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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION ONE

JANY AMOROSO,

Plaintiff and Appellant,

v.

BEN PRADHAN, M.D., et al.,

Defendants and Respondents.

B265875

(Los Angeles County  
Super. Ct. No. GC047679)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Norman Perry Tarle, Judge. Affirmed.

Law Offices of Barry Novack, Barry B. Novack, and Lisa R. Wiesel for  
Plaintiff and Appellant.

Cole Pedroza, Kenneth R. Pedroza, Maureen M. Home; Moore  
McLennan, Raymond R. Moore, and Drew N. Evans for Defendants and  
Respondents.

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Plaintiff and appellant Jany Amoroso challenges the trial court's denial of her motion for a new trial in her medical malpractice action against defendant and respondent Ben Pradhan. Amoroso claims that reversal is required because a juror committed prejudicial misconduct by prejudging the case and by failing to participate in deliberations. We affirm.

## **FACTS AND PROCEEDINGS BELOW**

### **A. *Surgery and Lawsuit***

In 2010, Amoroso fell and aggravated a herniated disc in her lower back. Pradhan, an orthopedic surgeon who specializes in spinal surgery, performed a microdiscectomy on Amoroso to remove the herniation. After the surgery, Amoroso reported feeling weakness and numbness in her right leg, along with swelling at the incision site. Pradhan told her that these conditions were not cause for concern, so long as fluid was not leaking from the incision site. About two weeks later, Amoroso reported that fluid was leaking from the incision site. Pradhan operated again, but did not resolve all of Amoroso's complaints.

Amoroso filed suit against Pradhan in July 2011, alleging medical malpractice. She claimed that Pradhan had fallen below the standard of care in the first surgery by failing to assess Amoroso's neural anatomy, leading him to cut into her nerve roots. Amoroso alleged that this error caused her to suffer new injuries, most notably a condition known as "foot drop" in her right foot. Foot drop is a condition in which a patient finds it difficult or impossible to lift the front part of her foot off the ground while walking. For his part, Pradhan denied that he penetrated Amoroso's nerve roots. According to Pradhan's expert witness, the weakness Amoroso suffered in her foot following surgery was a common result of the surgery and resolves itself over time. Pradhan also contended that Amoroso suffered from foot drop prior to the first operation, and that by the time of the trial, her condition had improved almost to normal.

After a trial in April and May of 2015, the court submitted to the jury a special verdict form. The verdict form required the jury to determine first whether Pradhan had been negligent in treating Amoroso. If the jurors answered the first question in the affirmative, they then had to determine whether Pradhan's negligence was a substantial cause of injury to Amoroso.

The jury voted by a 9-3 margin that Pradhan had been negligent in treating Amoroso. But the jury found, by another 9-3 vote, that Pradhan's negligence was not a substantial cause of harm to Amoroso.

B. *Allegations of Juror Misconduct*

After the trial, two jurors told Amoroso's attorney that a third juror, P.K., had committed misconduct during the case. P.K. had voted with the minority of jurors who believed Pradhan was not negligent in caring for Amoroso, and with the majority who found that Pradhan was not a substantial cause of Amoroso's injuries.

Amoroso filed a motion for a new trial on May 27, 2015. In support of the motion, Amoroso attached declarations from the two jurors who claimed to have witnessed misconduct. The first declaration came from G.B., who served as the foreperson of the jury and who voted with the majority as to both liability and causation. He stated as follows: "During the trial, while evidence was still being presented, Juror No. 4, [P.K.], approached me during a break and told me that he already decided that Dr. Pradhan is definitely not guilty. I did not engage in more discussion on the matter, but simply walked away."

Juror G.B. also stated that "[d]uring jury deliberations, Mr. K[,] expressed his position from the start and firmly stood by his position which he had expressed to me prior that Dr. Pradhan is definitely not guilty. He was not open to discussion. He would not look at the exhibits. He pushed so fiercely for everyone to take [Pradhan's expert witness's] testimony as the only factual option that it was disturbing. He pushed so hard with his fiery outbursts. He had a bag of paperwork with him that he kept looking at. It was regular white copy paper that was bundled by a clip, not his jury notebook. I do not know what those papers consisted of."

