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# Commonwealth of Kentucky

# Court of Appeals

NO. 2009-CA-000021-MR

LINDA S. GRUBB AND LAYMON GRUBB, INDIVIDUALLY, AS GRANDPARENTS AND NEXT FRIENDS OF ALYSSA B. MEREDITH AND AS CO-ADMINISTRATORS ON BEHALF OF THE ESTATE OF KRYSTAL D. MEREDITH — APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SUSAN SCHULTZ GIBSON, JUDGE
ACTION NO. 07-CI-003983

NORTON HOSPITALS, INC.; LUIS M. VELASCO, M.D.; AND JAMES B. HAILE, M.D. — APPELLEES

AND

NO. 2009-CA-000060-MR

LUIS M. VELASCO, M.D. — CROSS-APPELLANT

v.

CROSS-APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SUSAN SCHULTZ GIBSON, JUDGE
ACTION NO. 07-CI-003983

LINDA S. GRUBB AND LAYMON GRUBB,
INDIVIDUALLY, AS GRANDPARENTS
AND NEXT FRIENDS OF ALYSSA B.
MEREDITH AND AS CO-ADMINISTRATORS
ON BEHALF OF THE ESTATE OF
KRYSTAL D. MEREDITH CROSS-APPELLEES

AND NO. 2009-CA-000098-MR

JAMES B. HAILE, M.D. CROSS-APPELLANT

CROSS-APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE SUSAN SCHULTZ GIBSON, JUDGE
ACTION NO. 07-CI-003983

LINDA S. GRUBB AND LAYMON GRUBB,
INDIVIDUALLY, AS GRANDPARENTS
AND NEXT FRIENDS OF ALYSSA B.
MEREDITH AND AS CO-ADMINISTRATORS
ON BEHALF OF THE ESTATE OF
KRYSTAL D. MEREDITH CROSS-APPELLEES

AND NO. 2009-CA-000099-MR

NORTON HOSPITALS, INC.,
d/b/a NORTON HOSPITAL CROSS-APPELLANT

CROSS-APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE SUSAN SCHULTZ GIBSON, JUDGE
ACTION NO. 07-CI-003983

LINDA S. GRUBB AND LAYMON GRUBB,
INDIVIDUALLY, AS GRANDPARENTS
AND NEXT FRIENDS OF ALYSSA B.
MEREDITH AND AS CO-ADMINISTRATORS
ON BEHALF OF THE ESTATE OF
KRYSTAL D. MEREDITH CROSS-APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: TAYLOR, CHIEF JUDGE; STUMBO AND VANMETER, JUDGES.

VANMETER, JUDGE: Linda S. Grubb and Laymon Grubb, co-administrators of the estate of Krystal D. Meredith and grandparents and next friends of Alyssa B. Meredith, a minor, appeal from a judgment entered by the Jefferson Circuit Court in favor of Norton Hospital, Inc., Luis M. Velasco, M.D., and James B. Haile, M.D. (sometimes collectively referred to as "Appellees"). For the following reasons, we affirm.

On January 4, 2007, Krystal Meredith, in her third term of pregnancy, presented to her obstetrician Dr. Velasco who discharged her after examining her. On January 5 and 6, Meredith presented to Norton Hospital and was discharged each time. On January 7, Meredith presented again to Norton Hospital and was admitted. Dr. Haile was the "on call" physician covering Dr. Velasco's shifts at Norton Hospital from January 5-7.

On January 8, Dr. Velasco resumed care of Meredith, induced labor and delivered her baby. Following the delivery, Meredith's condition deteriorated.

On January 9, Meredith underwent exploratory surgery which revealed a ruptured appendix. Subsequently, she developed Adult Respiratory Distress Syndrome, from which she died on February 1, 2007.

The Grubbs brought suit against Appellees for wrongful death and loss of parental consortium. The Grubbs alleged that Drs. Velasco and Haile were negligent by failing to diagnose Meredith's ruptured appendix prior to her delivery, and that this delay in diagnosis caused her death. The Grubbs further alleged that the nurses at Norton Hospital should have recognized Dr. Haile's responses to Meredith's presentations were inappropriate, and should have initiated a "chain of command" to challenge his orders.

