

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 3, 2002**

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. 01-2098  
STATE OF WISCONSIN**

**Cir. Ct. No. 99-CV-18**

**IN COURT OF APPEALS  
DISTRICT IV**

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**ALLEN J. PRONSCHINSKE, INDIVIDUALLY AND AS  
ADMINISTRATOR OF THE ESTATE OF KAREN K.  
PRONSCHINSKE, AND DYLAN A. PRONSCHINSKE, A  
MINOR, BY ALAN E. GRISCHKE, HIS GUARDIAN AD  
LITEM,**

**PLAINTIFFS-RESPONDENTS,**

**v.**

**RUPINDER SINGH, M.D., KROHN CLINIC, LTD., AND  
PHYSICIANS INSURANCE COMPANY OF WISCONSIN,**

**DEFENDANTS-APPELLANTS,**

**CHAMPUS/U.S. ARMY,**

**DEFENDANT-SUBROGEE.**

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APPEAL from a judgment of the circuit court for Jackson County:  
ROBERT W. RADCLIFFE, Judge. *Affirmed.*

Before Dykman, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Dr. Rupinder Singh, Krohn Clinic, Ltd., and Physicians Insurance Company of Wisconsin appeal from the judgment on the malpractice claim of Allen Pronschinske, his son, and the estate of his deceased wife, Karen Pronschinske. The appellants raise various issues concerning the trial court proceedings. We affirm.

¶2 Dr. Singh saw Karen Pronschinske at a hospital emergency room on her complaints of chest congestion and dry cough. Dr. Singh ordered tests that included an EKG, and interpreted its results to show “first degree AV block,” a non-serious condition that did not require immediate treatment. Consequently, Dr. Singh recommended a stress test in a few days, and sent Karen home.

¶3 The next day, another physician reviewed the EKG and diagnosed second-degree AV heart block, a more serious condition requiring hospitalization and prompt treatment. However, no one notified Karen and, later that morning, she suffered a heart arrest and died. The complaint in this action alleged that Dr. Singh’s failure to properly diagnose and treat Karen’s heart condition caused her death.

¶4 At trial, the Pronschinskes offered evidence that Karen died after her second-degree block progressed into a fatal third-degree block. Their experts further testified that her death was avoidable had Dr. Singh promptly hospitalized and treated her. In contrast, the defense experts testified that Karen died from severe, acute myocarditis. Therefore, in their view, timely hospitalization and treatment would not have saved Karen.

¶5 At the conclusion of the trial, the jury found Dr. Singh causally negligent, with two dissenting jurors on the causation question. On motions after verdict, the trial court ordered a new trial on causation. As the court explained:

The Court finds that the testimony of [the defendants' expert witnesses] is entitled to greater weight than that of [the plaintiffs' expert witnesses]. The Court finds that it is significant that the opinions of the defense experts were supported by their actual review, evaluation and consideration of the heart tissue and the effects thereon by the myocarditis. The Court is not unappreciative of the economic and emotional costs inherent in trials, particularly of trials with subject matter such as presented in this case. Nevertheless, the Court firmly believes that a new trial is warranted consistent with Section 805.15(1), Wisconsin Statutes, on the grounds that the Jury's answer to [the causation question] is contrary to the great weight and clear preponderance of the evidence, and further that a new trial on [causation] should be granted in the interests of justice.

¶6 Although the issue of Dr. Singh's negligence was not retried, the court allowed the Pronschinskes to present testimony to the second jury explaining the negligence issue (Misreading the EKG and failing to promptly hospitalize Karen.) At the close of evidence, the defendants proposed the jury question, "Was the decision not to admit Karen K. Pronschinske to the hospital on October 27, 1997, a substantial factor in causing Karen Pronschinske's death?" Instead, the court framed the jury question as, "Was the negligence of Rupinder Singh, M.D., a cause of the death of Karen K. Pronschinske?"