Amoroso also attached a declaration from a second juror, R.G. In the declaration, R.G. stated that, during deliberations, P.K. had been "very adamant about his position from the start of deliberations," that he had inaccurately recited trial testimony, and that he became "aggressive in his tone when met with resistance." On one occasion, according to R.G., P.K. "declared it was 'impossible' . . . for the outcome to be any other way than he

saw it.” R.G. did not claim to have heard P.K. say that he had reached any conclusions about the case prior to the close of evidence.

In support of his opposition to the motion for a new trial, Pradhan attached declarations from P.K. and another juror. P.K.’s declaration stated as follows:

“2. I have no memory of ever saying anything to [G.B.] . . . that indicated I had already decided my verdict during the trial while evidence was still being presented.

“3. I did not say Dr. Pradhan was ‘definitely not guilty’ since guilt is not relevant to this civil trial, in that the special verdict form called only for findings of ‘negligence.’

“4. I understood and abided by the judge’s instructions that jurors should keep their opinions to themselves prior to deliberations beginning.

“5. During deliberations, I listened to the opinions and discussions of other jurors.

“6. During deliberations I looked at exhibits.

“7. I participated in the deliberations and stated my own opinions based on the evidence presented during the trial.

“8. I recall an incident that became heated between myself and juror [R.G.] Mr. G[,] said that I should preface my statements with the phrase ‘in my opinion.’ I accepted the recommendation, and thereafter used that phrase, although it was clear to me since I was saying it, it was obviously my opinion. In addition, over the course of deliberations I altered [m]y vote [on the questions in the special verdict form] from ‘No plus’ to just ‘No.’ ”

Pradhan also submitted a declaration from another juror, T.W. T.W. stated that she did not witness any jurors say that they had made up their minds prior to the close of evidence, nor any other kind of misconduct. She stated that she saw two incidents in which R.G. argued in a heated manner during deliberations, once against G.B. and once against P.K. According to T.W., “[i]n both incidents, [R.G.] was more passionate in his position th[a]n the other two were. In my opinion, this was an acceptable and normal exchange of opinions in both instances.”

After a hearing, the trial court denied the motion for a new trial without explanation.

## DISCUSSION

Amoroso alleges that juror P.K. committed misconduct by prejudging the case in favor of Pradhan prior to the close of evidence, contrary to the trial court's admonishments to keep an open mind, and by refusing to deliberate.<sup>1</sup> She contends that this misconduct prejudiced her, and that consequently, we must reverse the trial court's denial of her motion for a new trial. Amoroso's argument implicitly asks us to overturn the credibility judgments that the trial court must have made in evaluating the jurors' conflicting statements. Because we defer to the trial court's determinations of the credibility of declarants, we affirm.

Juror misconduct is one of the statutory bases for a motion for a new trial. (See Code Civ. Proc., § 657, subd. (2).) The trial court is required to admonish jurors that they must not form or express an opinion about a case before deliberations begin. (See Code Civ. Proc., § 611.) A juror who disobeys this order and makes up his mind about a case prior to the close of evidence has committed misconduct by prejudging the case. (*Grobesson v. City of Los Angeles* (2010) 190 Cal.App.4th 778, 790-791.) This is “ ‘serious misconduct’ ” because it deprives the parties of their constitutional “ ‘right to unbiased and unprejudiced jurors.’ ” (Id. at p. 791, fn. 7.)

“A refusal to deliberate consists of a juror's unwillingness to engage in the deliberative process; that is, he or she will not participate in discussions with fellow jurors by listening to their views and by expressing his or her own views.” (*People v. Cleveland* (2001) 25 Cal.4th 466, 485.) A juror who refuses to deliberate is subject to discharge from the jury. (*People v. Engelman* (2002) 28 Cal.4th 436, 442.) We assume without deciding that a juror's refusal to deliberate is a ground for a motion for a new trial in a civil case on the basis of juror misconduct.

