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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SHELLY LOKIETZ, Plaintiff and Appellant, v. JEFFREY C. WANG, Defendant and Respondent.	B280399 (Los Angeles County Super. Ct. No. SC110925)

APPEAL from a judgment of the Superior Court of Los Angeles County, William A. MacLaughlin, Judge. Affirmed.

Steven B. Stevens; The Vartazarian Law Firm and Steven R. Vartazarian for Plaintiff and Appellant.

Cole Pedroza, Kenneth R. Pedroza, Cassidy C. Davenport; Baker, Keener & Nahra John P. Nahra and Brenda K. Benson for Defendant and Respondent.

INTRODUCTION

Appellant Shelly Lokietz sued respondent Jeffrey C. Wang, M.D., for professional negligence, intentional misrepresentation, concealment, and negligent misrepresentation following a spinal surgery. Lokietz alleged that Wang did not successfully decompress her spinal cord during the surgery, and later misrepresented to Lokietz that the surgery had been successful. In a motion in limine, Wang sought to exclude evidence of other patients' allegations against him from unrelated lawsuits. Lokietz opposed the motion, asserting that the other patients' allegations of misrepresentation were similar to Lokietz's, so the evidence was relevant to a pattern of deceptive conduct and therefore admissible.

The trial court granted Wang's motion, holding that Lokietz had failed to include the names of the other patients on her witness list and she had not designated any experts to discuss the other patients' medical issues. The case proceeded to trial, and the jury found in favor of Wang.

Lokietz appealed. She argues primarily that the evidence she sought to present was relevant to her claims of misrepresentation and should have been admitted. Wang asserts that the evidence was properly excluded as inadmissible character evidence that is more prejudicial than probative. We find that the court did not abuse its discretion, and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Lokietz's allegations

In her complaint, Lokietz alleged that in February 2009 she began experiencing pain originating in her mid-back, wrapping around her left ribcage, and ending in her sternum. A CT

angiogram and MRI showed that her symptoms were caused by "a 4mm disc protrusion at the T6-T7 level of her mid back that was compressing the front left aspect of her spinal cord."[1] After conservative treatment failed, Lokietz scheduled a surgery with Wang to remove the disc herniation.

The surgery on October 5, 2009 was uneventful, but failed to resolve Lokietz's pain. Wang told Lokietz that surgery was successful and resolved the disc herniation, but after Lokietz continued experiencing pain, Wang ordered a CT myelogram of her thoracic spine. Lokietz alleged that the CT myelogram showed that there was still a T6-T7 disc bulge causing compression of the spinal cord, and no significant change following the surgery. Lokietz alleged that Wang nonetheless represented to her that surgery had gone as planned, and that the CT myelogram showed no compression.

Lokeitz underwent a number of additional tests to determine the source of her continuing pain. Five months after the surgery, Lokietz sought a second opinion from a Dr. Rhoten, who reviewed the post-surgery CT myelogram and informed Lokietz that she still had a disc protrusion causing spinal cord compression. A year after her initial surgery, Lokietz underwent a second surgery with Rhoten to remove the herniation and decompress the spine. The surgery was a success.

Lokietz alleged that when she confronted Wang with the information she learned about the continuing disc protrusion,

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[1] "T" refers to the vertebrae in the thoracic portion of the spine, which are individually numbered from top to bottom. Wang testified at trial, "A single disc is labeled by the vertebral body above and below. So when you say T6-7, it's one disc. It's the disc between the body of T6 and the body of T7."

Wang said he knew of the protrusion and had told Lokietz about it. Lokietz disputed that he told her that. She asserted four causes of action in her complaint against Wang: professional negligence, intentional misrepresentation, concealment, and negligent misrepresentation. She alleged that Wang's treatment of her fell below the standard of care. She also alleged that Wang misrepresented that the October 2009 surgery was a success and had relieved the offending herniation, when in fact the herniation continued to compress Lokietz's spine. Lokietz said her reliance on this misrepresentation caused her to suffer months of significant pain and unnecessary testing.

