

**GUAM MEMORIAL HOSPITAL
vs.
Walter DALE**

**Appellate No. 83-9001
District Court NMI
Appellate Division**

Decided September 9, 1985

**Affirmed (No. 85-2693) by
unpublished memorandum
(9th Cir. 1987)**

**1. Appeal and Error - Standard of
Review - Involuntary Dismissal**

In reviewing a Rule 41(b) dismissal, an appellate court must view the findings of the trial court in the same manner as those entered at the close of all evidence, determining only whether they are clearly erroneous. Fed.R.Civ.P. 41(b).

**2. Evidence - Hearsay - Business
Records**

Where plaintiff hospital introduced "cycle billings" regarding services rendered the deceased, such billings were properly admitted under the business records exception to the hearsay rule to show that the identified services were provided the deceased. Fed.R. Civ.P. 803(b).

**3. Appeal and Error - Standard of
Review - Involuntary Dismissal**

In the absence of testimony or other evidence as to how defendant's name was entered into plaintiff hospital's data banks, eventually appearing on its cycle billings as "responsible party," the alleged liability of the defendant for decedent's hospital bills is mere conjecture and not established by a preponderance of the evidence; accordingly, the grant of involuntary

dismissal under Rule 41(b) was proper. Fed.R.Civ.P. 41(b).

**4. Appeal and Error - Standard of
Review - New Trial**

In the absence of testimony or other evidence as to how defendant's name was entered into the plaintiff hospital's data banks eventually appearing on its cycle billings as "responsible party," the alleged liability of the defendant for decedent's hospital bills is mere conjecture and not established by a preponderance of the evidence; accordingly, the denial of plaintiff's motion for a new trial was not erroneous where it was based on the grounds of manifest error of law or mistake of fact or that the verdict was against the weight of the evidence. Fed.R.Civ.P. 59(a).

**5. Civil Procedure - Post Trial
Motions - New Trial**

The trial court has broad discretion to grant a new trial under Rule 59 and general equitable principles. Fed.R.Civ. P. 59.

**6. Appeal and Error - Standard of
Review - New Trial**

In reviewing a trial court's refusal to order a new trial, the appellate court has a very limited scope of review; an appellate court should not overturn a judgment absent manifest or gross abuse of discretion on the part of the trial judge. Fed.R.Civ.P. 59.

**7. Appeal and Error - Standard of
Review - New Trial**

To determine if there has been manifest or gross abuse of discretion at the trial level sufficient to justify reversal of the judgment, the appellate court should examine whether the trial court properly considered whether the moving party would actually be prejudiced by the denial of the new trial, and if so, whether the

moving party could have prevented such prejudice at trial. Fed.R.Civ.P. 59.

8. Appeal and Error - Standard of Review - New Trial

Where plaintiff hospital failed to have the necessary witnesses and documents present at trial to establish through competent evidence the liability of defendant for medical services rendered to the deceased, defendant's spouse, thereby causing the involuntary dismissal of the action following the plaintiff's presentation of its case, trial court did not abuse its discretion by refusing a new trial, even where at the motion for new trial the plaintiff produced an agreement accepting liability apparently signed by the defendant.

FILED
Clerk
District Court

SEP 09 1985

For The Northern Mariana Islands

By [Signature]
(Dorothy [Name])

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

APPELLATE DIVISION

GUAM MEMORIAL HOSPITAL,)	
)	D.C.A. No. 83-9011
Plaintiff-Appellant,)	
)	
vs.)	
)	OPINION
WALTER DALE,)	
)	
Defendant-Appellee,)	

BEFORE: DUENAS, WEIGEL, District Judges and HEFNER*,
DUENAS, District Judge

A complaint was filed by Guam Memorial Hospital (GMH) against Rosa Cruz Dale¹ and Walter Dale on December 23, 1981, seeking judgment for a portion of Rosa Cruz Dale's medical bills. An answer was filed on January 14, 1982, denying all allegations in GMH's complaint.

On March 29, 1982, Plaintiff-Appellant filed interrogatories to the Defendants and a Request for Production. No answers to interrogatories were ever filed nor were the requested documents ever produced. The only motion to compel answers or production was made by the Plaintiff-Appellant on the day of the trial, more than one year after the request. The trial court denied Plaintiff-Appellant's motion because of its

*The Honorable Robert A. Hefner, Chief Judge, Commonwealth Trial Court, sitting by designation.