This matter proceeded to trial from September 9, 2008 through September 19, 2008. At the conclusion of the trial, the jury found in favor of Appellees. Thereafter, the trial court denied the Grubbs' motions for post-trial relief. This appeal followed.

I. Juror excusal for cause

The Grubbs claim the trial court erred by failing to strike three jurors for cause. We disagree.

Whether to excuse a prospective juror for cause "rests within the sound discretion of the trial judge and ought not to be set aside by a reviewing court unless the error is manifest." *Mackey v. Greenview Hosp., Inc.*, 587 S.W.2d 249, 254 (Ky.App. 1979). Further, the trial judge is in "a far better position than this court to determine whether a juror should be excused for cause[.]" *Id.*

The Grubbs contend that the following exchange during voir dire reveals this juror's bias:

> Q: You will be hearing from an obstetrician/ gynecologist for the defense, Dr. Larry Griffin. Do any of you know Dr. Griffin?
>
> * * *
>
> A: He delivered my children.
>
> Q: The fact that he delivered your children, would that cause you to give any more credence to his testimony on this matter?
>
> A: It may.
>
> Q: It may?
>
> * * *
>
> Q: How many children has Dr. Griffin delivered?
>
> A: Both of them were c-sections.
>
> Q: The fact that Dr. Griffin is testifying for Norton Hospital, Dr. Velasco, would that cause you . . .?
>
> A: No. Not as long as he's not involved.

Our review of this exchange indicates that this juror could remain unbiased so long as the doctor wasn't involved as a party to the action, which he was not. Rather, the doctor testified as an expert witness for Appellees at trial. Unlike the cases of *Altman v. Allen*, 850 S.W.2d 44 (Ky. 1992) (no "automatic presumption of bias" on the part of prospective jurors toward former

obstetrician/gynecologist defendant), and *Bowman v. Perkins*, 135 S.W.3d 399 (Ky. 2004) (prospective juror who is a current patient of a defendant physician in a medical malpractice action should be discharged for cause), the doctor in this case was not a defendant. Further, voir dire does not clarify whether this juror is a current or former patient of the doctor. However, this juror did indicate that she could remain fair and impartial so long as the doctor wasn't involved as a party. Thus, to the extent to which the existence of bias was explored during voir dire, the trial court did not abuse its discretion by refusing to strike this juror for cause.

B. Juror 222785

This juror disclosed during voir dire that his son was employed as a purchasing manager for approximately ten years by Norton Healthcare, Inc., the parent corporation of subsidiary Norton Hospital.[1] This juror indicated that he probably would have problems if the case was a "close call." However, when the entire jury venire was asked whether they could remain fair and impartial, this juror did not indicate otherwise.

The Grubbs maintain that this juror should have been stricken for cause on the basis that his relationship with his son called into question his ability to remain impartial. We note that in *Ward v. Commonwealth*, 695 S.W.2d 404 (Ky. 1985), the Court addressed the varying degrees of relationships between prospective jurors and the Commonwealth's Attorney and whether bias existed. The Court held that a juror who was "sort of an uncle" to the Commonwealth's

[1] Norton Healthcare, Inc., is not a party to this lawsuit.

Attorney should have been excused for cause, but not the ex-brother-in-law and distant cousin of the Commonwealth's Attorney. *Id.* at 407. In so ruling, the Court reasoned:

> [I]rrespective of the answers given on voir dire, the court should presume the likelihood of prejudice on the part of the prospective juror because the potential juror has such a close relationship, be it familial, financial or situational, with any of the parties, counsel, victims, or witnesses.

*Id.* (quoting *Commonwealth v. Stamm*, 286 Pa.Super. 409, 429 A.2d 4, 7 (1981)). In other words, if the court finds that a "close relationship is established, without regard to protestations of lack of bias, the court should sustain a challenge for cause and excuse the juror." *Ward,* 695 S.W.2d at 407.