B. Motion in limine regarding other accusations

Trial was set to begin on August 3, 2015. Before the final status conference scheduled for July 30, 2015,[2] Wang filed a motion in limine to exclude all references to "any past or present lawsuits [in] which [Wang] has been a party," asserting that such evidence was inadmissible character evidence under Evidence Code section 1101.[3] Wang also asserted that such evidence was more prejudicial than probative under section 352, and that it

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[2]Many of the documents in the appellant's appendix do not have filing stamps, so the exact filing dates are unclear in the appellate record.

[3]All further statutory references are to the Evidence Code unless otherwise indicated. Section 1101, subdivision (a) states that evidence of a person's character "is inadmissible when offered to prove his or her conduct on a specified occasion." Subdivision (b) states that evidence of other acts may be admissible "when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident . . .) other than his or her disposition to commit such an act."

could not be used to attack Wang's credibility. We follow the parties' lead and refer to this as "motion in limine 2."

Lokietz opposed the motion, arguing that evidence of other claims against Wang was highly probative of Wang's motivation and intent in misrepresenting the success of the surgery to Lokietz. Lokietz asserted that Wang had been sued multiple times and feared being sued again, and he thought that telling Lokietz the truth might render him vulnerable to another malpractice action. Lokietz also asserted that because Wang had designated himself as an expert witness, his character and qualifications as an expert were at issue. Trial was continued. Before a final status conference set for April 6, 2016, Wang filed a reply in support of motion in limine 2.

Trial was apparently continued again. Around November 17, 2016,[4] prior to a final status conference set for November 30, 2016, Lokietz filed an 18-page "amended opposition" to motion in limine 2, accompanied by more than 175 pages of exhibits. Lokietz asserted that Wang misrepresented to Lokietz that the surgery was successful, but Wang claimed that he told Lokietz about the continued compression and she was mistaken in thinking that he did not inform her about it. Lokietz asserted, "Between 2010 and 2012, four other complaints were filed against Dr. Wang by his patients wherein they allege that he committed malpractice, and upon discovering it he intentionally misrepresented that their surgeries were successful and that their post operative scans showed that everything was fine. And then, when at least these other four patients that we know of

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[4]The amended opposition in the appellant's appendix does not include a file stamp. The amended opposition was signed on November 17, 2016.

discovered what he had done and sued him, Dr. Wang testified that he made full disclosures to the patients (although it was never charted) and the inaccurate medical records are a simple and innocent error because the resident must have dictated the note (exactly what Dr. Wang claims occurred here)."

Lokietz discussed four lawsuits involving Wang. In the first, plaintiff Sandra Carroll alleged that Wang told her that her September 2010 spine surgery was successful even though a post-operative MRI showed continuing compression on her spinal cord. In the second lawsuit, plaintiff Lee Ann Morgan had a two-level fusion surgery in September 2009, and Wang told her it went well even though there had been several complications and "her spine still had pathology." In the third lawsuit, Wang performed cervical spine surgery to release compression on plaintiff Jerome Lew in May 2009. Lew continued to suffer the same symptoms as before the surgery, and alleged that Wang intentionally failed to disclose that the surgery caused bony overgrowth and additional spinal cord compression. Lokietz attached the Carroll, Morgan, and Lew complaints to her amended opposition.

In the fourth lawsuit, Wang performed spinal surgery on fellow UCLA surgeon Hillel Laks, but allegedly neglected to tell Laks that he had tested positive for a bladder infection before the surgery, which is a "huge contraindication to surgery because of the risk of similar infection at the surgical site from bleeding." Laks developed a significant infection requiring "extensive hospitalizations, surgeries and treatment by infectious disease [*sic*]." In a deposition in that case, Wang testified that he had informed Laks about the infection prior to surgery, and claimed that this information was inadvertently omitted when the

medical notes were dictated by a resident. Lokietz stated that her counsel was waiting to receive the complaint from that case.

Lokietz asserted that in this case, Wang's defense was that he was honest with Lokietz about the post-surgical compression, and "the February 10, 2010, note indicating that he told plaintiff the complete opposite is explained as a simple innocent mistake made by a resident who dictated the note even though it says it's dictated by" Wang. Lokietz attached testimony from Wang's deposition stating that he saw the indentation of the spinal cord in the post-surgical MRI, but the resident who dictated the note instead stated that there was no compression. Wang testified, "I can't speculate as to why he dictated those words." Lokietz argued that the repeated accusations of similar conduct were probative of Wang's intent and the credibility of his defense.

Wang filed a reply to Lokitz's amended opposition, asserting that the opposition was "grossly untimely" and baseless. Wang argued that "mere allegations or accusations are never sufficient to overcome the prejudice caused by their introduction, yet that is all [Lokietz] presents here." Lokietz did not include evidence of any wrongdoing in her opposition; she had presented "mere written hearsay allegations and conclusions." Wang argued that to defend against these allegations would require multiple mini-trials, which would require "testimony by numerous witnesses to the actual medical care, along with expert witnesses who would need to explain whether there was in fact a medical complication in the first place." Wang also asserted that the evidence was more prejudicial than probative under section 352.

C. Court's ruling on motion in limine 2

On the first day of voir dire, December 8, 2016, the court reviewed the parties' witness lists in preparation to reading them to the panel of potential jurors. The court noted that a witness list had been submitted in March 2016, and a more recent version included fewer witnesses. The plaintiffs in the other cases were not listed as witnesses. Lokietz's counsel told the court he had informed defense counsel of which witnesses he intended to call "for the entirety of next week."

Turning to motions in limine, the court said it had reviewed motion in limine 2, but it was not yet prepared to rule on it. Lokietz's counsel said he did not intend to "introduce the fact that the defendant has been sued." He said he "would like to make an offer of proof of . . . what I proffer to introduce with respect to the issue of intent, with respect to these other allegations of alleged similar misconduct." He continued, "[T]hese plaintiffs in these lawsuits and their attorneys, I have spoken with all of them. They are ready to come here and testify." Lokietz's counsel also said that he wanted to "cross-examin[e] the defendant with respect to similar allegations of intentional misrepresentation or perhaps concealment." "If he says 'yes, I have done that,' it ends there. If he says 'no,' the question will be what will I be able to do next, will I have to bring people in, or will I simply be able to refer to an allegation when these complaints were filed?" Lokietz's counsel also said that depositions were taken in the other cases and he could use those as evidence, or he could call the plaintiffs as witnesses. He emphasized that because the case was about concealment, Wang's intent was a critical issue and therefore this evidence was highly probative.

Wang's counsel asserted that the evidence should not be admitted: "[S]aying that he is capable of calling a bunch of plaintiffs who filed lawsuits doesn't solve the problem because, first of all, they are not on the witness list. They can't make a case themselves, even if you wanted them to, about some type of concealment. The only thing they can say is I filed a lawsuit. And there is a public record that a lawsuit was filed." Wang's counsel continued, "[T]he mere allegation or complaint or an accusation by someone of something similar is hearsay. It's just an allegation, it's not proof." He added, "We'd have to have expert testimony on the subject of whether it was something that could be concealed, whether there was a complication in the first place." He also argued that a series of mini-trials would ensue, and the evidence would be more prejudicial than probative.

Lokietz's counsel responded that the evidence was admissible to prove intent. "[W]hen [Wang] says a medical record that notes the complete opposite of what Miss Lokietz's medical information is, that there is a CT scan or some type of imaging study that shows that a problem is there, when he puts down 'the problem is gone, your surgery is successful' and sends her on her way and he claims that was the product of an innocent mistake, that is the very circumstance for which 1101(b) was enacted, to bring in these allegations of other people of similar instances where they say the defendant did the same thing to them." Lokietz's counsel said expert testimony would be unnecessary, because the plaintiffs themselves could say that what Wang told them was a misrepresentation of what actually occurred. The court and parties spent the remainder of the morning session and the afternoon session on jury selection. The court read the list of witnesses to the jury panel.

