

**Youngman v Sanko**

2006 NY Slip Op 30168(U)

March 2, 2006

Supreme Court, Wayne County

Docket Number: 0047921/2002

Judge: Dennis M. Kehoe

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STATE OF NEW YORK  
SUPREME COURT COUNTY OF WAYNE

FILED

2006 APR 12 P 12:57

SHARON P. YOUNGMAN and  
OLEN J. YOUNGMAN,

WAYNE COUNTY  
CLERK'S OFFICE

Plaintiffs,

-vs-

DECISION and ORDER  
Index No. 47921

STEPHAN R. SANKO and  
ROCHESTER GYNECOLOGIC AND  
OBSTETRICS ASSOCIATES, P.C.,

Defendants.

APPEARANCES: Davidson, Fink, Cook, Kelly and Galbrath, LLP  
Paul D. Kelly, Esq.  
for the Plaintiffs

Ward, Norris, Heller & Reidy, LLP  
Eric J. Ward, Esq.  
for the Defendants

PRESENT: Hon. Dennis M. Kehoe  
Acting Supreme Court Justice

The above named Plaintiffs have moved for an Order pursuant to CPLR §4404(a) setting aside the jury verdict entered in this action after trial, which determined that the Defendants were not negligent. The Defendants have opposed the motion in its entirety, maintaining that the verdict was correct.

This medical malpractice action is based on the Plaintiff's claim that the medical care provided to the Plaintiff Sharon Youngman by Stephen R. Sanko, M.D. on a date approximately one week following the birth of her third child was negligent and constituted a departure from a

received adequate medication was a question for the jury, that there was ample evidence to support their conclusion as to the medication's adequacy, and that Dr. Sanko's actions were in conformance with acceptable medical care.

The Plaintiff's argument, succinctly stated, is that a jury's verdict must be set aside as against the weight of the evidence where no fair interpretation of the evidence supports the jury's conclusion, or if the verdict is one that reasonable persons could not have rendered after receiving conflicting evidence (Citing Sapia v. National Fuel Gas Corp., 292 AD2d 807 [4<sup>th</sup> Dept, 2002]). However, it is equally well-established that a court cannot substitute its judgment for that of the jury, and must accord considerable deference to the jury's interpretation of the evidence and its resolution of credibility issues (See, e.g. Calafiope v. Kiley, 303 AD2d 846 [3<sup>rd</sup> Dept, 2003]). Conflicting testimony of witnesses, both lay and expert, can give rise to issues of credibility whose determination is within the province of the jury. (See Osinki v. Taefi, 13 AD3rd 125, [4<sup>th</sup> Dept, 2004]).

The Court has reviewed the trial testimony at length, and finds that it cannot be said that the jury verdict could not have been reached on any fair interpretation of the evidence (See Shea v. Mazza, 307 AD2d 708 [4<sup>th</sup> Dept, 2003]). The jury obviously determined that the procedures followed by Dr. Sanko during the second D & C did not constitute negligence and that the fact that the Plaintiff was not administered additional medication did not represent a departure from an established standard of good medical care. (Other alleged acts of negligence on the part of the Defendant were also mentioned in the Plaintiff's moving papers, but these allegations are also found to be insufficiently supported by the evidence to constitute a basis for reversal.)

suffering and discomfort. She also maintains that she advised the doctor and his staff that the effects of the medication had worn off, but was advised that no other medication was available.

At trial, the Plaintiff's witnesses testified that the Defendant's actions were negligent in that: the procedure should not have been performed at the Defendant's office; only one D & C should have been performed on the date in question; the procedure should have initially been performed under ultrasound guidance; the procedures should have been performed aseptically; the Plaintiff should have been administered additional sedative and pain medication prior to the second procedure. Nevertheless, despite the Plaintiff's arguments, the jury found that the Defendant was not negligent, and the issues of proximate cause and damages were therefore never considered. The Plaintiff maintains that the Defendant's negligence was established as a matter of law, and that the verdict was against the weight of the evidence, thereby requiring a new trial in the interests of justice.

In response, the Defendant maintains that the Plaintiff's arguments on this motion are directed solely to the fact Dr. Sanko's failure to administer additional medication to Mrs. Youngman prior to the second D & C constituted negligence as a matter of law. However, the Defendant maintains that the Plaintiff's witnesses failed to establish the existence of a standard of medical care requiring the administration of sedative and pain medication prior to a second procedure. The Defendant also maintains that the Plaintiff did not establish that she was, in fact, inadequately sedated prior to the second D & C. There was testimony that the drugs administered have a "half-life" which should have rendered them effective for purposes of the second procedure. The Defendant also points to numerous discrepancies in the testimony of the Plaintiff's witnesses regarding the objective signs of pain allegedly demonstrated by the Plaintiff during the procedure. In short, the Defendant contends that the issue of whether the Plaintiff

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recognized standard of good medical practice.

The treatment in question involved the performance by Dr. Sanko of two dilation and curettage (hereinafter referred to as "D & C") procedures on the same date at his office. Specifically, the Plaintiff maintains that the Defendant was negligent when he failed to administer to the Plaintiff sufficient medication to sedate and provide pain relief for his patient during the second procedure.

Following the birth of the Plaintiff's child, Dr. Sanko determined that Mrs. Youngman had "retained placental tissue". Therefore, an outpatient D & C was scheduled at the doctor's office at 2:00 p.m. to remove the tissue. Prior to commencing the actual procedure, the Plaintiff received 50 mg. of Demerol and 2 mg. of Versed intravenously for sedation and pain relief, as well as an injection of 10 cc of 1% Zylcaine as a paracervical block. The first D & C was concluded at approximately 3:25 p.m., and the Plaintiff's husband joined his wife in the treatment room.

However, the testimony shows that the Plaintiff bled heavily following the completion of the first procedure. A portable ultrasound machine was therefore brought to the treatment room, and the Defendant concluded that placental tissue remained in the Plaintiff's uterus and that a second D & C was required, which was subsequently performed under real-time ultrasound guidance, commencing at approximately 4:00 p.m. It is uncontroverted that no one administered any sedative or pain medication to the Plaintiff prior to this second procedure.

At trial, the Plaintiff testified that she had "vivid and horrible" recollections of the second procedure (unlike the first procedure, due to the amnesia effects of the drugs initially administered). The Plaintiff maintains that she was acutely conscious of the movements and sounds associated with the procedure, and that she experienced extreme and conscious pain,

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Therefore, this Court finds that the determination of the jury was not against the weight of the evidence, and accordingly, the Plaintiff is not entitled to a new trial. The Plaintiff's motion pursuant to CPLR §4404 is therefore denied.

This decision shall constitute the Order of the Court.

DATED: March 2, 2006.  
Lyons, New York.



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Hon. Dennis M. Kehoe  
Acting Supreme Court Justice