



BSPH congratulates Jason A. Paskan and Bret C. Perry on their Eighth District Court of Appeal decision affirming a defense verdict in favor of their clients stemming from a recent medical malpractice and wrongful death action. In the underlying action, Plaintiff claimed that the defendant-physician, and his employer, failed to recognize that the decedent was experiencing signs consistent with a transient ischemic attack (TIA) or mini-stroke. As a result of this failure, the decedent suffered a massive multi-vessel stroke a few hours later causing his death. Plaintiff requested that the jury send a message to the community and return a verdict for compensatory damages in the amount of \$5,000,000. The defense countered these allegations arguing that Plaintiff's entire case was premised upon a hindsight analysis. The defense argued that viewing the care and treatment provided, prospectively, the complaints expressed by the decedent were non-specific and likely attributable to recent surgery. The jury deliberated and returned a verdict in favor of Defendants finding that the standard of care was met. The jury did not reach the issue of proximate causation.

On appeal, Plaintiff argued that the trial court abused its discretion and applied the incorrect legal standard in determining whether a prospective juror should have been excused for cause. Plaintiff argued that the prospective juror should have been excused for cause because the juror indicated that at the time of jury selection, and without the benefit of any evidence, he would lean in favor of the defendant-physician. However, upon further questioning, the prospective juror admitted that he would be completely fair and judge the case based on the yet to be heard evidence. The trial court refused to exclude the prospective juror for cause and Plaintiff's appeal ensued.

The Eighth District Court of Appeals affirmed the trial court's decision finding that the trial court applied the correct legal standard and that the trial court did not abuse its discretion in refusing to exclude the prospective juror for cause. In affirming the trial court's decision, the Court reiterated the long-standing principle that the determination of whether a juror is biased involves a judgment of credibility, the basis of which may not always be apparent from the record on appeal, and a reviewing court should defer to the trial judge who sees and hears the jury.



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