In *Davenport v. Ephraim McDowell Mem'l Hosp. Inc.*, 769 S.W.2d 56 (Ky.App. 1988), this court applied the "close relationship" standard articulated in *Ward* to a medical negligence action in which two jurors were challenged for cause. One juror's spouse worked at the defendant hospital and the juror herself was a former employee of the hospital. The juror knew the defendant doctor and nurses involved in the case. Further, the juror's impartiality was attacked by the plaintiff's daughters who alleged that they overheard the juror state, outside the courtroom prior to jury selection, that she loved the hospital and the defendant doctor, and that she had a strong desire to serve as a juror on the case. Although the juror denied making these statements, this court held that a significantly "close relationship" existed between the juror and the defendants so as to mandate excusal for cause.

The other juror in *Davenport* was married to a doctor who was on the hospital staff and she herself was a member of the hospital auxiliary. She was socially acquainted with the defendant doctor and with other doctors and employees connected with the hospital. Although she claimed these relationships would not affect her ability to weigh the evidence fairly, this court determined otherwise.

Further, in *Soto v. Commonwealth*, 139 S.W.3d 827 (Ky. 2004), the Court held that a prospective juror's statement during voir dire that "he might give 'slightly' more weight to the testimony of a police officer than to that of a layperson[]" but "otherwise stated that he could render a fair and impartial decision considering all of the facts of the case," did not establish implied bias so as to mandate excusal of the juror for cause. *Id.* at 850.

In this case, aside from the juror's indication that he "probably" would have a problem with a "close call," our review of voir dire does not reveal the existence of a "close relationship" between this juror and Appellees so as to mandate excusal for cause. Rather, in terms of degree, this juror's relationship with Appellees was relatively distant, considering that his son, rather than the juror, was employed by Norton Healthcare and that Norton Healthcare was not a party to this lawsuit. Accordingly, the trial court did not abuse its discretion by refusing to strike this juror for cause.

C. Juror 201435

This juror stated during voir dire that he practiced law and that his law firm does medical defense malpractice and has done some work for Norton. However, the extent and degree of this juror's professional relationship with Norton Hospital was not developed during voir dire; particularly, the record does not reflect whether his firm has a current and ongoing relationship with Norton Hospital and whether he personally worked on any cases, or anticipated working on cases in the future.

In *Riddle v. Commonwealth*, 864 S.W.2d 308 (Ky.App. 1993), this court held that while prospective jurors' prior attorney-client relationship with a prosecuting attorney did not automatically disqualify them when challenged for cause under a presumed bias theory, prospective jurors who further stated that they would pursue such a relationship in the future should be disqualified for cause. In *Fugate v. Commonwealth*, 993 S.W.2d 931 (Ky. 1999), the Court agreed with the opinion of this court expressed in *Riddle* that "a trial court is required to disqualify for cause prospective jurors who had a prior professional relationship with a prosecuting attorney and who profess that they would seek such a relationship in the future." *Id.* at 938.

In this case, voir dire does not explore the nature and degree of this juror's relationship with Norton Hospital to the extent necessary to determine whether bias exists. Specifically, the record does not disclose whether this juror has a current relationship, or anticipated having a future relationship, with Norton Hospital. Further, this juror did not indicate, when questioned with the entire

venire, that he would be unable to remain fair and impartial. Accordingly, the court did not abuse its discretion by refusing to strike this juror for cause.

II. Agency relationship

The Grubbs claim the trial court's grant of Appellees' motion for partial summary judgment on the issue of agency was erroneous. We disagree.

The court concluded that no agency relationship existed between Dr. Velasco and Norton Hospital under the terms of the Physician Employment Agreement (Agreement) executed between Dr. Velasco and Community Medical Associates (CMA), another subsidiary of Norton Healthcare.[2] The court further determined that no agency relationship existed between Dr. Haile and Norton Hospital or between Dr. Haile and Dr. Velasco.

Summary judgment shall be granted only if "the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR[3] 56.03. The trial court must view the record "in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.,* 807 S.W.2d 476, 480 (Ky. 1991) (citations omitted). Further, "a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least

[2] The Grubbs originally asserted claims against CMA, but later dismissed these claims voluntarily.

[3] Kentucky Rules of Civil Procedure.

some affirmative evidence showing that there is a genuine issue of material fact for trial." *Id.* at 482 (citations omitted).

