

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-005

SEPTEMBER TERM, 2017

William Engels	}	APPEALED FROM:
	}	
v.	}	Superior Court, Windsor Unit,
	}	Civil Division
	}	
Richard A. Lane M.D., P.C.	}	DOCKET NO. 90-2-12 Wrcv

Trial Judge: Robert P. Gerety, Jr.

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals from the trial court’s denial of his motion for a mistrial. Plaintiff argues that the court abused its discretion by failing to grant the parties’ joint request for a mistrial. We affirm.

Plaintiff filed a personal injury suit against defendant in February 2012. Trial was held over three days in November and December 2016. On the morning of the second day of trial, the court informed counsel that a juror (Juror 5) had reported to a court officer that another juror (Juror 4) had gotten “in her face and flipped her the bird.” Juror 5 reportedly said to the court officer that she thought this person had anger problems and that the other jurors were making comments that he might someday end up in jail.

The court and counsel subsequently questioned Juror 5 individually on the record in open court. Juror 5 explained that a group of the jurors had been joking around with each other and then Juror 4 turned around, got in her face, flipped her the bird, and laughed at her. Juror 5 reiterated her belief that this person had anger issues, and reported that Juror 4 said that he would beat up anybody that had a Trump/Pence sticker on their cars. Juror 5 expressed confidence that the incident would have no impact on her ability to independently evaluate the evidence and render a verdict based on the facts and consistent with the law, even if she had strong opinions that differed from those of Juror 4.

The court and counsel then spoke with several other jurors who may have witnessed the incident. Juror 6 explained that a juror was trying to be funny during a conversation about contact lenses, asking “how many fingers am I holding up?” Juror 4 joined in, showing Juror 5 a number using his middle finger. Juror 4 did not seem angry and Juror 6 observed no other comments or conduct by Juror 4 that he thought were inappropriate.

Finally, the court and counsel spoke with Juror 7 who indicated that nothing had gone on in the jury room that made her feel threatened or unable to act independently and to use her own judgment about the appropriate result.

Following these conversations, the trial court opted not to question any more jurors. Plaintiff's attorney moved for a mistrial. He argued that the information disclosed about Juror 4 called into question his ability to listen to matters freely, openly, and honestly, and that Juror 4 had injected an element into the jury dynamic that undermined the goal of an open-minded panel. Defendant's attorney joined in the motion, expressing his concern about Juror 4's temperament and how he might respond in the future, especially if there was a disagreement during deliberations.

The court took the motion under advisement. When the jury returned to the courtroom, the court asked if any juror believed, for any reason, that he or she could not independently assess the evidence presented in this case and make his or her own personal decisions about the facts of the case as they found them to be. No juror indicated that he or she felt this way. The court then reminded the jury of the court's expectation that every juror, independently, must be free to assess the evidence, independently, during deliberations, to express their views about the evidence and the law as provided by the court, and independently formulate their own personal decisions about the appropriate verdict without interference from other jurors. The court also emphasized that all jurors should treat one another with respect and civility during deliberations, and freely express their own views, whatever they may be. The jury trial then continued.

At the close of the evidence, the court denied the motion for a mistrial. After recounting the circumstance above, the court explained that it was satisfied from its discussion with the jurors and through its caution to the jury, that no juror felt that anything had happened that in any way would prevent or impact the juror from exercising independent judgment. It found no evidence to show that any juror was unduly influenced by another juror. The jury rendered a verdict in favor of defendant, and this appeal followed.

Plaintiff asserts that Juror 4's misconduct created an environment in which both parties believed that their respective rights to an impartial jury had been infringed. He argues that the court erred by failing to grant the parties' joint request for a mistrial.

As plaintiff acknowledges, the trial court has discretion in ruling on a motion for mistrial and determining if "alleged juror misconduct has prejudiced the trial process." Labate v. Rutland Hosp., Inc., 2015 VT 128, ¶ 17, 200 Vt. 438. We reject the argument that the court was obligated to grant the motion simply because both parties moved for a mistrial. This is inconsistent with the discretionary authority given to the trial court. The trial court exercised its discretion here. As set forth above, the court was reasonably persuaded, both from its conversation with the jurors who witnessed the incident and from its subsequent cautionary inquiry of all of the jurors, that the incident had not affected any juror's ability to independently evaluate the case. The court provided a reasonable explanation for its decision, grounded in the record. While plaintiff disagrees with the result, he fails to show any abuse of discretion. See, e.g., Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (mem.) (explaining that arguments which amount to nothing more than a disagreement with court's conclusion do not make out a case for an abuse of discretion).

Plaintiff offers an alternative argument in the “relief requested” portion of his brief. He asks this Court to reverse the judgment because the trial court erred in failing to admit evidence of a previous fall at defendant’s property. This argument, which is one-sentence long, is inadequately briefed and we do not address it. See V.R.A.P. 28(a) (brief shall contain concise statement of case and specific claims of error, contentions of appellant, and citations to authorities, statutes and parts of record relied on); Johnson v. Johnson, 158 Vt. 160, 164 n.* (1992) (Court will not address contentions so inadequately briefed as to fail to minimally meet standards of V.R.A.P. 28(a)).

Affirmed.

BY THE COURT:

Paul L. Reiber, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice