



amcno

PHYSICIAN

Fall 2020 Volume 105 No. 4

THE VOICE OF PHYSICIANS IN NORTHERN OHIO

www.amcno.org

AMCNO Files Amicus Brief, Ohio Supreme Court Rejects Attack on a Jury Verdict

By Brian D. Sullivan, Esq., Reminger Co., LPA

On July 23, 2020, the Ohio Supreme Court issued a decision rejecting a dissatisfied plaintiff's attack on a jury verdict in favor of a physician in a medical malpractice lawsuit. *Jones v. Cleveland Clinic Foundation*, Ohio Supreme Court Slip Opinion 2020-Ohio-3780. In so doing, the Supreme Court reversed the Eighth District Court of Appeals that had vacated a defense verdict based on its belief that lengthy jury deliberations warranted a mistrial. The Academy of Medicine of Cleveland & Northern Ohio ("AMCNO") joined in the physician's efforts to convince the Ohio Supreme Court to affirm the jury verdict in his favor.

The *Jones* case involved a jury verdict rendered late on a Friday evening in favor of the defense in a medical malpractice matter. After the trial was over, one of the jurors wrote a

letter to the court expressing regret for her vote and a statement that she had compromised her true beliefs to avoid having to return to continue deliberations the

following week. The trial court refused to consider the letter and denied the plaintiff's motion for a mistrial. The court of appeals, however, reversed this determination concluding that the letter should have been considered by the trial judge and supported plaintiff's request for a new trial. AMCNO filed an amicus brief (or friend of the court brief) in support of the physician's efforts to reverse the decision of the appellate court.

(Continued on page 2)

AMCNO Applauds City Council for Passing Legislation to Keep Kids Healthy

The AMCNO is pleased to announce that Cleveland City Council unanimously approved the healthy default drinks policy supported by the AMCNO. This legislation ensures that kids' meals offered in Cleveland restaurants include healthier drinks as the default options, not sugary drinks. Mayor Frank Jackson signed it into law the same day.

As we reported in our March/April issue, this legislation was spearheaded by the American Heart Association and a broad coalition of local and regional organizations (including the AMCNO) to support the Cleveland Healthy Kids' Meals Campaign. This campaign was created to increase awareness around sugary drink consumption, and call for policy changes that can lead to better outcomes for kids.

This community-based initiative addresses the epidemic of sugary drink consumption among Cleveland's kids, and the resulting risks of chronic health issues, including diabetes and heart disease. Several healthcare representatives testified before City Council, and the AMCNO submitted written testimony in support of this important legislation.

The legislation will require restaurants, by the end of January 2021, to provide children with a healthy beverage option such as milk, water or juice. This legislation is similar to measures adopted in other cities, and will still allow customers to obtain sugary drinks, if they so desire, through a separate purchase.

Restaurants that don't comply with the ordinance could face fines, and the Department of Public Health has been charged with enforcement.

(Continued on page 3)

INSIDE THIS ISSUE

AMCNO Medical Legal Issues Pages 11-12

AMCNO Executive Staff Changes Page 14

ADDRESS SERVICE REQUESTED

AMCNO
6111 Oak Tree Blvd.
Ste. 150
Cleveland, OH 44131-0999

AMCNO Files Amicus Brief, Ohio Supreme Court Rejects Attack on a Jury Verdict

(Continued from page 1)

In *Jones*, the plaintiff presented to the emergency department of a local hospital complaining of chest pains. He was evaluated by a cardiologist and ordered to undergo a stress test. The stress test was performed, and the cardiologist interpreted the results as negative. Two weeks later, Mr. Jones died of a heart attack. Plaintiff alleged that the cardiologist was negligent in failing to obtain a cardiac catheterization that would have found Jones' blocked coronary artery and enabled doctors to save his life.

After a week of trial, the jury began its deliberations on Friday morning. After approximately 1½ hours of deliberation, the jury asked the trial court for clarification on a jury instruction and noted that their votes were equally split. Several hours later, the jury submitted a second note indicating that they were still undecided and not sure what to do. The jury was instructed to keep deliberating.