The court ruled on the motion the following court day. The court said from the bench, "[A]fter looking at everything filed with the court . . . I think there is an evidentiary problem that doesn't even require the court to consider whether the other instances that you have specifically enumerated for us would qualify as evidence of intent." The court continued, "The way you have to prove these would be through, at a minimum, the testimony of the patient and expert testimony." The court reasoned, "In order to prove . . . the doctor misrepresented the efficacy of the surgery and misrepresented to the plaintiff the conclusory causes for her continued problems after the surgery, is necessarily going to require expert testimony." The court said expert testimony would be required to show "a bad result" in that the pre-surgical problem remained, while Wang represented to the patient that everything was fine. The court noted that Lokietz's counsel also acknowledged that patients would be required to testify, but "we don't have either of the patients on the witness list, nor do we have expert testimony in those cases on our list of witnesses."

Lokietz's counsel said that because the issue was not malpractice, there was no need for expert testimony. The court acknowledged that Lokietz was focused on the misrepresentation causes of action, but said that whether a doctor's statements to a patient actually constituted a misrepresentation of fact would require expert testimony regarding the facts. Lokietz's counsel emphasized that the issue was more about whether Wang failed to portray information to patients, and when confronted with such an accusation, claimed that the medical records were erroneously dictated. The court said the purpose of the evidence was not really the issue, because "the question is what evidence

do you need at this time to be able to prove these other incidents that are the basis of attributing an intent to deceive the [plaintiff]." The court said, "I am granting that motion [because] we don't even have these other patients, let alone we don't have any experts designated as witnesses at this point." The court said it did not need to consider the admissibility of the evidence under sections 1101 or 352.

In its written minute order granting the motion, the court stated, "[E]vidence of claims made by others, by itself, would not be sufficient evidence to be admissible. In order to establish that . . . in those other instances, Defendant intentionally misrepresented the results of a surgery, and the causes of continuing complaints, Plaintiff must present the actual evidence of what occurred. This would require, at a minimum, the testimony of the patient and, most probably, expert testimony to establish the failure of the surgery and the causes of the ongoing complaints." The court discussed the cases Lokietz presented, and said, "In each instance, at least the plaintiff would have to testify and in most, if not all, there would have to be medical expert testimony. However, Plaintiff has not designated any of the patients in the other cases as witnesses [on] her witness list nor designated any pertinent expert medical witnesses as witnesses [for] this case." The court continued, "[T]he failure to list the witnesses, and designate experts, precludes such witnesses at this time. As a result, the best, the only evidence she could present would be the fact that other lawsuits have been filed which made allegations similar to those made by Plaintiff. Such evidence is not sufficient and will not be permitted." The court noted that it did not make a determination as to the

similarity of the other allegations, and it did not analyze the evidence under section 352.

D. Trial, verdict, and notice of appeal

The evidence presented at trial does not affect the issues on appeal, and therefore we present only an abbreviated version of the evidence here.

Lokietz testified that her pain began when she was attempting to do yoga in her living room. It was significant chest pain that felt like "electrical shocks, as if somebody was hitting me with a cattle prod, or when you walk on the carpet and someone touches you, you get zapped." Wang said he first saw Lokietz in September 2009, when she was referred by another doctor. Lokietz had pain in her mid-back that wrapped around her left side to her chest, as well as other related symptoms. A previously completed MRI revealed "a large disc herniation" in the thoracic spine "with compression" of the spinal cord. Compression of the nerve root as it emerged from the spinal cord could have caused Lokietz's wraparound pain. An updated MRI also showed severe thoracic disc herniation at T6-T7, and surgery was warranted to alleviate the spinal cord compression.