On appeal from a granting of summary judgment, our standard of review is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Lewis B & R Corp.*, 56 S.W.3d 432, 436 (Ky.App. 2001) (citations omitted). Because no factual issues are involved and only legal issues are before the court on a motion for summary judgment, we do not defer to the trial court and our review is *de novo*. *Hallahan v. Courier-Journal*, 138 S.W.3d 699, 705 (Ky.App. 2004).

The court found that Norton Hospital and CMA are subsidiaries of Norton Healthcare, yet are separate and distinct legal entities, as evinced by their respective articles of incorporation. The court found that the evidence did not show that these entities were organized in a manner so as to constitute a mere sham, or that they operated as a shield for fraudulent or criminal acts, so as to ignore their separate corporate identities. *See Square D Co. v. Kentucky Bd. of Tax Appeals,* 415 S.W.2d 594, 601 (Ky. 1967) (even though subsidiaries are engaged in similar or related business, the corporate separation must be recognized unless it is a mere sham or the subsidiaries' operations lose their independent identity by reason of exceptional integrated business relationships); *Big Four Mills, Ltd. v. Commercial Credit Co.*, 307 Ky. 612, 616-17, 211 S.W.2d 831, 834 (1948) (a court will ignore the distinction between corporate entities if its recognition would

operate as a shield for fraudulent or criminal acts or would be subversive of the public policy of a state). The court further found that the evidence did not establish that Dr. Velasco was an employee or agent of Norton Hospital at any time pertinent to the case at bar.

In addition, the court found that while Dr. Haile was the "on call" physician covering for Dr. Velasco's shifts, the evidence did not show that Dr. Haile was acting on behalf of, or as a substitute for, Dr. Velasco so as to create an agency relationship between them or that Dr. Haile was an employee or agent of Norton Hospital. Accordingly, the court held as a matter of law that Dr. Velasco was not vicariously liable for the actions of Dr. Haile, and Norton Hospital was not vicariously liable for the actions of either doctor.

The Agreement upon which the Grubbs rely in asserting their claim of agency is between Dr. Velasco and CMA.[4] Indeed, the first paragraph of the Agreement reads:

> **This Agreement** is effective as of the 1st day of August, 2005, by and between **Community Medical Associates, Inc. d/b/a Norton Medical Associates**, a nonprofit corporation organized under the laws of the Commonwealth of Kentucky (**"Norton"**), and **Luis M. Velasco, M.D.**, a physician who is duly licensed to practice medicine in the Commonwealth of Kentucky and/or the State of Indiana (the **"Physician"**).

While the Grubbs concede that the Agreement on its face is between Dr. Velasco and CMA d/b/a Norton Medical Associates ("Norton"), they argue that its language is much broader and protective of Norton Healthcare in general.

[4] Dr. Haile was not a signatory to the Agreement.

Yet, even if the Agreement's reference to "Norton" could be construed to mean "Norton Healthcare," no claims were asserted against Norton Healthcare and thus the issue of whether the doctors were agents of Norton Healthcare is not before us.

Further, the Grubbs maintain that Norton Hospital commanded ownership of Meredith as its patient under the terms of the Agreement and Dr. Velasco was contractually obligated as Norton Hospital's agent to care for her. The Agreement provides, in relevant part:

> **2. <u>Duties.</u>**
>
> a. At the direction of Norton, Physician shall . . . render services to Norton Patients. For purposes of this Agreement, **"Norton patients"** shall refer to all patients of Physician, Community Medical Group, PSC, or medical practices of Norton Hospitals, Inc. existing prior to this Employment Agreement and any patients seen by any Norton-employed physician or Norton Hospitals, Inc.-employed physician during the term of this Agreement.
>
> **8. <u>Patients and Records</u>**. . . . Physician acknowledges that . . . all patients seen by Physician during the term of Physician's employment with Norton are patients of Norton and are not patients of Physician.

The Grubbs' argument is premised on a misinterpretation of the plain language of the Agreement. As previously discussed, the first paragraph of the Agreement provides that "Norton" refers to CMA d/b/a Norton Medical Associates. Accordingly, "Norton patients" refers to patients of CMA d/b/a Norton Medical Associates. Therefore the Grubbs' argument is without merit.

