

# SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING  
100 NORTH NINTH STREET  
RICHMOND, VIRGINIA 23219  
(804) 786-2259

## **Granted Appeal Summary**

### **Case**

MICHAEL PHILLIP GROSS, ET AL. v. SUPEN PEZE STUART  
(Record Number 180758)

### **From**

The Circuit Court of Fairfax County; T. Mann, Judge.

### **Counsel**

Frank K. Friedman, Joseph W. Milam, III, Charles J. Dickenson (Woods Rogers, PLC) and Susan L. Mitchell and Matthew D. Banks (Mitchell Banks, PC) for appellants.

Gary B. Mims and Matthew C. Perushek (Sickels, Frei & Mims, L.L.P.) for appellee.

### **Assignments of Error**

- I. The circuit court erred in denying defendants' motion in limine and in permitting plaintiff to cross-examine the defense medical expert about collateral matters (including a disciplinary proceeding arising from his deployment to Afghanistan) that were wholly unrelated to the medical procedures and alleged injuries in this case.
  - A. The circuit court erred in permitting plaintiff to introduce evidence about collateral matters in contravention of *Stottleyer v. Ghramm*, 268 Va. 7 (2004) – particularly where plaintiff would not be entitled to prove the disputed collateral evidence in her own case.
  - B. The circuit court erred in ruling that Dr. Pitman's disciplinary history and related allegations constituted relevant and admissible evidence. The collateral matters should not have been deemed admissible for impeachment or "credibility" purposes or for any other reason.
  - C. Even if the evidence of Dr. Pitman's disciplinary history and related allegations is deemed relevant, the circuit court erred in admitting the evidence where its unfair prejudice substantially outweighed any probative value.
- II. The circuit court erred in allowing plaintiff to inject the consent issue into the case, particularly where no such claim was pled and there was no evidence that exploring the eyelid was a deviation from the standard of care.

- A. The circuit court erred in denying defendants’ motions for mistrial and post-trial motions to strike the evidence and for a new trial relating to Dr. Malone’s improper mention of consent.
  - B. The circuit court erred in denying defendants’ motions for mistrial and post-trial motions to strike the evidence and for a new trial relating to counsel’s improper argument regarding consent.
  - C. The circuit court erred in refusing to provide an instruction that consent and/or exceeding consent was not at issue in this case – particularly where the court acknowledged that the concept of exceeding consent had been placed before the jury by plaintiff, plaintiff did not plead any consent claim, and plaintiff had no evidence that exploring the eyelid (the suggested “violation of consent”) was a deviation from the standard of care.
- III. The circuit court erred in ruling that it “lacked authority” to address defendants’ post-trial motions.