

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 27, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 00-3232

Cir. Ct. No. 98-CV-655

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

MARY E. HAUN,

PLAINTIFF-APPELLANT,

V.

**THOMAS V. RANKIN, M.D., THE MEDICAL PROTECTIVE
COMPANY AND WISCONSIN PATIENTS COMPENSATION
FUND,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Eau Claire County: WILLIAM M. GABLER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Mary Haun appeals a judgment dismissing her medical malpractice action against Dr. Thomas Rankin. The jury found that Rankin was negligent in his care and treatment of Haun but that his negligence did

not cause Haun any injury. Haun argues that the trial court should have changed the jury's answer to the cause question because Haun's only claim was that Rankin performed unnecessary surgery and unnecessary surgery as a matter of law causes injury. Haun also argues that the trial court improperly exercised its discretion when it granted Rankin's motions in limine, preventing the jury from learning of Rankin's criminal convictions, lies in his sworn application to practice medicine and his application for privileges at Sacred Heart Hospital, his false statements in bankruptcy proceedings and, in the opinion of an expert witness, five to ten other unnecessary surgeries he performed. We reject these arguments and affirm the judgment.

¶2 Haun was referred to Rankin by a neurologist because her numerous medical conditions created a risk of falling and potential spinal cord injury. Rankin advised surgery and Haun consented. After the surgery, when Haun complained of additional pain, Rankin performed a second operation. Haun's complaint alleged that Rankin negligently recommended and negligently performed the two surgeries. Two medical experts agreed with her contentions. However, two other medical experts and Rankin testified that these surgeries were medically justified, properly performed and caused Haun no injury. Additionally, one of Haun's experts criticized Rankin for placing a bone graft at an improper angle, but conceded "that wasn't causing Ms. Haun any particular symptoms."

¶3 Haun's argument that the trial court should have changed the answer on causation fails for two reasons: (1) it is based on the false premise that the jury necessarily found that the initial surgery was unnecessary; and (2) it relies on the wrong standard. Haun pleaded and presented evidence that the operation was badly performed. By answering "yes" to the negligence question, the jury was not necessarily finding that the surgery was unnecessary. It could just as well have

found that the operation was necessary, but improperly done, and that Rankin's improper procedures did not harm Haun. In addition, inconsistency in the verdicts is not grounds for changing an answer. It merely begs the question which of the inconsistent answers should be changed. To justify changing an answer, the court must conclude that there is no credible evidence to support it. *See Meurer v. ITT General Controls*, 90 Wis. 2d 438, 450, 280 N.W.2d 156 (1979). Rankin's position was supported by the testimony of two expert witnesses, and even Haun's expert conceded that Rankin's improper placement of a graft did not cause Haun's subsequent symptoms. The record discloses no basis for changing the jury's answer on causation.

¶4 The trial court properly granted Rankin's motions in limine under WIS. STAT. § 904.03 (1999-2000), because the probative value of the proffered evidence was substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury and undue delay. Evidence that Rankin had been convicted of crimes twelve years before trial was highly prejudicial and only marginally relevant. The trial court appropriately considered the factors set out in *State v. Smith*, 203 Wis. 2d 288, 295-96, 553 N.W.2d 824 (Ct. App. 1996), particularly the lapse of time since the convictions, and reasonably determined that disclosing the convictions to the jury would unfairly prejudice Rankin.¹ While his credibility was at issue, his positions were supported by other expert witnesses, diminishing the significance of his personal credibility.

¹ Haun's arguments demonstrate that she intended to improperly use the evidence. She argues that the trial court should have considered the lapse of time from the convictions to the date of her surgery rather than the date of trial, demonstrating that she did not intend to use that information to impeach Rankin's credibility as a witness, but as a general attack on his character. Haun apparently believes that she should be allowed to sue Rankin even if reasonable physicians would have performed these surgeries as Rankin did because he was a dishonest man.

The trial court appropriately excluded evidence of Rankin's prior convictions to avoid any improper suggestion that he committed malpractice by virtue of his character rather than his performance.

¶5 Rankin's lies on his sworn application to practice medicine and his application for hospital privileges consisted of lying about his prior convictions. That evidence could not be introduced without informing the jury of the prior convictions. Again, because Rankin's credibility in his self-serving statements was not as significant as the testimony of his supporting expert witnesses, the trial court reasonably exercised its discretion when it excluded that testimony.

¶6 Accusations that Rankin lied about his interest in property during bankruptcy proceedings and performed other unnecessary surgeries would have required multiple trials within this trial. Rankin would have had the right to defend himself against these accusations by informing the jury of his interest in property entirely unrelated to his medical practice. He could also have defended the accusation that he performed unnecessary surgery by conducting a mini trial on the necessity of each of the other operations he performed. The trial court correctly concluded that delving into these matters might confuse the true issues for the jury and expend substantial court time on these collateral matters.

¶7 The trial court's rulings on the motions in limine demonstrate its complete understanding of the facts and relevant law, and its decisions are those that a reasonable judge could reach. Therefore, this court must sustain its decisions as a reasonable exercise of discretion. See *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5 (1999-2000).

