In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-24-00260-CV

VANESSA LUCIO, APPELLANT

V.

COVENANT HEALTH SYSTEM, METHODIST HOSPITAL, PLAINVIEW, TEXAS D/B/A COVENANT HOSPITAL PLAINVIEW, CHARLES R. SMITH, D.O., AND DOUGLAS CUMMINS, M.D., APPELLEES

On Appeal from the 72nd District Court
Lubbock County, Texas
Trial Court No. DC-2022-CV-0141, Honorable John Grace, Presiding

May 8, 2025

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

We have before us one issue concerning whether the trial court erred in denying challenges for cause levied against two venire members who ultimately sat on the jury. Vanessa Lucio sued Covenant Health System, Methodist Hospital, Plainview, Texas d/b/a Covenant Hospital Plainview, Charles R. Smith, D.O., and Douglas Cummins, M.D. for medical malpractice. The trial court convened the matter for jury trial, which jury answered "no" when asked if "the negligence, if any, of those [defendants] . . . proximately

cause[d] the injury in question." Based on that verdict, the trial judge entered judgment ordering that Lucio "take nothing." She appealed, complaining of the trial court's ruling on the aforementioned challenges. We affirm.[1]

Preservation of Error

A preliminary issue warrants consideration. It concerns whether Lucio preserved her issue for review. She asserts that she did, while the physicians argue otherwise. We side with Lucio.

Preserving a complaint like that here requires the party to use a peremptory challenge against the venire member involved, exhaust remaining challenges, and notify the trial court that a specific objectionable venire member will remain on the jury list. *Cortez ex rel. Estate of Puentes v. HCCI-San Antonio, Inc*., 159 S.W.3d 87, 90-91 (Tex. 2005). Lucio did just that regarding the two venire members in question, Numbers 25 and 27. So, she preserved her complaints for review.

Juror 27

We begin our analysis of the issue with Juror 27. Allegedly, the trial court erred in rejecting Lucio's challenge for cause since the juror "expressed unequivocal bias that [she] will not award certain sums of money unless the evidence is stronger than a preponderance of the evidence." The sums alluded to were "millions of dollars." We overrule the issue.

Generally, the standard of review is one of abused discretion. *Cortez ex rel. Estate of Puentes*, 159 S.W.3d at 93. But, the trial court loses its discretion upon establishing bias or prejudice as a matter of law. *Id.* (stating that "trial courts exercise discretion in

[1] Only the two physicians deigned to file an appellee's brief responding to Lucio's appellate complaints.

deciding whether to strike veniremembers for cause when bias or prejudice is not established as a matter of law, and there is error only if that discretion is abused"). And, in deciding if discretion was abused, we review the entire examination of the juror. *Id.* This is so since the trial court is actually present during voir dire and in a better position to evaluate the juror's sincerity and capacity for fairness and impartiality. *Id.*

Next, a venire member is disqualified from serving on a jury if there is, among other things, "bias or prejudice in favor of or against a party in the case . . . ." TEX. GOV. CODE ANN. § 62.105(4). Quoting *Compton v. Henrie*, 364 S.W.2d 179 (Tex. 1963), our Supreme Court iterated that "bias" is an inclination toward one side of an issue rather than to the other. *Hyundai Motor Co. v. Vasquez*, 189 S.W.3d 743, 751 (Tex. 2006). Apparently, it is a form of "prejudice," which means "prejudgment." *Id.* But, to disqualify one, "it must appear that the state of mind of the juror leads to the natural inference that he will not or did not act with impartiality." *Id.*; *Goode v. Shoukfeh*, 943 S.W.2d 441, 453 (Tex. 1997) (quoting *Compton*, *supra*). An equivocal expression of bias falls outside that realm, however. *Cortez*, 159 S.W.3d at 93-94; *GMC v. Burry*, 203 S.W.3d 514, 546 (Tex. App.—Fort Worth 2006, pet. denied). Furthermore, the relevant inquiry focuses on where the jurors are likely to end, not where they start. *El Hafi v. Baker*, 164 S.W.3d 383, 385 (Tex. 2006), (quoting *Cortez, supra*). Indeed, the onus falls upon the party alleging bias to arrive at the requisite end. He has the duty to "specifically ask questions that would have determined whether he had a right to challenge the veniremember," not the trial court. *Valle-Fernandez v. State*, No. 02-24-00071-CR, 2025 Tex. App. LEXIS 1305, at *20-21 (Tex. App.—Fort Worth Feb. 27, 2025, no pet.(mem. op.). That said, we turn to the issue.

