

VERDICTS & SETTLEMENTS

FRIDAY, AUGUST 23, 2013

PERSONAL INJURY

Dental Malpractice

Negligence Per Se

VERDICT: Defense

CASE/NUMBER: *Michelle Y. Nicolas v. Nancy Goebel, D.D.S. doing business as Smile by Design Orthodontics; Angelita Ramirez; Smile by Design* (BC468162)

COURT/DATE: L.A. Superior Central / July 3, 2013.

ATTORNEYS:

Plaintiff — Victor A. Schulte (The Law Offices of Gary A. Dordick ALC, Beverly Hills).

Defendant — **N. Denise Taylor (Taylor Blessey LLP, Los Angeles)** for Gregory Kaplan, D.D.S. dba Smile by Design Orthodontics,

Angelita Ramirez; George E. Peterson (Peterson, Bradford & Burkwitz, Burbank) for Nancy Goebel D.D.S.

MEDICAL Plaintiff — Jay Grossman, D.D.S., cosmetic and implant dentistry, Brentwood.

Defendant — Steven Graff-Radford, D.D.S., oral pain management, Robert Keim, D.D.S., Los Angeles; Eric Sung, D.D.S., general dentistry, Los Angeles.

FACTS: On Jan. 18, 2008, plaintiff Michelle Nicolas, 20 presented for orthodontic treatment at Smile by Design Orthodontics under the care of defendant Nancy Goebel, D.D.S., an independent contractor. For most of her visits, defendant Angelita Ramirez, RDA, was the dental assistant involved in her care.

On March 25, 2011, at the request of Dr. Goebel, Ramirez removed the brackets and residual cement with an air driven hand piece and fluted finishing bur. Plaintiff claimed that during the course of the bracket removal, Ramirez used a diamond bur instead, and damaged 26 of the plaintiff's teeth, by creating bur marks and removing enamel to the dentin.

PLAINTIFF'S CONTENTIONS:

Plaintiff contended that Ramirez committed a battery, and alleged negligence per se

based on an alleged violation of Business and Professions Code section 1752.4, which plaintiff claimed prohibited an RDA from removing cement with a high speed motorized drill. Plaintiff relied on the testimony of a subsequent dentist Dr. Christine Matthews, who claimed that she observed damage to the patient's teeth on April 9, 2011.

DEFENDANT'S CONTENTIONS:

Defendants contended that Ramirez used the proper bur for the cement removal, and that she did not damage plaintiff's teeth, citing as evidence the photographs taken right after the removal, and a subsequent examination which showed that although there was damage, it was not in the location of the brackets and where the cement would be, and also at least one tooth that wasn't bracketed had damage. The damage looked like the teeth had been prepped for veneers, and the defense contended that plaintiff must have gone elsewhere where the damage was caused, which plaintiff denied.

DAMAGES: Plaintiff's expert stated that she would need full mouth veneers, replaced every five years for life, costing \$750,000.

According to defendants, plaintiff asked for \$250,000 in past non-economic damages and \$1 million in future economic damages.

JURY TRIAL: Length, eight days; Poll, 12-0; Deliberation, 2.5 hours.

SETTLEMENT DISCUSSIONS: Plaintiff made a statutory 998 demand of \$1 million to Ramirez and \$1 million to Dr. Goebel.

Dr. Kaplan and Ramirez made a statutory 998 offer of \$9,999. No offer by Dr. Goebel.

RESULT: Defense verdict. The battery cause of action was dismissed at the conclusion of plaintiff's case.

EXPERT TESTIMONY: Jay Grossman, D.D.S., testified that defendants were negligent in allowing Angelita Ramirez, an RDA, to use a motorized hand piece to remove cement and that this was a violation of the law; that Ramirez created bur marks on 26 of the patient's teeth, removing enamel and exposing dentin. He testified that patient suffered from pain and

cold sensitivity as a result of the damage to her teeth. Dr. Grossman further testified that as a result, the only treatment was the placement of veneers, at \$2,500 a veneer, with replacement every five years for the rest of her life. He also testified that to a reasonable dental probability she would require root canals as the result of the defendant's negligence.

Robert Keim, D.D.S., testified that the standard of care was met; that an RDA was permitted to remove cement with a motorized piece under the supervision of an orthodontist during the time period in question, and that based on his interviews with Ramirez and Dr. Goebel, and his review of the records and photos, that Ramirez was well trained and competent and there was no evidence that she damaged plaintiff's teeth during the bracket and cement removal.

Eric Sung, D.D.S., examined the patient in conjunction with Dr. Graff-Radford (oral pain expert) and took photos and models of the patient's teeth. It was his testimony that the damage to plaintiff's teeth could not have been made by a fluted finishing bur of the kind that Ramirez used, but had to have been made by a diamond bur; that the damage was not in the area of where the cement would have been; that there was no enamel loss to the dentin as contended by the plaintiff's expert; that the area of the "bur marks" was in the area of where teeth would usually be prepped for veneers; that veneers were contraindicated for the patient and any area of thinned enamel could be repaired with resin. Dr. Sung demonstrated his findings with his photos and photos of the models taken from impressions of plaintiff's teeth.

Steven Graff-Radford, D.D.S., performed the examination of plaintiff with Dr. Sung. He demonstrated that she was exaggerating her pain complaints. He testified that she did not react to any of the tests that he performed in a way that a person in pain would react, and specifically did not react to the impression material that was colder than room temperature and would have elicited a pain response if the teeth were damaged as plaintiff claimed.

FILING DATE: Aug. 22, 2011.