Next, the Grubbs assert that even if no "actual agency" relationship was created under the Agreement, Norton Hospital is vicariously liable for the actions of Dr. Velasco under an "ostensible agency theory." We disagree.

An apparent or ostensible agent is not an actual agent, but is "one whom the principal, either intentionally or by want of ordinary care, induces third persons to believe to be his agent, although he has not, either expressly or by implication, conferred authority upon him." *Middleton v. Frances*, 257 Ky. 42, 44, 77 S.W.2d 425, 426 (1934) (citation omitted). The general premise in Kentucky is that hospitals are not vicariously liable for doctors who are not its employees so long the hospital does not represent to its patients that the doctors are its employees. *See Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255 (Ky. 1985) (apparent agency may be inferred from the circumstances absent evidence that the patient knew or should have known that the treating physician was not a hospital employee when the treatment was performed); *Floyd v. Humana of Virginia, Inc.*, 787 S.W.2d 267 (Ky.App. 1989) (medical malpractice plaintiff could not hold hospital liable for alleged negligence of physician on ostensible agency theory where admission forms read and signed by plaintiff indicated her knowledge that doctors were independent contractors and not agents of hospital, and no representation or action was made so as to induce plaintiff to believe that doctors were employees or agents of hospital); *Roberts v. Galen of Virginia, Inc.*, 111 F.3d 405 (6th Cir. 1997) (hospital not liable under ostensible agency doctrine for alleged negligence of independent contractor physicians where hospital's patient

registration and authorization for medical treatment form alerted the public that its physicians were not its employees or agents); *Vandevelde v. Poppens*, 552 F.Supp.2d 662 (W.D. Ky. 2008) (hospital not vicariously liable under Kentucky law for alleged negligence of physicians based on an ostensible agency theory where hospital's consent upon admission forms alerted the public that its physicians were not its employees or agents).

In this case, the record reflects that Meredith signed, on three separate occasions, consent forms provided by Norton Hospital which informed her that she may receive "the services of physicians, groups of physicians or other practitioners (such as nurses and physician assistants) who are not employees of the hospital[.]" No evidence was presented to show that Norton Hospital represented to the public that the doctors working within the confines of the hospital were its employees or agents. Thus, as a matter of law Norton Hospital is not vicariously liable for the alleged negligence of the doctors under an "ostensible agency theory."

Next, the Grubbs aver that Dr. Haile is a dual agent of Norton Hospital and Dr. Velasco. They argue that Dr. Haile acted as a substitute for, and on behalf of, Dr. Velasco and thus was bound by the terms of the Agreement. The Grubbs contend that since the doctors treated Meredith in "joint concert" and as agents of Norton Hospital, Norton Hospital had a duty to ensure its patients, like Meredith, received appropriate treatment from both doctors.

The trial court determined that the evidence did not show that Dr. Haile was acting on behalf of, or as a substitute for, Dr. Velasco so as to create an

agency relationship. Even if we presume that Dr. Haile was acting as a substitute for Dr. Velasco, no Kentucky authority has been provided to us establishing that vicarious liability can be imposed in these circumstances. Rather, we note that in a case with facts similar to this one, a New York court determined that an obstetrician was not vicariously liable for the negligence of a physician who "covered" for him. *Kavanaugh v. Nussbaum*, 71 N.Y.2d 535, 523 N.E.2d 284 (N.Y. 1988). The court noted that "[u]nderlying the doctrine of vicarious liability . . . is the notion of control." *Id.* at 546, 523 N.E.2d at 287-88. Accordingly, in the absence of "some recognized traditional legal relationship such as a partnership, master and servant, or agency, between physicians in the treatment of patients, the imposition of liability on one for the negligence of the other has been largely limited to situations of joint action in diagnosis or treatment or some control of the course of treatment of one by the other." *Id.* at 547, 523 N.E.2d at 288 (citation omitted). Moreover, from a policy standpoint "[t]he implications of such an enlarged liability would tend to discourage a physician from arranging to have another care for his patients on his illness or absence and thus curtail the availability of medical service." *Graddy v. New York Med. Coll.*, 19 A.D.2d 426, 430, 243 N.Y.S.2d 940, 944-45 (N.Y. App. Div. 1963).