Lokietz's surgery was performed on October 5, 2009. Wang testified about how the surgery was done. Once certain bony structures were removed, some of the disc material was removed to decompress the spine. Wang looked at the spinal cord and used instruments to determine that "there was no longer any compression." A fusion was completed to stabilize the spine. Orthopedic spine surgeon Alex Gitelman, M.D., testified that while he was doing his fellowship in spinal surgery, he assisted Wang during Lokietz's surgery.

Lokietz testified that when she woke up from surgery, "I was in excruciating pain." Wang testified that in the days after the surgery, Lokietz complained of left chest pain. Wang testified that "[f]or this type of procedure, I would expect a patient to be in the hospital for at least five days. If they have pain control issues, which this patient definitely had, I – they typically stay in the hospital much longer." Lokietz was discharged after nine days in the hospital, on October 14, 2009.

On October 21, Lokietz followed up with Wang complaining of continued pain. Wang testified that the pain Lokietz complained of before the surgery had been alleviated, and the abnormal reflexes Lokietz had before the surgery were gone, so it appeared that no symptoms were related to any compression on the spinal cord. Wang advised Lokietz to continue treatment with her existing pain management physician, and to follow up with Wang in three months.

Lokietz returned to Wang on November 4, 2009, again complaining of continuing pain and other symptoms. Wang testified that Lokietz's "preoperative symptoms of the nerve pain were gone. The wraparound pain was gone." Lokietz testified that the wraparound pain never resolved. Wang ordered a CT myelogram, which involves injecting dye into the spinal canal. What Lokietz was told about the results of the CT myelogram was a central issue in the case.

The CT myelogram was completed on November 12. The CT myelogram report stated that there was "a left pericentral disc bulge at T6-T7 measuring 4 millimeters, not significantly changed from the MRI dated before the surgery," and "the left lateral aspect of the spinal cord remains flattened." At trial, Wang acknowledged that according to the CT myelogram,

"[t]here is an indentation" of the spinal cord. Wang testified that he did not see the CT myelogram results until February 10, 2010, when Lokietz came for another visit.

Meanwhile, Lokietz saw another doctor, Denise Garvey, M.D., on November 16, 2009. Lokietz was complaining of left arm and left leg numbness, burning, sharp pain in her back, and vomiting. Garvey's medical record noted, "Had spine surgery 10/5. Has body brace. Had phantom nerve pain after surgery with neuropathy, and xyphoid pain gone. Two weeks ago, had sneeze." Garvey testified that "on detailed questioning" Lokietz stated that her chest pain had resolved, but she "had a setback after a large sneeze pulled her chest wall two weeks ago. . . . Now she complains of agonizing total back pain and remains on self-imposed bed rest." Lokietz testified that she recalled having a sneeze that caused significant pain. Wang testified that a sneeze "increases your abdominal pressure . . . and that can cause pushing out of disc material."

Wang and Gitelman saw Lokietz at a follow-up visit in February 2010. Wang said that he displayed the CT scan results at the visit, and discussed the results with Lokietz. Gitelman testified that he was aware that the CT myelogram "showed an indentation in the same area as it was before the surgery," and he was "certain" that information had been relayed to Lokietz. When Lokietz's counsel asked her if Wang discussed the CT myelogram results with her at this appointment, Lokietz replied, "Absolutely not." Lokietz testified that she had an x-ray during the visit; Wang showed it to her and told her everything was fine.

Gitelman testified that he dictated the note in Lokietz's file following the February 2010 visit. Gitelman noted that the CT myelogram "was reviewed. It demonstrated no compression of

the spinal cord, and instrumentation in good position." Gitelman testified that "compression" is a subjective term, and there was no "significant" compression at the time. Gitelman also did not note in the record that there was an indentation of the spinal cord, but "[i]n retrospect, I likely should have put it in there." Wang testified that he would have preferred Gitelman to include that information in the note.