Later that evening, a juror was excused due to a family emergency. An alternate juror was summoned, and the entire jury was instructed to restart their deliberations. After another hour of deliberations with the replacement juror, the jury advised the trial court that it was once again deadlocked. They were once again instructed to continue their deliberations. About an hour later, the trial court received another note indicating that the jury was tired, cranky, and deadlocked. They wanted to know if they needed to continue to deliberate before they could go home. By this time, it was around 9:30 pm.

The trial court, with the agreement of counsel, decided to send a note to the jurors saying that they could leave for the evening and return on Monday morning to resume deliberations. After delivering the message to the jury, the bailiff reported that a couple of jurors reacted to the judge's note by stating, "Come back for what? We are not going to change." In response, the trial court determined it would read the standard jury instruction relating to deadlocked deliberations and was discussing with

counsel whether it should be read that evening or on Monday morning. As the trial judge was discussing this issue with counsel, the jury announced it had reached a verdict. The jury returned to the courtroom and announced it had reached a 6 to 2 verdict in favor of the defense. Plaintiff promptly moved for a mistrial.

One month after the trial, the trial court received a letter from a juror. The juror explained that her jury service had been stressful and that she had ultimately agreed to a defense verdict to avoid coming back the following week. She further explained that she felt very strongly that the plaintiff was correct in the case and that the physician was negligent. After disclosure of the letter to all parties, the trial court concluded that it could not consider the juror's letter. It did so because the rules of evidence preclude the use of a juror's testimony to attack a verdict unless the testimony suggests a threat, bribe, or impropriety by an officer of the court, and the letter did not suggest that any of the exceptions to the prohibition against juror testimony was applicable.

On appeal to the Eighth District, the appellate court concluded that the trial judge mistakenly refused to consider the letter. The appellate court further found that, given the totality of the circumstances surrounding the jury's deliberation, the trial court abused its discretion in refusing to grant a mistrial.

On appeal to the Ohio Supreme Court, AMCNO argued that relitigating the validity of trial court decisions under these circumstances undermined the integrity and finality of our time honored jury system. The AMCNO argued that the appellate court decision risked opening "Pandora's box" and permitted Ohio courts to re-examine verdicts on the basis of a juror's unsworn, post-trial statements about their personal motivations for their vote. To that end, the AMCNO argued that, if the Supreme Court allowed jurors to undermine the validity of private, candid jury deliberations, medical

professionals across the state would be unduly burdened by the obligation to relitigate medical malpractice cases. Finally, AMCNO argued that, if the appellate court decision was left to stand, jurors would likely be subject to harassment from litigants dissatisfied with verdicts. Unsuccessful litigants would be incentivized to question jurors to determine if any of them were tired, hungry, dissatisfied or otherwise have regrets about their decision. This harassment would not only unduly burden jurors, but also threaten to extend litigation in an otherwise settled matter.

The Ohio Supreme Court reversed the decision of the appellate court. In so doing, it concluded that the Rules of Evidence prohibit juror testimony to impeach a verdict unless the testimony relates to jury misconduct and when the evidence of that misconduct arises from a source outside the jury or the testimony relates to "any threat, any bribe, any attempted threat or bribe or any improprieties of any officer of the court." The Supreme Court concluded that neither exception to the prohibition against juror testimony was applicable under the facts of this case. Indeed, the Supreme Court concluded that a juror's impression of deliberations is not "outside evidence" and that conjecture that jurors felt pressured to change their votes because of a desire to avoid further deliberations did not amount to "outside influence." The Supreme Court observed that what plaintiff complains of was exactly the type of internal juror dynamics that the rule prohibiting juror testimony was designed to keep sacrosanct. Based on this analysis, the Supreme Court concluded that the trial court properly refused to consider the juror's letter when reviewing plaintiff's request for a mistrial. The court further found there was no basis on which plaintiff was entitled to a new trial and remanded the matter to the appellate court to consider other issues related to admission of certain trial testimony. ■