¶7 The jury answered "yes" to that question, with no dissenters. On motions after verdict, although continuing to believe that the evidence strongly favored the defendants, the court refused to order a third trial.<sup>1</sup> Judgment was

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<sup>1</sup> The court stated:

(continued)

entered and the appellants brought this appeal. The principal issues are: (1) whether the trial court properly refused to grant a third trial on causation, (2) whether the trial court properly framed the jury question, and (3) whether it properly allowed the Pronschinskes to offer testimony on the nature of Dr. Singh's negligence.

¶8 The trial court properly exercised its discretion when it refused to order a third trial. Under WIS. STAT. § 805.15(1) (1999-2000),<sup>2</sup> the trial court may grant a new trial in the interest of justice when the jury findings are contrary to the great weight and clear preponderance of the evidence, even though the findings are supported by credible evidence. *Sievert v. American Family Mut. Ins. Co.*, 180 Wis. 2d 426, 431, 509 N.W.2d 75 (Ct. App. 1993). This court owes great deference to the trial court's decision on this question. *Id.* Here, the appellants contend that the court had no reasonable basis to first order a new trial, and then deny one, without changing its view of the evidence, which the parties agree was virtually the same in both trials. We disagree with that proposition. The trial court could reasonably conclude that after giving the appellants two causation trials, with two dissenters in the first and no dissenters in the second, the jury was entitled to the deference ordinarily accorded its findings under WIS. STAT. § 805.14(1). Under that provision, the trial court will sustain the verdict if it is

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Now, while this court's personal evaluation of the evidence is contrary to the jury's conclusion, I am in no position to again substitute my judgment for that of the jury, and it certainly would be in error for me to do so, because there was credible evidence at the second trial of this matter ... that this negligence on the part of Dr. Singh was a substantial factor in causing the death of Karen Pronschinske.

<sup>2</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

supported by any credible evidence, and it is beyond dispute that there was ample credible evidence to support the jury's verdict on causation, even if the court did not accept it the first time around.

¶9 The trial court properly framed the jury question. We give substantial deference to the manner in which a trial court frames the verdict question. *Runjo v. St. Paul Fire & Marine Ins. Co.*, 197 Wis. 2d 594, 602, 541 N.W.2d 173 (Ct. App. 1995). We will affirm if the question fairly presents the jury with the material issues of fact. *Id.* In this case, the appellants' proposed verdict question and the question used state the identical issue; whether Dr. Singh's misdiagnosis and subsequent failure to hospitalize Karen was a cause of her death. We do not fault the trial court for choosing one form of the same question over another. Additionally, there is no merit to the appellants' contention that it was error to ask whether Dr. Singh's acts were "a cause" rather than a "substantial factor" in the death. Those terms are interchangeable. *See Clark v. Leisure Vehicles, Inc.*, 96 Wis. 2d 607, 618, 292 N.W.2d 630 (1980).

¶10 The trial court also properly allowed testimony that described the nature of Dr. Singh's negligence. The jury could hardly determine whether his actions caused Karen's death without knowing what those actions were.

¶11 The appellants also contend that the Pronschinskes' attorney tainted the verdict with inflammatory and prejudicial remarks in closing, that the court should have barred counsel's inquiry, on cross-examination of their expert witnesses, about the medical possibilities rather than medical probabilities concerning Karen's death, and that the appellants should receive a new trial in the interest of justice. The only closing remark the appellants objected to was counsel's comment that Dr. Singh did not care about Karen. The trial court

admonished counsel, and counsel rephrased his remark. The appellants have waived their claim of error concerning any other of the allegedly prejudicial comments, because they failed to object to them. *Miles v. Ace Van Lines Movers, Inc.*, 72 Wis. 2d 538, 545, 241 N.W.2d 186 (1976). Second, their contention that counsel could not ask about medical possibilities in cross-examining the defense witnesses is simply wrong. *Hernke v. Northern Ins. Co. of New York*, 20 Wis. 2d 352, 359-60, 122 N.W.2d 395 (1963). Finally, we decline to order a third trial in the interest of justice in the absence of any substantial prejudicial error in the second trial.

*By the Court.*—Judgment affirmed.

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