Robert Hart, M.D., an orthopedic spine surgeon, testified as a defense expert. He opined that Wang complied with the relevant standard of care as to the surgery. He said the offending disc "in large part" was removed by Wang on October 2009, and if a disc fragment remains following such a surgery, it is not an indication that the surgery was performed in a manner that was below the standard of care. Hart also testified that the evidence showed that following surgery, there was decompression of the spine. Hart gave several possible explanations for the indentation of the spine following surgery, including that all of the compressing material was not removed, a "reherniation" after surgery was complete, or a hematoma caused by the surgery, which would eventually resorb. Wang testified about these possibilities as well.

Hart opined that Wang also complied with the relevant standard of care in the February 2010 visit. He said the CT myelogram indicated that there was an indentation of the spinal cord, but because it was not pressed against other structures, it was nevertheless "fully decompressed."

Regarding Wang's purported failure to convey the results of the CT myelogram to Lokietz, Hart said that depending on the patient, when imaging results do not indicate that anything serious is amiss, it can be "counterproductive" to worry the

patient with small issues, and "the better option is to figure out a way to help the patient buy time to experience their own recovery, to let their body heal." Hart also opined that Lokietz's second surgery was not needed: "Not only was it not necessary, I think it was not appropriate at that time to proceed with further surgery."

Searching for an answer to her ongoing pain, Lokietz saw neurosurgeon Patrick Rhoten, M.D. in July 2010. Rhoten testified that Lokietz presented with "ongoing pain issues and some problems with balance and the like." Lokietz reported that she was in more pain after the surgery than before the surgery. She said she had been told that a CT myelogram after the surgery was "okay." Rhoten testified that when he reviewed the CT myelogram, however, "there was residual disc still sitting against her spinal cord and against the T7 nerve on the left side," thus, "there was definitely still pressure on the spinal cord at the level of the prior surgery. Rhoten stated that the CT myelogram, "[w]hen compared to her preoperative study . . . does not look significantly different." Rhoten showed these images to Lokietz; she was "incredulous" and "very upset" that there was no apparent difference between the images before and after surgery.

Rhoten recommended surgery to address the disc bulge; the surgery was completed. Lokietz testified that recovery from the second surgery was much easier, and it alleviated the wraparound, shock-like pain and other symptoms she had been experiencing for more than a year. Rhoten testified that Lokietz's complaints of hand issues and balance problems resolved after the second surgery, suggesting that the symptoms had been caused by the herniation. Rhoten opined that Wang

performed the earlier surgery below the standard of care, and the second surgery was required because the first one "didn't work."

E. Verdict

The jury found that Wang was not negligent in his care and treatment of Lokietz. It also found that Wang did not make a false representation to Lokietz. On the verdict form, the jury was also asked, "Did Jeffrey Wang, M.D. intentionally fail to disclose a fact that Shelly Lokietz did not know and could not have reasonably discovered?" The jury answered, 12-0, "yes." The next question stated, "Did Jeffrey Wang, M.D. intend to deceive Shelly Lokietz by concealing the fact?" the jury answered, 3-9, "no."

A defense judgment was entered. Lokietz timely appealed.

DISCUSSION

Lokietz asserts that the trial court erred in granting Wang's motion in limine 2 and excluding evidence of other lawsuits or allegations of concealment against Wang. Although Wang's original motion sought to exclude evidence or discussion of other lawsuits involving Wang, on appeal Lokietz asserts that the trial court "erred in refusing to admit evidence of other acts of concealment involving other patients." We address the issue as Lokeitz frames it. "Trial court rulings on the admissibility of evidence, whether in limine or during trial, are generally reviewed for abuse of discretion."[5] (*Pannu v. Land Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1317.)

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[5] Lokietz asserts that we are required to view the evidence in the light most favorable to the prevailing party, and that she is the prevailing party on the concealment cause of action because the jury found Wang intentionally concealed a fact from Lokietz. She cites *State Farm Fire & Casualty Co. v. Jioras* (1994) 24

The trial court held that in order to establish that Wang misrepresented facts to other patients, Lokietz would have to "present the actual evidence of what occurred. This would require, at a minimum, the testimony of the patient and, most probably, expert testimony to establish the failure of the surgery and the causes of the ongoing complaints." However, the court excluded such evidence because Lokietz had not "designated any of the patients in the other cases as witnesses [on] her witness list nor designated any pertinent expert medical witnesses as witnesses [for] this case."[6] With such testimony barred, "the only evidence" Lokietz could present was "the fact that other lawsuits have been filed" with similar allegations, but "[s]uch evidence is not sufficient." The court specifically did not address whether the other allegations were similar to the ones in this case, or whether the evidence proffered was more prejudicial than probative under section 352.

In their briefs on appeal, the parties focus on issues the court did not decide, such as whether evidence of Wang's interactions with other patients would be relevant to the issues presented at trial, and whether the evidence was more prejudicial than probative. The argument section of Wang's respondent's

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Cal.App.4th 1619, 1626. This case discusses the substantial evidence standard of review, which is not applicable here. Moreover, Lokietz cites no authority, and we are aware of none, that defines "prevailing party" based on a single question on a verdict form, rather than on which party prevailed at trial.

[6] Although the parties do not discuss discovery cutoff dates, it appears that Lokietz's amended opposition to motion in limine 2 was filed after the close of discovery—twelve days before the final status conference and three weeks before the trial actually began. (See Code Civ. Proc., § 2024.020, subd. (a).)

brief does not address the court's stated basis for the ruling at all; it asserts only that the evidence was not admissible for substantive reasons. Lokietz addresses the court's reasoning very briefly, in about three pages of her 73-page opening brief and in a footnote in her reply brief. While we may affirm a court's ruling on a basis other than the one stated by the court (see, e.g., *Ryder v. Lightstorm Entertainment, Inc*. (2016) 246 Cal.App.4th 1064, 1072 ["We may affirm on any ground supported by the record, and we are not bound by the trial court's reasoning."]), under an abuse of discretion standard we typically consider the court's reasoning as part of our assessment as to whether the court exercised its discretion in a manner that exceeded the bounds of reason. By failing to address the court's basis for granting the motion or mentioning it only in passing, the parties have offered us little assistance in completing our task.

In the small section of her opening brief discussing the stated basis for the court's ruling, Lokietz admits that the other plaintiffs were not on her witness list, and that she had not designated any experts to testify about the other plaintiffs' allegations of misrepresentations. However, she argues that admission of the proposed evidence would not have prejudiced Wang, because he received notice of the issues and potential witnesses through Lokietz's amended opposition to motion in limine 2. She asserts that "almost 200 pages of exhibits attached to the amended opposition included . . . the names of other patients [and] other wrongful incidents with descriptions of the information that Dr. Wang concealed." She describes this as a document that "was, in effect, a list of witnesses" and asserts that Wang would have suffered no prejudice if they testified "because

he [knows] all of his other patients." Lokietz asserts, "Crucial information should not be precluded merely because the court and the defendant were advised of it by a document called an 'opposition' instead [of] through a 'list.'" As noted above, Wang does not address Lokietz's pretrial disclosures or the court's ruling.

The court was well within its discretion to bar the testimony of witnesses and other evidence not properly disclosed in the parties' pretrial filings. "It is . . . well established that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them." (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967.) "'That inherent power entitles trial courts to exercise reasonable control over all proceedings connected with pending litigation . . . in order to insure the orderly administration of justice.'" (*Ibid.*) Lokietz acknowledges that a "trial court has discretion to exclude witnesses not on the witness list." She cites Los Angeles Superior Court local rule 3.25(f)(1), which states that a party's failure to exchange and file witness and exhibit lists at least five days before the final status conference "may result in [the party] not being able to call witnesses [or] present exhibits at trial." (Super. Ct. L.A. County, Local Rules, rule 3.25(f)(1).) In its ruling, the court said, "[T]he failure to list the witnesses, and designate experts, precludes such witnesses at this time." It was not an abuse of discretion to exclude evidence that had not been properly included in the parties' pretrial filings.