1 untimeliness. The Plaintiff-Appellant then requested a
2 continuance until 1:30 p.m. that same afternoon since it had
3 assumed that the Defendant-Appellee Walter Dale would be present
4 for the trial of this matter and had intended to call him as a
5 witness. The court granted Plaintiff-Appellant's request for
6 a continuance.

7 The only witness called by the Plaintiff-Appellant was
8 Mr. Leland L. Knapp, who was employed by GMH since August, 1980,
9 in the capacity of Acting Controller from August, 1980, to
10 October, 1981, and as Assistant Controller from October, 1981, up
11 to the date of the trial. His duties at GMH consisted of being
12 in overall charge of the Admissions Department, the Business
13 Office, the Credit and Collection Department, the Data Processing
14 Department, and the Communications Center.

15 Through Mr. Knapp's testimony, three documents were
16 admitted into evidence on the basis of the Business Records
17 Exception. [Rule 803(6) of the Federal Rules of Evidence]².
18 These three exhibits are cycle billings containing the itemized
19 charges for all goods and services provided to Rosa Cruz Dale
20 while she was a patient at GMH. The total amount of the GMH
21 charges equals \$43,154.75.

22 Mr. Knapp described in his testimony the procedures
23 used by the Hospital in preparing Exhibits 1, 2, and 3. Those
24 procedures consisted of feeding the information regarding all
25 medical charges into a computer and awaiting the final product of
26 the computer activity--the cycle billings. However, he was

1 unable to explain how the name "Dale, Walter" appeared on these
2 cycle billings as the responsible party. He could only testify
3 that this information was generated by the Admissions Office and
4 fed into the computer.

5 On cross-examination by Defendant-Appellee, Mr. Knapp
6 testified:

7 "Q. You have nothing with you to show that he's
8 (Walter Dale) responsible for this
9 debt other than Exhibits 1, 2, and 3
10 which has his name on them?

11 A. That's correct.

12 Q. You have no agreements signed by him saying
13 he's responsible?

14 A. No, I do not.

15 Q. No idea how his name got on this?

16 A. Again as I stated, it would have to ---

17 Q. You have no personal knowledge of how
18 his name ---?

19 A. I personally have not seen a document which
20 put his name on the bills; that's correct."

21 On redirect examination:

22 "Q. ...Do you have you any knowledge, sir, of
23 how Mr. Dale's name got on these bills?

24 A. To clarify that, I would have to say that
25 this was through --- would have to be
26 through the admission documentation from
which admissions are keyed into the
computer system.

Q. Would it have been some document that is
signed at the time of admission?

A. Yes.

Q. Could you describe such a document to us?

A. It would be what we would call an admission
patient or admission record-in patient.
Patient comes in as an out-patient; they
sign an out-patient registration form
for that.

Q. Would there be a place on this form for
someone to sign ---"

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1 At this point, there was an objection by Defendant-
2 Appellee, which the Court sustained on grounds that the answers,
3 as they pertain to this case, would be hearsay.

4 There was no further admissible evidence given as to
5 how or under what circumstances Defendant Walter Dale's name was
6 made to appear on Exhibits 1, 2, and 3.

7 At the conclusion of Plaintiff-Appellant's case, the
8 Defendant-Appellee moved for judgment pursuant to Rule 41(b) of
9 the Federal Rules of Civil Procedure. Rule 41(b) states in
10 pertinent part, as follows:

11 "Involuntary Dismissal: Effect Thereof.

12 . . . After the plaintiff, in an action tried
13 by the court without a jury, has completed
14 the presentation of his evidence, the defendant,
15 without waiving his right to offer evidence in the
16 event the motion is not granted, may move for a
17 dismissal on the ground that upon the facts and
18 the law the plaintiff has shown no right to relief.
The court as trier of the facts may then determine
them and render judgment against the plaintiff or
may decline to render any judgment until the close
of all the evidence. If the court renders judgment
on the merits against the plaintiff, the court
shall make findings as provided in Rule 52(a). . . ."

19 The court granted the Defendant-Appellee's motion to
20 dismiss since there was only mere "conjecture" as to how Walter
21 Dale's name came to appear on the cycle billings as the
22 responsible party. The trial court stated "that conjecture is
23 not, and never will be, a substitute for proof of the relevant
24 facts necessary to prove a cause of action by a preponderance of
25 the evidence."

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1 On June 9, 1983, Plaintiff-Appellant moved for a new
2 trial pursuant to Rule 59(a) of the Federal Rules of Civil
3 Procedure on the basis of the following:

4 1) The trial court committed manifest errors
5 of law and mistakes of fact;

6 2) The verdict was against the weight of the
7 evidence;

8 3) That a new trial was necessary to prevent
9 injustice; and

10 4) That substantial justice was not done.
11

12 In support of such motion the Plaintiff submitted a document
13 entitled "Admission and Discharge Record," which contained as
14 follows:

15 "I agree to and guarantee payment.
16 of the amount due for services
17 rendered to this patient.
 /s/ Walter M. Dale
 Date 8/28/77"

18 On June 23, 1983, the trial court entered a decision
19 and order denying the motion for a new trial, stating that
20 "[r]eference to the affidavit and the attached document was
21 clearly intended by plaintiff to show 'manifest injustice,' but
22 one cannot overlook the effect also of bringing into evidence,
23 after judgment, relevant and critical evidence which should have
24 been properly discovered in the exercise of reasonable diligence
25 and produced at the time of trial. This was not done however."
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1 A timely appeal was filed by Plaintiff-Appellant on
2 July 5, 1983, from the Judgment entered June 1, 1983, and from
3 the court's decision and order denying Plaintiff's Motion for a
4 New Trial, dated June 23, 1983.

5
6 STATEMENT OF THE FACTS

7 Rosa Cruz Dale was admitted as a patient at GMH on
8 August 28, 1977 and subsequently died on February 15, 1978.
9 There were three-cycle billings dated September, 1977; October,
10 1977; and May, 1978, containing itemized charges for goods and
11 services rendered by GMH for a patient named Rosa Cruz Dale with
12 the "responsible party" identified as Walter Dale. No payment
13 for any of these bills was ever received by GMH.

14 It was on the basis of the non-payment of these cycle
15 billings that the Plaintiff-Appellant filed suit against Walter
16 Dale in the District Court for the Northern Mariana Islands.

17
18 DISCUSSION

19 I.

20 The first issue raised on appeal is whether the trial
21 court erroneously dismissed the Plaintiff-Appellant's case
22 pursuant to Rule 41(b), Federal Rules of Civil Procedure.

23 [1] In reviewing a Rule 41(b) dismissal, an appellate court
24 must view the findings of the trial court in the same manner as
25 those entered at the close of all evidence, determining only
26

1 whether they are clearly erroneous. Wilson v. United States of
2 America, 645 F.2d 728, 730 (9th Cir., 1981).

3 [2] In the case at bar, the Plaintiff-Appellant contends
4 that the trial court erred in failing to assign the proper weight
5 to Plaintiff-Appellant's exhibits numbered 1, 2, and 3, the cycle
6 billings of GMH, which were admitted into evidence pursuant to
7 the Business Records Exception set forth in Rule 803(6) of the
8 Federal Rules of Evidence. This is not so. The
9 Plaintiff-Appellant's witness, Mr. Knapp, was able to testify
10 concerning the procedures for the cycle billings, however, he was
11 unable to testify as to how the name "Walter Dale" came to appear
12 on the billings as the responsible party. Thus, the trial court
13 properly admitted Plaintiff-Appellant's Exhibits 1, 2, and 3,
14 into evidence pursuant to the Business Record Exception for the
15 limited purpose of proving regularly conducted business activity,
16 that is, that certain goods and services were provided to Rosa
17 Cruz Dale during her stay at GMH and that billings in the total
18 amount of \$43,154.75, occurred during the stated period of time.
19 The court below further properly ruled that these exhibits failed
20 to prove the liability of Defendant-Appellee Walter Dale as the
21 person responsible for the debt to GMH since there was neither
22 testimony nor evidence presented to the court explaining how
23 Defendant Walter Dale's name came to be listed on the cycle
24 billings as the responsible party for Rosa Cruz Dale's medical
25 expenses.

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1 The Plaintiff-Appellant argues to this Court that the
2 trial court had the following sufficient evidence before it to
3 make a conclusion as to how Defendant Walter Dale came to be
4 listed as the "responsible party" for the medical bills at issue:

5 "Q. [By Mr. White]. Do you know, Sir,
6 how -- do you have any knowledge
7 of the procedures which were in
8 effect for designating a responsible
9 party as of August of 1977?

10 A. [By Plaintiff's witness]:
11 [T]here were no written policies and
12 procedures. However, the form which
13 was being used, to my knowledge, was
14 the exact same form as what was being
15 utilized in 1980 when I came on board
16 with GMH.