In this case, the evidence does not establish that Dr. Velasco exercised any actual or legal control over Dr. Haile, negligently referred Meredith to Dr. Haile, or participated in any "joint diagnosis" of Meredith. Upon consideration of persuasive authority addressing this issue and the policy concerns involved, we

conclude that the trial court did not err by determining that no agency relationship existed.

III. Liability insurance

The Grubbs contend the trial court erred by sustaining Appellees' motion in limine to preclude evidence of Appellees' malpractice insurance. We disagree.

The court held, in light of its determination that neither Dr. Velasco nor Dr. Haile was an agent of Norton Hospital, that evidence of Appellees' malpractice insurance was prohibited by KRE[5] 411. The court further held that to the extent the evidence was relevant, the probative value of its admission was substantially outweighed by the danger of undue prejudice.

KRE 411 prohibits the admissibility of evidence of insurance coverage, with a few exceptions. The rule provides:

> Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

A decision as to the admissibility of evidence rests within the sound discretion of the trial judge. *Baker v. Kammerer*, 187 S.W.3d 292 (Ky. 2006). Further, "[a] trial judge may always exclude evidence when its probative value is substantially outweighed by its risk of undue prejudice." *Id.* at 297. We review a

[5] Kentucky Rule of Evidence.

trial court's evidentiary rulings for an abuse of discretion. *Ten Broeck Dupont Inc. v. Brooks*, 283 S.W.3d 705, 725 (Ky. 2009) (citing *Tumey v. Richardson*, 437 S.W.2d 201, 205 (Ky. 1969)).

The Grubbs assert that evidence of Appellees' insurance arrangement should have been admitted to show bias, control, and common defense; specifically, that Norton Healthcare paid to insure Dr. Velasco (and Dr. Haile, they argue, by virtue of his assumption of Dr. Velasco's duties under the Agreement), and thus all responsibility, direct or indirect, for Meredith's treatment fell upon Norton Healthcare as the common insurer.

The provision of the Agreement as it relates to malpractice insurance provides in pertinent part:

> Medical malpractice insurance will be provided with coverage limits of not less than that required by the Board of Trustees of Norton Healthcare for members of its Medical Staff, with coverage furnished by Norton through Physician's current professional liability insurance carrier, another carrier selected by Norton, or Norton's self-insured trust, such that Norton shall pay any applicable premiums for such coverage during the term hereof at the current rate[.]

The Grubbs direct us to the cases of *Nunnellee v. Nunnellee*, 415 S.W.2d 114 (Ky. 1967), and *Baker*, 187 S.W.3d 292, in support of their argument that evidence of malpractice insurance is admissible to prove bias; however, those cases are distinguishable from the case at bar. Though the Court in *Nunnellee* held that evidence that a witness represents an insurance company was admissible to show possible bias, *Nunnellee* was decided prior to Kentucky's adoption of the

rules of evidence. Further, while the Court in *Baker* concluded that the trial court abused its discretion by denying Baker's counsel the opportunity to cross-examine a witness regarding potential bias stemming from her employment by Kammerer's insurer, crucial to the Court's holding was the fact that the trial court failed to engage in any meaningful analysis under KRE 403 before prohibiting cross-examination concerning the witness's employment.

Here, given that the Agreement on its face is between Dr. Velasco and CMA, and no agency relationship existed between Appellees, we conclude that the court did not abuse its discretion by determining that the Agreement's provision relating to malpractice insurance was prohibited by KRE 411. Nonetheless, even if the evidence was relevant, the court properly engaged in a KRE 403 balancing test analysis and did not abuse its discretion by concluding that the probative value of its admission was outweighed by the risk of undue prejudice.

The judgment of the Jefferson Circuit Court is affirmed.

TAYLOR, CHIEF JUDGE, CONCURS.

STUMBO, JUDGE, DISSENTS IN PART.

STUMBO, JUDGE, DISSENTING IN PART: Respectfully, I must dissent from the majority's view that all three challenged jurors were properly permitted to serve. I believe that Juror 222785 and Juror 201435 should both have been excused. Both jurors admitted to personal or professional relationships that disqualified them from serving. I would grant Appellant a new trial.

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