The matter of requiring more evidence to award millions of dollars began with counsel for Lucio describing the burden of proof, alluding to percentages ranging from 50 to 90, and querying if members would need more than the greater weight of the credible evidence to award "millions of dollars." Eight venire members raised their hand, three of which were Numbers 15, 25, and 27. Counsel specifically interrogated only Juror 15, who ultimately said "yes" when asked "if the plaintiff is asking for more than a million dollars, would you want more evidence than the greater weight of the credible evidence; you would hold me to a higher standard?"[2] Counsel then turned to the venire at large to ask who agreed with Number 15. She then couched her question in the vernacular of a core belief and ended with "[y]ou would be unable to set that aside and not -- and just go with what Judge Grace instructs you is my burden . . . [y]ou would want more?" Venire members 25 and 27 were in the group ultimately raising their hands. Neither were then questioned by Lucio's attorney. That is, no effort was made to assure that either clearly heard and understood counsel's description of percentages, reference to "pink elephants," and allusion to "more evidence." No effort was made to assure that those jurors did not simply raise their hands because they had questions. Nevertheless, that was not the sole conversation about comporting with the trial court's instructions regarding an award of "millions of dollars."

The physicians' attorney expressly raised the topic and pursued it among those who indicated they may want "more evidence." Interspersed within his questioning was repeated reference to the burden of proof as "greater weight of credible evidence," awarding such damages if the greater weight supported it, and following the court's

[2] Lucio did not challenge Number 15 for cause despite his answers.

instructions. And, immediately before specifically questioning Juror 27, counsel asked of Juror 26 if she had a problem being on the jury and whether she could follow the trial court's instruction. Number 26 replied that she lacked such a problem and could follow those instructions. Then, he turned to Number 27 with "Ms. [____], same with you. Anything?" She answered "no" and also responded affirmatively when asked if she understood his definition of "preponderance of the evidence?"

Harkening back to the standard of review and the analysis surrounding its application, we consider the entirety of the examination of Juror 27 surrounding the purported bias in question. Aspects of same may be construed as indicative of Number 27's inability to award "millions of dollars" even though such an award were supported by a preponderance of the evidence and irrespective of the trial court's instructions. Yet, of the eight venire members expressing that position, counsel for Lucio subjected only one to further questioning to clarify their responses and position. That venire member was 15, not 27. Though not identical to a generalized question posed to the entire venire which often falls short of illustrating bias, *see e.g.*, *Taber v. Roush*, 316 S.W.3d 139, 165 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (observing that general questions "usually are insufficient to satisfy the diligence required in probing the mind of a venire member with respect to a legal disqualification for bias or prejudice"), the tack taken here has its similarities.

Both leave open the likelihood of misunderstandings about the law, the juror's obligations, and the informed intent underlying Number 27's decision to raise her hand. This is why the court in *Smith v. Dean*, 232 S.W.3d 181 (Tex. App.—Fort Worth 2007, pet. denied) observed that venire members within a "'block group'" who raise their hands

in response to a question "did not express unequivocal bias by merely raising their hands." *Id.* at 191 (stating that "[t]hey could have raised their hands in response to trial counsel's question about whether they agreed with another venire member"). And, the omission here grows in importance when one considers the personalized examination undertaken by counsel for the physicians. When personally interrogated after having the burden of proof explained, those within the group of eight (including Number 15) generally evinced the ability to abide by the court's instructions. And, though defense counsel failed to ask Juror 27 that specific question, she nonetheless revealed her understanding of the burden of proof and uttered that she had no hesitance to sit on the jury.

Admittedly, more could have been done by both parties. Both sides could have specifically turned to Number 27 and asked focused questions delving into any purported bias pertaining to an award of "millions of dollars." Neither did. But, again, the entire examination of the particular juror is determinative, which reason suggests would include the context of that examination. And, the entire examination of Number 27 as pursued by both plaintiff and defense counsel sways us to conclude that Number 27's "state of mind . . . [does not, as a matter of law,] lead[] to the natural inference that [s]he will not or did not act with impartiality." That, coupled with the greater ability of the trial court to both witness what transpired first-hand as it occurred also requires us to hold that the trial court did not abuse its discretion in overruling Lucio's challenge for cause against Number 27.

Juror 25

Lucio next contends that the trial court erred in denying her challenge for cause levied against Number 25. Allegedly, that individual not only "expressed unequivocal bias" regarding the need for "stronger than a preponderance of the evidence" when it

came to awarding certain sums of damage but also "expressed a disqualifying financial connection to" the defendants. We overrule the issue.

As mentioned above, Juror 25 was one of the eight who raised her hand when asked about "more evidence" to award "millions of dollars." She also was one of the eight whom Lucio did not specifically question. So, much of what we said about the limited questioning of Juror 27 equally applies to Juror 25. To that we add one other circumstance. Counsel for the physicians did specifically ask her: "knowing that you have the right to determine what the credible evidence is, could you follow the Court's instruction and base your decision on the credible evidence?" She answered: "[y]es, sir." That answer prevents us from saying she had, as a matter of law, an unequivocal bias against following court instructions when it came to abiding by the applicable burden of proof while determining damages. *See Pineda v. State*, No. 07-09-0397-CR, 2011 Tex. App. LEXIS 1782, at *3 (Tex. App.—Amarillo Mar. 10, 2011, no pet.) (mem. op., not designated for publication) (stating that the venire member's position must be unequivocal for if there is vacillation or equivocation with respect to his ability to follow the law, we defer to the trial court's judgment or discretion); *see also Patino v. State*, No. 07-03-0131-CR, 2005 Tex. App. LEXIS 3934, at *3-4 (Tex. App.—Amarillo May 19, 2005, pet. ref'd) (mem. op., not designated for publication) (same). And, given the entirety of the examination to which she was exposed, we cannot say the trial court abused its discretion in denying the challenge for cause on the basis of bias or prejudice. That leaves us with the matter of Juror 25's purported financial interest.

