

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LINTON SMITH, Personal Representative of the  
Estate of SUSAN SMITH, Deceased,

UNPUBLISHED  
April 21, 2009

Plaintiff-Appellant,

v

No. 279908  
Wayne Circuit Court  
LC No. 04-401059-NH

OAKWOOD HEALTHCARE, INC., a/k/a  
OAKWOOD HEALTHCARE CENTER, d/b/a  
OAKWOOD FAMILY MEDICAL CENTER -  
BELLEVILLE,

Defendant-Appellee,

and

CURTIS SIMMONS, M.D., and ALEXANDRIA  
SIMPSON, M.D.,

Defendants.

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Before: Beckering, P.J., and Talbot and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right, following a jury trial, from a judgment of no cause of action in favor of defendant Oakwood Healthcare, Inc. (the “Oakwood Clinic”), in this wrongful death medical malpractice action.<sup>1</sup> Specifically, plaintiff challenges the trial court’s decision to bifurcate the liability and damages phases of the trial. We affirm.

Plaintiff’s decedent suffered a brain hemorrhage while vacationing in Mexico. Physicians in Cancun performed surgery in which “burr holes” were bored in the decedent’s head to drain the accumulated blood and relieve the pressure on the brain from the subdural bleeding. The decedent was permitted to return to Michigan by commercial flight the following

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<sup>1</sup> Defendants Curtis Simmons, M.D., and Alexandria Simpson, M.D., were dismissed by stipulation at the time the judgment was entered.

week. Upon her return, the decedent went to the Oakwood Clinic for follow-up care. Dr. Alexandria Simpson examined the decedent on February 2, 2002, and found no signs of acute distress or a neurological condition requiring imminent treatment. On February 4, 2002, Dr. Simmons also found no signs of acute distress. Dr. Simmons referred the decedent to the Michigan Brain and Spine Institute (the “Institute”) for follow-up evaluation and treatment. Dr. Simmons and Donna Doemer, the Oakwood Clinic’s referral coordinator, testified that Dr. Simmons wanted the Institute to schedule the decedent’s appointment that day or the next day, or “ASAP” (as soon as possible). According to a witness from the Institute, however, Dr. Simmons stated that the decedent should be seen for a postoperative appointment within one or two weeks. The Institute subsequently scheduled an appointment for the decedent on February 14, 2002. On February 7, 2002, the decedent experienced another brain hemorrhage and died the following day.

Plaintiff, the decedent’s husband and personal representative of the decedent’s estate, subsequently filed this medical malpractice action. His theory of liability was that Drs. Simmons and Simpson breached the appropriate standard of care for family practice physicians by failing to refer the decedent for immediate evaluation by a neurosurgeon, either by scheduling an appointment that day, or recommending that she go to an emergency room. Plaintiff’s experts averred that the decedent likely died of a subarachnoid hemorrhage, which was most likely caused by an aneurism. They alleged that defendants should have surmised that plaintiff suffered an aneurism in Mexico, which could not have been successfully treated by the burr hole procedure, and which was likely to bleed again if not treated immediately by “coiling” or “clipping.”

Defendants, however, offered expert testimony that the decedent’s clinical presentation on February 2 and February 4, 2002, did not suggest any signs of an emergent condition. They stated that her condition was consistent with postoperative recovery from a successful procedure, and that they met and exceeded the standard of care by referring her to a neurosurgeon “ASAP.”

A jury trial began in December 2006. As trial proceeded, the trial court became concerned about the slow progress of the trial and the possibility that it would extend beyond the holiday break. Therefore, on the fourth day of trial, the court announced that it would bifurcate the liability and damages phases of the trial, so that the question of liability could be submitted to the jury before the holiday break. If the jury found defendants liable, then it would return after the holiday break for the damages portion of the trial. The jury returned a special verdict in which it found that the Oakwood Clinic was not professionally negligent, thereby avoiding the need for further proceedings regarding damages. Plaintiff thereafter moved for judgment notwithstanding the verdict, arguing that he was prejudiced by the trial court’s decision to bifurcate the trial. The court denied plaintiff’s motion.

Plaintiff now argues that the trial court erroneously bifurcated the trial without a persuasive showing that bifurcation was necessary, and that a new trial is required. We disagree.

Initially, we disagree with plaintiff’s contention that he preserved this issue with an appropriate objection to the trial court’s bifurcation decision at trial. Plaintiff merely expressed a preference to present all of his evidence at once. Plaintiff never argued below, as he does on appeal, that bifurcation was not appropriate or would be prejudicial. An issue is not properly preserved absent “a specific and clear objection.” *In re Forfeiture of \$19,250*, 209 Mich App 20,

31; 530 NW2d 759 (1995). In addition, an objection on one ground is insufficient to preserve an appellate challenge based on a different ground. *Meagher v Wayne State Univ*, 222 Mich App 700, 724; 565 NW2d 401 (1997). Accordingly, we conclude that this issue is not preserved. Therefore, we review this issue for plain error affecting plaintiff's substantial rights. *Hilgendorf v St John Hosp & Medical Ctr Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001).