In addressing a motion for a new trial based on juror declarations, the trial court applies a three-step process. (*Barboni v. Tuomi* (2012)

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<sup>1</sup> Amoroso also alleges that juror P.K. committed misconduct by bringing certain unknown papers with him into the jury room, but she has produced no evidence showing that the papers contained improper materials. We reject this allegation of misconduct because it is based solely on speculation.

210 Cal.App.4th 340, 345 (*Barboni*).) First, the court must determine whether the jurors' declarations are admissible. (*Ibid.*) Next, "[i]f the evidence is admissible, the trial court must determine whether the facts establish misconduct. [Citation.] [Citation.] 'The moving party bears the burden of establishing juror misconduct.'" (*Ibid.*) Finally, if the trial court determines that misconduct occurred, it " "must determine whether the misconduct was prejudicial." ' " (*Ibid.*)

When the trial court does not issue a statement of decision, and we cannot discern its reasoning through examination of the record, "the reviewing court must conclude that the trial court made all findings necessary to support the judgment under any theory which was before the court. [Citations.] . . . [T]his rule is merely a corollary of the general rule that a judgment is presumed to be correct and must be upheld in the absence of an affirmative showing of error." (*Border Business Park, Inc. v. City of San Diego* (2006) 142 Cal.App.4th 1538, 1550.)

Under this rule, "[w]e must . . . assume that where there was conflicting evidence, the trial court impliedly resolved those conflicts in favor of the prevailing party." (*Andrews v. County of Orange* (1982) 130 Cal.App.3d 944, 957, disapproved of on other grounds by *People v. Nesler* (1997) 16 Cal.4th 561, 582 fn.5.) This rule applies regardless of whether evidence takes the form of written declarations or oral testimony. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479; *Young v. Brunicardi* (1986) 187 Cal.App.3d 1344, 1350–1351.)

In this case, P.K.'s declaration conflicted with G.B.'s. P.K. denied saying that Pradhan was "definitely not guilty," stated that he abided by the trial court's instructions not to express his opinions to others, and claimed that he participated in deliberations by speaking, looking at exhibits, and listening to others. Because the trial court denied the petition for a new trial without explanation, we must infer that the court accepted the truth of P.K.'s declaration. We may not reexamine this decision: "[W]eighing the credibility of conflicting declarations on a motion for new trial is uniquely within the province of the trial court." (*Weathers v. Kaiser Foundation Hospitals* (1971) 5 Cal.3d 98, 109.)

Amoroso argues that we need not accept P.K.'s declaration as true because the declaration was carefully worded, such that P.K. did not expressly deny some of G.B.'s allegations. In particular, P.K. did not outright deny telling G.B. during the trial that he had already reached a decision prior to the close of evidence, but rather stated that he had "no memory" of having done so. Nor did P.K. explicitly deny that he made up his mind about the case while testimony was still underway.

But we do not perceive a meaningful difference between P.K.'s statement that he had "no memory" of telling G.B. anything indicating he had prejudged the case, and outright denying having done so. A witness's testimony is necessarily limited to what he can remember. And P.K. also stated that he "abided by the judge's instructions that jurors should keep their opinions to themselves prior to deliberations beginning," thus implying that he did not tell G.B. his opinion of the case while evidence was still being presented. By arguing that we should disbelieve P.K.'s denials because they appear to be carefully worded, Amoroso essentially asks us to find that P.K.'s statement is not credible. That is an argument for the trial court.

Even if P.K.'s declaration did not perfectly answer all of G.B. and R.G.'s allegations in every respect, the trial court was entitled to accept P.K.'s account as more credible. (See *Weathers v. Kaiser Foundation Hospitals*, *supra*, 5 Cal.3d at p. 108; *Barboni*, *supra*, 210 Cal.App.4th at p. 350.) If we accept, as we must, the trial court's implicit conclusion that P.K. participated in deliberations and did not tell G.B. that he had prejudged the case, there is no basis for concluding that P.K. committed misconduct. Consequently, Amoroso's appeal fails.

## **DISPOSITION**

The judgment of the trial court is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.