge's remarks and questions, although at times imprudent, did not express any clear bias against plaintiff or plaintiff's counsel, and, furthermore, the judge instructed the jury to disregard any opinion which it believed he may have expressed. *Cole v Detroit Auto Inter-Ins Exchange*, 137 Mich App 603, 610; 357 NW2d 898 (1984). Accordingly, we conclude that plaintiff was not denied a fair trial because of judicial bias or partiality.

Plaintiff next asserts that the verbiage and presentation of the jury instructions constituted reversible error. We again disagree. Here, the trial court modified SJ12d 30.01 by restricting the jury's deliberation to five specific allegations of malpractice that were supported by the pleadings and the evidence. We conclude that the modification of the standard jury instruction properly presented the issues to be decided and did not deny plaintiff a fair trial. See *Kovacs v Chesapeake and Ohio Ry Co*, 134 Mich App 514, 533-534; 351 NW2d 581 (1984), *aff'd* 426 Mich 647 (1986).

Plaintiff also claims that by repeating the jury instructions pertaining to medical malpractice and the burden of proof twice, along with providing the jury with a written copy of the instructions, the trial court was demonstrating clear bias which requires reversal. While MCR 2.516(B)(5) prohibits providing a partial set of written jury instructions to the jury during deliberations without the consent of both parties, any error is deemed harmless except upon a showing of prejudice. *VanBelkum v Ford*, 183 Mich App 272, 274-275; 454 NW2d 119 (1989). We find no prejudice in this case and therefore hold the error to be harmless. Moreover, this Court has held that the practice of repeating certain standard jury instructions is common and within the trial court's discretion. *Id.* Accordingly, error requiring reversal did not occur.

Finally, plaintiff argues that the trial court abused its discretion in excluding relevant evidence regarding defendant's multiple clinics and the high number of patients defendant treated each week. We find no abuse of discretion because the trial court properly held that the evidence was irrelevant to plaintiff's malpractice claim. MRE 401.

Affirmed.

/s/ Donald E Holbrook, Jr.

/s/ Barbara B. MacKenzie

/s/ William B. Murphy