The parties submitted witness lists in March 2016, and revised lists shortly before trial. On December 8, 2016, the day jury selection began, the court read the names on the witness

list—eight witnesses, including Lokietz and Wang—to ensure that no jurors knew any of the witnesses. None of the plaintiffs from other lawsuits were listed as witnesses. Lokietz's counsel told the court on the first day of trial that he "told [defense counsel] who I intend to call for the entirety of next week." Nothing in the record suggests that this disclosure included the other plaintiffs' names, or that inclusion of the other plaintiffs' testimony factored into the parties' or the court's time estimate for the trial. Under these circumstances, it was entirely appropriate for the trial court to prohibit the addition of multiple witnesses and issues to a trial already in progress, irrespective of the purported relevance of the witnesses' testimony.

Lokietz argues that a "passing reference to a 'witness list' was not the basis for [the trial court's] ruling," and it "is clear that the trial court's ruling was based on the belief that expert testimony was necessary to accompany evidence of other misconduct." This assertion is not supported by the record. The court stated that in order for Lokietz to establish what she intended to prove, "one or more witnesses would be necessary"—"at least the plaintiff would have to testify and in most, if not all, there would have to be medical expert testimony." Thus, the court's ruling was not based primarily on the need for expert testimony, although the court stated that it might be necessary to address certain plaintiffs' complaints. Moreover, Lokietz does not disagree that the other plaintiffs would need to testify, asserting that "the other patients, their medical records, and Dr. Wang's prior testimony would be sufficient to show his pattern of concealing information from his patients." The court held that these plaintiffs were not properly designated as witnesses before

trial, and excluded them on that basis.[7] Even assuming that Lokietz is correct and expert testimony was not required, therefore, the court did not abuse its discretion by granting Wang's motion in limine 2.

Because we have found that the court did not abuse its discretion by granting motion in limine 2 on the basis stated in the court's remarks at the hearing and in its minute order, we do not address the bulk of the arguments asserted in the parties' briefs on appeal. For example, Lokietz asserts that "evidence of Dr. Wang's concealments with other patients was relevant to intent and to his common plan or design" under section 1101, subdivision (b), or to challenge his credibility. Lokietz emphasizes the importance of this evidence in light of Wang's defense that it was his typical practice to discuss *all* imaging and test results with patients, when in fact Wang had a "pattern of concealing or misrepresenting information when it appears that his surgeries had unfavorable outcomes." She argues that the error was highly prejudicial, as indicated by the close jury vote on the question of Wang's intent. However, none of these issues concerning the relevance of the evidence lead to a conclusion that the trial court erred by granting motion in limine 2 for the reasons stated in the court's ruling. "It is appellant's burden to affirmatively demonstrate error" (*Creed-21 v. City of Wildomar* (2017) 18 Cal.App.5th 690, 702), and she has not met that burden here.

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[7] It does not appear from the record on appeal that these patients' medical records were included in the evidence exchanged before trial, or that patient privacy issues inherent in the use of such evidence had been addressed.

We also do not address the issues raised in Wang's brief on appeal. Wang argues that the other plaintiffs' medical issues were not factually similar to Lokietz's, and that expert testimony would be required if evidence of the other plaintiffs' medical conditions were introduced. He also asserts that the evidence was inadmissible character evidence under section 1101, subdivision (a), and that it did not fall within the parameters of subdivision (b). Wang also contends that the evidence was more prejudicial than probative, and therefore was properly excluded under section 352. These arguments, like most of Lokietz's, concern issues that the court did not decide.

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

MICON, J.*

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*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.