

The Supreme Court of the State of Louisiana

JULIE RUNKLE

No. 2022-CC-00514

VS.

LOUISIANA UROLOGY, LLC, ET AL.

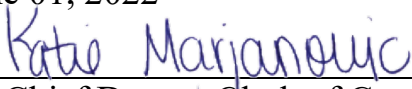
IN RE: Julie Runkle - Applicant Plaintiff; Applying For Supervisory Writ, Parish of East Baton Rouge, 19th Judicial District Court Number(s) 638586, Court of Appeal, First Circuit, Number(s) 2022 CW 0045;

June 01, 2022

Writ application granted. See per curiam.

JDH
JBM
SJC
JTG
PDG

Weimer, C.J., dissents and would deny the writ.
Hughes, J., additionally concurs and assigns reasons.
Crain, J., concurs and assigns reasons.
Griffin, J., additionally concurs and assigns reasons.

Supreme Court of Louisiana
June 01, 2022


Chief Deputy Clerk of Court
For the Court

06/01/2022

SUPREME COURT OF LOUISIANA

No. 2022-CC-00514

JULIE RUNKLE

VS.

LOUISIANA UROLOGY, LLC, ET AL.

On Supervisory Writ to the 19th Judicial District Court,
Parish of East Baton Rouge

PER CURIAM

Writ granted. Plaintiff called Dr. Henry Hollier in her case-in-chief as a witness identified with an adverse party pursuant to Code of Evidence article 611(C) due to his role as the surgeon who performed the plaintiff's operation. Defendant Louisiana Urology declined to cross-examine Dr. Hollier at that time. Dr. Hollier was later called as a witness in defendant's case-in-chief. Over plaintiff's objection, the trial court refused to allow plaintiff to cross-examine Dr. Hollier on the basis that plaintiff had previously examined him in her case-in-chief. At the conclusion of trial, the jury found Louisiana Urology was not at fault. The trial court denied the plaintiff's motion for new trial.

Code of Evidence article 611(C) provides in part:

Generally, leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony and in examining an expert witness on his opinions and inferences. However, when a party calls a hostile witness, a witness who is unable or unwilling to respond to proper questioning, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Comment (c) of Article 611 provides in part:

The terms "direct examination" and "cross-examination" are not defined in this Paragraph or elsewhere in this Code. "Direct examination" as used in this Code simply means the questioning of a witness by the party who called him, and, particularly as used in Paragraphs B and C of this Article, "cross-examination" refers merely

to the questioning of a witness after the witness has been called and questioned by another party. In common legal parlance the term “cross-examination” often carries with it an additional connotation that relates to the form and content of the questioning; that is, to the use of leading questions and to the use of questions that attack the credibility of a witness. This Code, however, separates from the meaning of “direct” and “cross-examination” those issues which relate to scope and form of examination and attacks on credibility. Thus, Paragraph B of this Article controls the scope of cross-examination. Paragraph C controls the use of leading questions.

A trial court has the right to control the nature, extent and character of cross-examination; however, a trial court cannot deprive a party of the procedural right of cross-examination. **Labadot v. Labadot**, 328 So.2d 747, 749 (La. App. 4 Cir. 1976).

The plaintiff in this case did not have the opportunity to cross-examine Dr. Hollier. The plaintiff was able to conduct a direct examination of Dr. Hollier in her case-in-chief. Because Dr. Hollier met the definition of a witness identified with an adverse party, the plaintiff was able to ask leading questions. Under the terms of Article 611 the plaintiff did not cross-examine Dr. Hollier because the plaintiff was not allowed to question him following his direct examination during the defense’s case-in-chief. Dr. Hollier was the plaintiff’s first witness at trial. During Dr. Hollier’s direct examination by the defendant, Dr. Hollier addressed the testimony of plaintiff and her expert, Dr. Richard Link, who testified after Dr. Hollier in the plaintiff’s case-in-chief.

Without cross-examination of Dr. Hollier by the plaintiff, the jury could not properly weigh the evidence and determine its value. This error defeated plaintiff’s right to a fair trial. *See Harry Bourg Corp. v. Punch*, 625 So.2d 735, 737 (La. App. 1 Cir. 1993). Because of this error, we grant the plaintiff’s motion for new trial.