17 Q. And did that . . . form have any
18 place for someone to sign as a
19 responsible party?

20 A. Yes, it did."

21 However, the Appellant fails to give this Court the
22 remainder of the relevant testimony on this point. Mr. Knapp's
23 testimony continued in pertinent part as follows:

24 "

25 BY MR. WHITE:

26 Q. How do you know that the forms that
 you saw in 1980 were the same forms
 that were used in 1977?

 A. That would be based on medical
 record.

 THE COURT: What medical record -- record?

 BY MR. WHITE:

 Q. What medical records did you review?

 A. I do not have the medical records of the
 patient with me as I do not have a right
 to carry the medical record with me as
 a breach of the confidentiality of the
 patient.

 THE COURT: Which patient are you talking
 about?

 THE WITNESS: The patient being Rosa Cruz
 Dale.

1
2 Q. (By Mr. White) Did those medical
3 records have, um, an admission form which
4 included a place for a person to sign?

5 BY MR. WHITE:

6 Q. For a place for a person to sign as
7 being responsible for Mrs. Dale's bills?

8 A. As I -- As I stated, I caused for
9 them to be reviewed. I, personally, did
10 not review the file.

11 Q. Were you advised as to whether anyone
12 had signed for being responsible for
13 Mrs. Dale's bills?

14 MR. LAYNE: If it please the Court --

15 THE COURT: State your objection.

16 MR. LAYNE: It's hearsay.

17 THE COURT: Sustained."

18 [3] It is clear to this Court that the record below
19 supports the trial court's finding that no liability was shown.
20 There was neither testimony nor evidence before the trial court
21 explaining how Walter Dale's name came to appear on the cycle
22 billings as the responsible party for the medical bills at issue
23 and no proof that the Defendant Walter Dale is the person liable
24 for the medical bills of Rosa Cruz Dale. The trial court has
25 committed no error in concluding as a matter of law that the
26 Plaintiff-Appellant had not made out a case, by a preponderance
of the evidence, against the Defendant, and by dismissing the
case against the Defendant under Rule 41(b) of the Federal Rules
of Civil Procedure. Wilson v. United States of America, supra.

II.

[4] The Plaintiff-Appellant next argues on appeal that the
trial court abused its discretion in refusing to grant a new

1 trial pursuant to Rule 59 of the Federal Rules of Civil
2 Procedure. Rule 59 states in pertinent part as follows:

3 "(a) Grounds. A new trial may be granted to
4 all or any of the parties and on all or part
5 of the issues (2) in an action tried
6 without a jury, for any of the reasons for
7 which rehearings have heretofore been granted
8 in suits in equity in the courts of the
9 United States. On a motion for a new trial in
10 an action tried without a jury, the court may
11 open the judgment if one has been entered,
12 take additional testimony, amend findings of
13 fact and conclusions of law or make new
14 findings and conclusions, and direct the
15 entry of a new judgment."

16 The Appellant contends that the trial court should have
17 granted a new trial since:

- 18 1) manifest errors of law and mistakes of fact
19 were committed by the trial court;
- 20 2) the verdict was against the weight of the
21 evidence;
- 22 3) a new trial was necessary to prevent injustice;
- 23 and
- 24 4) substantial justice was not done.

25 Based on our above decision upholding the Rule 41(b)
26 dismissal, it should be apparent that this Court is not of the
opinion that the trial court has committed manifest errors of law
and mistakes of fact nor that the verdict was against the weight
of the evidence.

This Court has however given much consideration to the
Plaintiff-Appellant's contentions that substantial justice was
not done and that a new trial is necessary to prevent injustice.

1 [5] As was previously noted, the Plaintiff-Appellant on
2 June 9, 1983, moved for a new trial pursuant to Rule 59 and
3 supported such motion with a document entitled "Admission &
4 Discharge Record" that was not produced at the trial. Such
5 document contained the following pertinent information:

6 "I agree to and guarantee payment
7 of the amount due for services
8 rendered to this patient.
/s/ Walter M. Dale
Date 8/28/77"

9 This document was not intended by the Plaintiff-Appellant as
10 newly discovered evidence, instead it was intended to show
11 "manifest injustice." The trial court recognized its broad
12 discretion under Rule 59 of the Federal Rules of Civil Procedure
13 and equitable principles to grant a new trial, but it further
14 correctly identified the problem with the Plaintiff-Appellant
15 attempting to introduce, after judgment, "relevant and critical
16 evidence which should have been properly discovered in the
17 exercise of reasonable diligence and produced at the time of
18 trial." Guam Memorial Hospital v. Walter Dale, et al., Civil
19 Case 81-0078, page 2 of the Decision and Order Denying the Motion
20 for a New Trial issued by the District Court for the Northern
21 Mariana Islands on June 23, 1983.

