

**IN THE COURT OF APPEALS OF IOWA**

No. 8-870 / 07-1920  
Filed November 26, 2008

**ARLISS ULLMAN, Individually and as  
Executor for the ESTATE OF FRANK ULLMAN;  
KENT ULLMAN, Individually; KAREN  
STOCKTON, Individually; and KEVIN ULLMAN,  
Individually,**

Plaintiffs-Appellants,

**vs.**

**SAMUEL CONGELLO, D.O., BRYON BEASLEY, M.D.,  
and MASON CITY CLINIC, P.C.,**

Defendants-Appellees.

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Appeal from the Iowa District Court for Cerro Gordo County, James M.  
Drew, Judge.

Plaintiffs appeal a jury verdict in favor of the defendants in a medical  
negligence case. **AFFIRMED.**

Alfredo Parrish and Tammy Westhoff-Gentry of Parrish Kruidenier Dunn  
Boles Gribble Parrish Gentry & Fisher, L.L.P., Des Moines, for appellants.

Thomas A. Finley and Frederick T. Harris of Finley Alt Smith Scharnberg  
Craig Hilmes & Gaffney, P.C., Des Moines, for appellees.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

**EISENHAUER, J.**

Frank Ullmann suffered from two progressive lung diseases and a heart condition. Dr. Congello and Dr. Beasley treated Ullmann's heart condition by prescribing the drug amiodarone. After Ullmann died in March 2003, the plaintiffs, Ullmann's wife and children, filed suit alleging medical negligence. The alleged acts of negligence submitted to the jury were: (a) failure to use due care to ensure that the drug therapy selected to treat Ullmann's heart condition was appropriate and necessary; (b) failure to properly monitor the use of amiodarone; (c) failure to detect the warning signs of amiodarone toxicity; and (d) failure to timely stop the use of amiodarone. In September 2007, the jury returned a verdict in favor of the doctors. The plaintiffs appeal arguing the court erred in giving an alternative-treatment instruction to the jury and in limiting impeachment of the doctors' expert witness. Finding no error, we affirm.

**I. Alternate-Methods-of-Treatment Instruction.**

We review the court's decision to give the challenged jury instruction for correction of errors of law. *Anderson v. Webster City Cmty. Sch. Dist.*, 620 N.W.2d 263, 265 (Iowa 2000). However, instructional error will not warrant reversal unless the objecting party has been prejudiced. *Kurth v. Iowa Dep't of Transp.*, 628 N.W.2d 1, 5 (Iowa 2001). Instruction No. 14 informed the jury:

Physicians may disagree in good faith upon what would be the proper treatment or diagnosis of a medical condition in a given situation. It is for the physician to use his or her professional judgment to select which recognized method of treatment to use in a given situation. If you determine that there were two or more recognized alternative courses of action which have been recognized by the medical profession as being within the standard of care, and the defendants, in the exercise of their best judgment,

elected one of those proper alternatives, then defendants were not negligent.

The plaintiffs' attorney objected to the instruction, stating: "[W]e would object to the entire instruction because it could lead a jury to believe that if they considered options that would negate any error they would have made with regard to the treatment." We believe the word "they" in the plaintiffs' objection refers to the defendants-doctors.

On appeal, the doctors argue the plaintiffs' objection did not preserve error for our review. Generally, error in jury instructions is waived if the error is not raised, "specifying the matter objected to and on what grounds," and ruled on by the district court. Iowa R. Civ. P. 1.924. Further, "[n]o other objections shall be . . . asserted on appeal." *Id.* "Even a timely objection to jury instructions will not avoid waiver of error if the objection is not sufficiently specific." *Olson v. Sumpter*, 728 N.W.2d 844, 848 (Iowa 2007). Specific objections are required "to alert the trial court to the basis of the complaint, so that if error does exist, the court may correct it before placing the case in the hands of the jury." *Id.* at 849.

When measured against these well-established principles, the plaintiffs' objection perhaps preserved error on their claim Instruction 14 "places undue emphasis on a physician's 'best judgment' and, conversely minimizes the physicians' culpability for the mistakes they make." We do not address the plaintiffs' other arguments as they were not preserved for our review because the plaintiffs cannot amplify or change an objection to jury instructions on appeal. *See id.*

Assuming error is preserved on this single issue, we conclude the plaintiffs' argument is without merit. While noting "[m]edicine is not a field of absolutes," an undue emphasis argument was rejected by the Iowa Supreme Court when it approved the use of alternative-treatment instructions in Iowa. *Estate of Smith v. Lerner*, 387 N.W.2d 576, 581-82 (Iowa 1986). Additionally, the *Smith* court ruled the instruction's requirement of the exercise of "best judgment" negated the plaintiff's contention the "jury could not find the defendants negligent in selecting improper treatments, so long as they were recognized ones." *Id.* We conclude the plaintiffs are making a similar argument as the arguments made and rejected in *Smith*, and the trial court did not err in submitting Instruction 14 to the jury.

## **II. Expert Testimony.**

The plaintiffs also argue the district court erred in improperly limiting impeachment of a defense expert witness. On cross-examination, the plaintiffs' attorney examined the expert's history: (1) he had testified for the worker in fifteen to twenty percent of asbestos cases; (2) in over 100 non-asbestos, workers' compensation cases, his testimony was ninety to ten percent in favor of the corporation; and (3) he had testified for the employer/corporation in all thirty-eight of the published, non-asbestos workers' compensation cases. The court allowed additional cross-examination about two of the workers' compensation cases, but then ruled, "that's enough . . . because they're of marginal relevance . . . and I am uncomfortable given they're other proceedings that aren't even under the same standard that we're under here."

The scope of cross-examination is within the trial court's discretion and we reverse only if there has been an abuse of discretion causing prejudice. *Campbell v. Van Roekel*, 347 N.W.2d 406, 411 (Iowa 1984). After reviewing the record and considering the arguments of the parties, we find no abuse of discretion. See Iowa Ct. R. 21.29(1)(e).

**AFFIRMED.**