



Alerts

No Mistrial Required When Defendant Physician Rendered Medical Aid to Juror at Trial

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Health Care Alert

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Issue

Should the situation of a litigant and attorney rendering medical aid to a juror who fell ill during closing arguments should have resulted in mistrial?

Giraldo Tirado and Christian Tirado, as Plenary Guardians of the Estate and Person of Gina Gutierrez, a Disabled Person v. Konstantin Slavin and Gerald Oh, 2019 IL App (1st) 181705

Case Summary

Gina Gutierrez—on whose behalf this medical malpractice suit was brought—suffered headaches, swelling, and redness in the weeks after her surgery to remove a cyst from her lower spine on June 21, 2011. Gloria Tirado (later named plenary guardian of Gutierrez' estate) called the surgeon's clinic twice in the 10 days after surgery, and the parties disputed whether the surgeon's office advised that she take Gutierrez to receive emergent care or whether she should take extra medication. Gutierrez was readmitted to a hospital on July 5 or 6, 2011, because she was suffering from severe postoperative headaches and fluid had been draining from her incision. She was diagnosed with positional headaches and a cerebral spinal fluid (CSF) leak but did not test positive for infection. Her condition deteriorated in the hospital and she developed a fever. Gutierrez was treated with antibiotics, tested for an infection again, intubated, and provided medications to reduce swelling and inflammation in the brain.

Gutierrez underwent a second CT scan, which showed severe brain swelling (cerebral edema) and herniation of the cerebellar tonsils. Defendant surgeon attempted to reduce the brain swelling using medication and hypertonic saline. An MRI was performed around 9:00 p.m. and showed that Gutierrez had suffered a stroke at the bottom of her brain. The surgeon performed a craniectomy to relieve pressure in her skull and remove the cerebral tonsils, and repaired the CSF leak in her lower back, noting an infection. Gutierrez now suffers from partial paralysis in all four limbs, suffers impaired cognitive abilities, and requires 24-hour skilled nursing care.

During plaintiffs' closing argument at trial, a juror became ill. The jurors returned to the jury room for a break where the ill juror stopped breathing. Defense counsel, who was also a nurse, ran to the jury room with the surgeon. Plaintiffs did not go into the room. Defense counsel felt for the juror's pulse when the juror awoke. The juror then began speaking and seemed stable. Defense counsel returned to the court room, and paramedics later arrived and cleared the juror, whom the court excused and replaced with an alternate juror. Closing arguments resumed that same day. The jurors were instructed on the law, retired to the jury room, and eventually entered a verdict for the surgeon. The following morning, plaintiffs moved for a mistrial, which the trial court denied.



The appellate court affirmed the denial of plaintiff's motion for mistrial, finding no abuse of discretion. The *Tirado* court compared the facts to *Campbell v. Fox*, 113 Ill. 2d 354 (1986), where the defendant physician carried an incapacitated juror, who had collapsed during opening statements, to the defense table and rendered aid. In *Campbell*, the Illinois Supreme Court reversed the trial court's refusal to grant a mistrial, finding that the effect of the unusual events undoubtedly influenced the jury and prevented it from dispassionately evaluating the evidence. The appellate court distinguished *Campbell*, finding that the parties and jurors in the present case were able to proceed with closing arguments, receive jury instructions, and render a verdict after the incident, and that no break was taken after the ill juror was dismissed. The *Tirado* court found it notable that plaintiffs' counsel had not requested that the court make a record of the unusual events and that the parties had proceeded as if nothing had happened after the incident.

Takeaway

Litigants and their attorneys alike should recognize that their actions, as much as evidence and argument, can influence jurors and their ultimate decision.

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