The initial debate between the parties encompasses preservation. Allegedly, Lucio failed to preserve the ground in question as a basis for challenging the venire member.

As we have said, preservation requires a timely and specific objection or complaint. *In re DCP Operating Co*., No. 07-18-00416-CV, 2019 Tex. App. LEXIS 3441, at *6 (Tex. App.—Amarillo Apr. 29, 2019, orig. proc.) (mem. op.). Furthermore, the "objection must be specific enough so that the trial court can understand ***the precise grounds*** to make an informed ruling and afford the offering party an opportunity to remedy the defect if possible." *Id.* (emphasis added).

During voir dire, Juror 25 revealed she worked for a company that received referrals from Covenant Hospital. Lucio's counsel then queried the potential juror about the matter. That questioning disclosed: 1) the referrals were to the company, as opposed to the particular venire member; 2) the latter would be "a little worried that [her] boss wouldn't want [her] to find against two Covenant doctors"; 3) that would be "in the back of [her] mind throughout the trial"; and 4) she was unsure whether she could put that out of her mind. Lucio then challenged the juror for cause by uttering:

> She works for Calvert Home Health. She said she would have trouble setting her knowledge aside, that she would require more than a preponderance of the evidence for millions, that she could not set that aside. And, again, I believe, under Cortez, that she -- you know, her minor recantation in response to Mr. Kershaw's questions was not sufficient given the breadth of her -- the breadth of her bias that she expressed.

Before us, Lucio urges that Number 25 voiced a financial interest in the outcome of the suit which disqualified her from serving. Comparison of the latter with the challenge uttered below discloses no overt mention to the trial court of an alleged "financial interest." Rather, Lucio alluded to the juror's employer and "trouble setting her knowledge aside." Reference to "setting her knowledge aside" reflects more of a complaint founded on some

fear, bias, or prejudice.[3] It does not encompass the "precise ground" of financial interest in the subject matter of the suit. So, her grounds for removal urged below fail to comport with the allegation of financial interest urged here; that means it was not preserved for review. *See Blommaert v. Borger Country Club*, No. 07-12-00337-CV, 2014 Tex. App. LEXIS 3682, at *8 (Tex. App.—Amarillo Apr. 3, 2014, pet. denied) (mem. op.) (holding that because appellants' complaint on appeal did not comport with their relevancy objection at trial, nothing was preserved for our review). Yet, even if adequately preserved, we nevertheless would find Lucio's argument unavailing.

A direct or indirect interest in the subject matter of the suit may warrant disqualification. TEX. GOV. CODE ANN. § 62.105(2). Remote interests do not. *Guerra v. Wal-Mart Stores*, 943 S.W.2d 56, 59 (Tex. App.—San Antonio 1997, pet. denied) (stating that "Texas courts have recognized that an interest can be too remote to require the disqualification of a juror"). Nor do contingent interests, whether immediate, real, and substantial, suffice. *See City of Hawkins v. E.B. Germany & Sons*, 425 S.W.2d 23, 26 (Tex. Civ. App.—Tyler 1968, writ ref'd n.r.e.). An example of such a remote, non-immediate interest in a suit's subject matter consists of a taxpayer's sitting on the jury wherein a taxing authority stands as a party. *Id.* Ruling adversely to the governmental entity may well result in an increase in the juror's taxes, or it may not. In either case, the interest is too remote and contingent. *Id.* The same is no less true here. Lucio's

[3] This is especially so given an aspect of Lucio's argument here. She tells us that "unlike cases about juror bias, the cases on 'interested' jurors do not focus on the jurors' feelings or their potential future actions." "'Worried' jurors have stayed on juries if their interest is not financial." Yet, if what Lucio proposes were accurate, then, it would not matter whether Juror 25 could set aside her "knowledge." Indeed, her supposed financial interest alone would disqualify the juror, or so goes Lucio's argument. Yet, Lucio mentioned the juror's inability to set aside her knowledge about a matter. And, that adds fodder to our interpretation of Lucio's ground below as focusing on some "knowledge" causing her to be biased or prejudiced, not on some financial interest requiring disqualification. In short, there was no need to mention "knowledge" of something as being a catalyst for removal if financial interest alone sufficed.

hypothesis depends not only on 1) an area hospital assuming a role of pettiness and thereby opting to withhold referrals to the juror's employer but also on 2) that employer assuming a similar petty attitude by financially punishing the juror due to her verdict. That may happen or it may not. And, both are mere speculations dependent on contingencies, as opposed to a real potentiality. So, we cannot fault the trial court for rejecting a challenge for cause dependent upon such a contingent, remote financial interest.

Having overruled the issues before us, we affirm the trial court's judgment.

Brian Quinn
Chief Justice