MCR 2.505(B) provides:

**Separate Trials.** For convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, the court may order a separate trial of one or more claims, cross-claims, counterclaims, third-party claims, or issues.

Thus, MCR 2.505(B) allows a trial court to sever a trial to avoid prejudice or when severance would be conducive to expedition and economy. *LeGendre v Monroe Co*, 234 Mich App 708, 719; 600 NW2d 78 (1999). This Court has held that separate trials "should be ordered only upon the most persuasive showing that the convenience of all parties and the court requires it." *Id.*; *Hodgins v Times Herald Co*, 169 Mich App 245, 261; 425 NW2d 522 (1988).

Plaintiff argues that bifurcation was inappropriate in this case because there was no persuasive showing that it was necessary for the convenience of the parties and the court. We disagree. Trial had been underway for four days, and plaintiff still had not presented all of his liability evidence. Also, plaintiff had not presented any evidence concerning damages yet, except for a few brief references to plaintiff's loss of his wife's love and companionship. The trial court had legitimate reasons to be concerned about the progress of the trial because the holiday break was approaching and the court wanted to avoid a delay that would make it difficult for the jury to evaluate the evidence if it had to consider both liability and damages following an interruption in the proceedings, particularly considering that the liability portion involved complex medical matters outside the knowledge of most laypersons and that there were conflicting theories concerning the decedent's condition. Under the circumstances, it was not inappropriate for the trial court to bifurcate the trial so that the liability portion could be presented to the jury before the holiday interruption, while the evidence was still fresh in the jurors' minds.

We disagree with plaintiff's argument that the jury's verdict can only be explained by its desire to avoid returning for further proceedings after the holidays. Jurors are presumed to have understood and followed the trial court's instructions, and to have honored their oaths to decide the case without partiality. *People v Cline*, 276 Mich App 634, 638; 741 NW2d 563 (2007); *Bordeaux v Celotex Corp*, 203 Mich App 158, 164; 511 NW2d 899 (1993). There is no basis in the record to conclude that the jury here did not honor its oath to decide the case fairly and impartially.

Contrary to plaintiff's assertion, the evidence of malpractice was not so substantial that the jury's verdict could only be explained by an improper motive. Defendants' experts testified that Drs. Simmons and Simpson reasonably believed that emergent treatment was not necessary because the decedent's clinical presentation showed no urgent problems. Dr. Farzin Namei testified that Dr. Simmons adequately performed a neurological assessment that did not reveal any evidence of a continuing problem. Additionally, there was evidence that the decedent

showed good improvement following her treatment in Mexico, and that there was no evidence of ongoing bleeding because she was not complaining of a severe headache. The decedent was able to walk, and her symptoms were consistent with normal postoperative recovery. Defendants also presented evidence that Drs. Simpson and Simmons had no reason to infer from the decedent's incisions that she received only minimal treatment for a subdural hemorrhage if, indeed, she did have an aneurism and subarachnoid bleeding. Further, although there was conflicting evidence concerning Dr. Simmons's actions in referring the decedent to a neurosurgeon, the jury reasonably could have found that Dr. Simmons made a reasonable effort to refer the decedent to the Institute by the next day, but that Institute personnel failed to act on his instructions. Thus, there was a reasonable basis in the evidence to conclude that defendants did not breach the appropriate standard of care.

Plaintiff's reliance on *Peasley v Lapeer Circuit Judge*, 373 Mich 222, 224; 128 NW2d 515 (1964), and *Detloff v Taubman Co, Inc*, 112 Mich App 308, 309-310; 315 NW2d 582 (1982), is misplaced. Both of those cases were decided under former GCR 505.2, which permitted the court to bifurcate proceedings "for convenience or to avoid prejudice." The current version of the rule, MCR 2.505(B), now provides an additional ground for ordering separate trials, i.e., "when separate trials will be conducive to expedition and economy." In this case, because of the nature of the trial and the approaching holiday break, bifurcation was conducive to expedition and economy because it enabled the more complicated issue of liability to be presented to the jury without the interruption of the holiday break.

For these reasons, we conclude that plain error has not been shown and, accordingly, affirm the judgment for defendant.

Affirmed.

/s/ Jane M. Beckering  
/s/ Michael J. Talbot  
/s/ Pat M. Donofrio