

Third District Court of Appeal

State of Florida, July Term, A.D. 2007

Opinion filed October 17, 2007.

Not final until disposition of timely filed motion for rehearing.

No. 3D06-2870

Lower Tribunal No. 05-9833

Sohail Delfani, M.D.,

Appellant,

vs.

**Martha Cromer, individually, and as Personal Representative of the
Estate of Curtis L. Cromer,**

Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Daryl E. Trawick, Judge.

Wicker, Smith, O'Hara, McCoy & Ford, P.A., and Shelley H. Leinicke (Ft. Lauderdale), for appellant.

McKenna & Obront, and Paul A. McKenna, for appellee.

Before GERSTEN, C.J., and GREEN and SHEPHERD, JJ.

PER CURIAM.

Dr. Sohail Delfani, defendant below, appeals an order granting a new trial after a jury entered a verdict in his favor in this wrongful death action. We affirm.

He argues that the trial court abused its discretion when it conducted an evidentiary hearing and ordered a new trial based upon the jury foreperson's nondisclosure of his involvement in nine prior civil cases and one criminal case in response to jury questionnaire questions¹ regarding prior litigation history. We disagree. The trial court's determination that the juror concealed this information during questioning; that the information was relevant and material to jury service in the case; and that the juror's failure to disclose the information was not attributable to the appellee/plaintiff's lack of diligence is fully supported by the record before us. Therefore, we cannot conclude that the order granting a new trial constituted an abuse of discretion. See Roberts v. Tejada, 814 So. 2d 334 (Fla. 2002); De La Rosa v. Zequeira, 659 So. 2d 239 (Fla. 1995).

¹ Specifically, the questionnaire included the following two questions:

8. Have you or any family member ever been sued or have you sued someone else, this is including claims made by you or against you, which never went to court.

11. Have you or anyone close to you ever been charged with a crime not including any traffic tickets. If yes, explain.

The juror in question handwrote "no" on his questionnaire to both questions.

As to Dr. Delfani's two remaining issues on appeal pertaining to two evidentiary rulings during the trial below, we similarly find no abuse of discretion and affirm.

Affirmed.