

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ANNA DIEFFENBACH and DONALD DIEFFENBACH, :	:	DOCKET NO: 10-00016
Plaintiffs :	:	CIVIL ACTION – LAW
vs. :	:	
	:	
PETER B. TREVOLEDES, M.D., :	:	JURY TRIAL DEMANDED
Defendant :	:	

O P I N I O N A N D O R D E R

AND NOW, this 6th day of January, 2012, following oral argument on Plaintiffs’ Motion in Limine to Exclude Reference to Relationship of Attorney Waters and Nurse Hitesman, it is hereby ORDERED and DIRECTED that Plaintiffs’ motion is DENIED.

The admission or exclusion of evidence is within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *Jacobs v. Chatwani*, 922 A.2d 950, 960 (Pa. Super. Ct. 2007). All relevant evidence is generally admissible. Pa. R.E. 402. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Pa. R.E. 401.

During trial, any party may attack the credibility of any witness, and any evidence relevant to the issue may be used to attack the credibility of a witness, except as provided by statute or the Rules of Evidence. Pa. R.E. 607. It is well-settled within the Commonwealth that a witness may be cross-examined on his motivation or inducement to testify. *Hamill-Quinlan, Inc. v. Fisher*, 591 A.2d 309, 311 (Pa. Super. Ct. 1991). Our Superior Court has adopted the rationale of Packel and Poulin, *Pennsylvania Evidence*, § 608.3 (1987), particularly holding that:

[a] witness may be discredited by demonstrating that he or she has a reason to testify falsely. Wigmore classifies the emotions that might cause a witness to give false testimony into three categories: (1) bias, which is a personal attitude favorable or

unfavorable to a particular party; (2) interest, which may flow from “[a] relation between the witness and the cause at issue;” and (3) corruption or conscious false intent. Bias, interest, and corruption do not render a witness incompetent, but such motives affect the witness’ credibility and should be considered in determining the weight to give his or her testimony. Consequently, evidence that a witness’ testimony may be colored by bias, interest, or corrupt motive is nearly always relevant.

Bias, interest, or corruption is usually established by demonstrating circumstances that might naturally lead a witness to favor or disfavor one party in a proceeding. Any evidence that support an inference of bias, interest or corruption is relevant impeachment evidence. The commonly accepted types of proof relevant to show bias, interest or corruption include: *family relationship and other personal connection suggesting favor or hostility*, an employment relationship, status as party in the case, and the possibility of financial gain or loss from the outcome of the case.

591 A.2d at 312 (citations omitted) (emphasis added).

Prior to trial, a party may file an *in limine* motion to obtain a ruling from the trial court on the admissibility of evidence before the evidence is offered in trial. *Yacoub v. Lehigh Valley Med. Associates, P.C.*, 805 A.2d 579, 588 (Pa. Super.2002). The purposes behind an *in limine* motion are excluding “anticipated prejudicial evidence, keeping extraneous issues out of the underlying proceeding, precluding reference to prejudicial matters, or preventing encumbering the record with immaterial matter.” *Commonwealth v. Pikur Enterprises, Inc.*, 596 A.2d 1253, 1259 (Pa. Cmwlth. Ct. 1991). The trial court has the discretion to entertain these motions. *Id.*

In this matter, Plaintiffs’ filed an *in limine* motion to preclude the introduction of evidence establishing that Nurse Hitesman and Attorney Waters are related, through marriage, and that these two individuals had a conversation about the underlying case during a holiday gathering in 2010. Evidence exists that establishes that Nurse Hitesman, one of the Plaintiffs’ witnesses, and Attorney Waters, one of Plaintiffs’ attorneys, are brothers-in-law. Additionally, evidence exists and that establishes that these two individuals had a conversation regarding the case at hand during a holiday party in 2010.

If Plaintiffs wish to have Nurse Hitesman testify about his own markings on the operative record, defense counsel may bring out the witness's familial relationship with Plaintiffs' counsel and the prior conversation between the two individuals on cross-examination. Except as provided for under the Rules of Evidence and by statute, defense counsel may cross-examine a fact witness on his credibility. Although Plaintiffs argue that Nurse Hitesman's credibility is not at issue in this matter, the depositions provided to this Court by counsel illustrate otherwise.

The depositions of both Nurse Hitesman and Defendant portray an issue as to the origin of the words "intestinal laceration/perforation" that Nurse Hitesman wrote on Plaintiffs' operative record. In his deposition, Nurse Hitesman testified that his writing of "intestinal laceration/perforation" next to the post-operative diagnosis would have been provided to him by Defendant. Dep. of Hitesman, 20-23. However, during the same deposition, Nurse Hitesman testified that he did not have a recollection of conversations that he had with Defendant concerning this case. Dep. of Hitesman, 29. Particularly, Nurse Hitesman testified that he believed that the words perforation and laceration came from Defendant, but that Nurse Hitesman does not recall this conversation with Defendant. Dep. of Hitesman, 31-32. Additionally, in Defendant's deposition, Defendant testified that he did not recall referring to the intestinal injury as a laceration. Dep. of Def., 200. This Court believes that Nurse Hitesman's credibility will be put into issue if he testifies during trial, and, therefore, that defense counsel may cross-examine Nurse Hitesman on any bias or interest that he may have. Whether or not Nurse Hitesman is found to be credible will be placed in the hands of the jury.

This Court notes that the scope of the cross-examination of Nurse Hitesman is within the Court's discretion. *See Jacobs*, 922 A.2d at 965, and *Yacoub*, 805 A.2d at 592.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

cc: Clifford A. Rieders, Esquire
C. Edward S. Mitchell, Esquire
Gary L. Weber, Esquire, Lycoming County Reporter