22 [6] In reviewing this issue, we as an appellate court have
23 a very limited scope of review. Wright & Miller, 11 Federal
24 Practice & Procedure, § 2803 at pp. 31-33 and § 2818 at pp.
25 118-120 (1973). As stated above, a trial judge has been given
26 broad discretion with regard to Rule 59 motions and an appellate

1 court should not overturn such a decision and judgment absent
2 manifest or gross abuse of discretion on the part of the trial
3 judge. 11 Federal Practice & Procedure, Id. and Holmes v. Wack,
4 464 F.2d 86, 89 (10th Cir., 1972), reh'g denied.

5 [7] To determine if there has been manifest or gross abuse
6 of discretion, we should examine whether the trial court properly
7 considered whether the Plaintiff-Appellant would actually be
8 prejudiced by the denial of the new trial, and if so, whether the
9 Plaintiff-Appellant could have prevented such prejudice at trial.
10 Marshak v. Green, 89 F.R.D. 637 (S.D. N.Y., 1981), and Frankel v.
11 Lull Engineering Co., 334 F.Supp. 913, 929 (E.D. Pa., 1971).
12 From a review of the record below, it is evident that the trial
13 court recognized and fully considered that the Plaintiff-
14 Appellant would be prejudiced by the trial court's denial of a
15 new trial; however, it appears that the trial court was of the
16 impression that inadequate trial preparation on the part of
17 Plaintiff-Appellant's counsel was the sole cause of such
18 prejudice. We agree.

19 [8] As can be easily detected from the record, this is not
20 a complex case. The sole issue of proof was the liability of
21 Defendant Walter Dale for the medical bills of Rosa Cruz Dale.
22 As it appears from the record below, counsel for Plaintiff-
23 Appellant was fully aware that the Defendant-Appellee had denied
24 all allegations of GMH's complaint and that he therefore had the
25 burden of proving each and every allegation by a preponderance
26 of the evidence. It further appears that counsel for the

1 Plaintiff-Appellant was fully aware of the scheduled trial date
2 of April 18, 1983, but neglected to subpoena the
3 Defendant-Appellee to appear at trial. Instead, on the day of
4 trial, upon discovering that the Defendant was not present, the
5 Plaintiff-Appellant for the first time requested the trial court
6 to compel the Defendant-Appellee to answer interrogatories and
7 produce certain documents in response to interrogatories and
8 requests for production which had been filed more than one year
9 prior to the trial. And, in conjunction with such request, to
10 grant a one-day continuance. As previously noted, the trial
11 court properly denied such motion as untimely but did allow the
12 Plaintiff-Appellant a continuance until 1:30 p.m. that same
13 afternoon since the Plaintiff-Appellant had assumed the
14 Defendant-Appellee would be present for trial and had intended to
15 call him as a witness.

16 The trial commenced at 1:30 p.m. that same afternoon
17 and Plaintiff-Appellant's counsel indicated his readiness to
18 proceed with his case against the Defendant-Appellee, but again
19 failed to have the necessary witnesses and documents present at
20 trial to prove its case by a preponderance of the evidence.

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F O O T N O T E S

1/ Rosa Cruz Dale was deceased at the time of the filing of GMH's complaint.

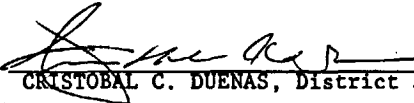
2/ Rule 803(6) of the Federal Rules of Evidence reads in pertinent part as follows:

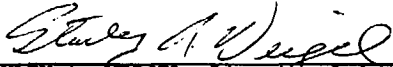
"(6) Records of regularly conducted activity.

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method of circumstances of preparation indicate lack of trustworthiness."

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Although we sympathize with the Plaintiff-Appellant, we do not feel that the trial court's denial of a new trial amounted to a manifest abuse of his discretion under the circumstances of this particular case. The Plaintiff-Appellant is not entitled to relitigate its case and the judgment of the District Court is affirmed.


CRISTOBAL C. DUENAS, District Judge


STANLEY A. WEIGEL, District Judge

ROBERT A. HEFNER, Designated Judge