2014 PA Super 52

SUSANNE CORDES, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF EDWARD D. CORDES, SR. Appellant v. ASSOCIATES OF INTERNAL MEDICINE; TRI-STATE MEDICAL GROUP, P.C.; TRI STATE MEDICAL GROUP, P.C. D/B/A/ ASSOCIATES OF INTERNAL MEDICINE; ANN MARIE RAY, M.D.; AND MARTHA LOUISE NEWMAN, P.A. Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1737 WDA 2011

Appeal from the Judgment Entered October 20, 2011
In the Court of Common Pleas of Beaver County
Civil Division at No.: 10763-2009

BEFORE: STEVENS, P.J.,* BENDER, J., BOWES, J., GANTMAN, J., DONOHUE, J., ALLEN, J., OLSON, J., OTT, J., and WECHT, J.

OPINION IN SUPPORT OF REVERSAL BY WECHT, J.:**FILED MARCH 12, 2014**

In this medical malpractice case, Susanne Cordes ("Appellant"), individually and as administratrix of the estate of Edward D. Cordes, Sr., appeals the October 20, 2011 judgment entered in favor of the above-captioned defendant-Appellees. Appellant claims that the trial court abused its discretion during the jury selection process by denying the challenges for cause she asserted against three venirepersons. Those individuals were empaneled as jurors, and the jury returned a defense verdict.

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* Former President Judge Stevens did not participate in the consideration or decision of this case.

We vacate the judgment, and we remand.

I. Factual and Procedural History

On June 8, 2007, Appellee Ann Marie Ray, M.D., Mr. Cordes' primary care physician, diagnosed him with vertigo. Dr. Ray concluded that Mr. Cordes had not suffered a transient ischemic attack. Dr. Ray directed Mr. Cordes to discontinue his use of Plavix, a blood thinner. On August 17, 2007, Mr. Cordes suffered a massive stroke. He died on August 19, 2007. On May 1, 2009, Appellant filed a malpractice complaint. Appellant alleged that Dr. Ray's misdiagnosis and discontinuation of Mr. Cordes' use of Plavix constituted a departure from the applicable standard of care.

Jury selection occurred on May 6, 2011. The venirepersons were asked four preliminary questions as a group, including inquiries seeking to determine whether any prospective jurors had any acquaintance with the parties and other specified individuals. ***See*** Notes of Testimony ("N.T."), 5/6/2011, at 16, 18. After these preliminary questions, counsel adjourned to the deliberation room, where they summoned prospective jurors for individual *voir dire*. ***See id.*** at 19. The court indicated that, after each venireperson was questioned by counsel, the parties would make any challenges for cause and exercise any desired peremptory challenges. ***Id.*** at 9-10, 13.

Appellant exercised all four of her peremptory challenges before then-prospective jurors Richard Majors, Christine Kaelin, and Sean Snowden,

respectively, were called for individual questioning. ***See id.*** at 107. Appellant exhausted her challenges despite her prior knowledge, from the preliminary *voir dire* in open court, that Mr. Majors knew or had "social, business, or other contact or employment with any of the parties," ***id.*** at 16, and that one of Ms. Kaelin's family members had had "social, business, or professional contact" with one or more of five individuals named as potential witnesses, one of whom was Dr. Ray. ***Id.*** at 18.

The trial court described the individual *voir dire* proceedings as follows:

> During individual voir dire, [Mr. Majors] revealed that he was an employee of Heritage Valley Health Systems ["Heritage Valley"]; however, . . . he did not know Dr. Ray personally. Notes of Testimony ("N.T."), 5/6/2011, at 107. Mr. Majors indicated that he manages the leases for which Heritage Valley acts as a landlord and was aware that Dr. Ray's practice group leased office space from Tri-State Medical Group ["Tri-State"], which is an entity of [Heritage Valley]. ***See id.*** at 107-11. Mr. Majors' employment with Heritage Valley did not involve any medical care and/or treatment of patients. ***See id.*** at 110. Further, he stated that he would not consider whether a potential verdict in favor of [Appellant] would somehow adversely affect Heritage Valley's financial status. ***See id.*** at 111-12. Mr. Majors stated that his employment with Heritage Valley would not prevent him from being a fair and impartial juror. ***See id.*** at 107-19. [Appellant's] counsel moved to strike Mr. Majors for cause due to his employment with Heritage Valley. [Appellant] claim[ed] that Mr. Majors' close financial relationship with co-employee Dr. Ray compelled exclusion.
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> Notably, [Heritage Valley] was not a named defendant in this case. Moreover, [Heritage Valley] is a large health system corporation and one of the chief employers in Beaver County. Practically, the court appropriately denied the motion stating that Mr. Majors, on multiple occasions, said that he could render

a verdict against Dr. Ray, irrespective of his employment with Heritage Valley. ***See id.*** at 117-19.

* * * *

[Also] during individual voir dire, [Ms. Kaelin] revealed that Dr. Ray is her parents' physician. However, she indicated that she could be fair and impartial in a case involving Dr. Ray. ***See id.*** at 177-78. Upon further examination by [Appellant's] counsel, Ms. Kaelin stated that while she had taken her mother to a doctor's appointment, she had never met Dr. Ray and would not be more inclined to believe Dr. Ray because her parents have a good impression of [her]. ***See id.*** at 180-81. In fact, Ms. Kaelin indicated that she could disbelieve Dr. Ray and render a verdict against her if the evidence warranted such a result. ***See id.*** at 181. [Appellant's] counsel moved to strike [Ms. Kaelin] for cause due to her parents' relationship with Dr. Ray.

[Appellant] argue[d] that Ms. Kaelin had a close situational relationship with Dr. Ray. However, [Ms.] Kaelin clearly indicated that she had never met Dr. Ray. While her parents may have a close situational relationship with Dr. Ray, there was nothing to suggest to this Court that Ms. Kaelin, herself, had any type of relationship with Dr. Ray. Accordingly, the Court properly denied [Appellant's] motion to strike Ms. Kaelin for cause as Ms. Kaelin clearly demonstrated that she could render a fair and impartial verdict notwithstanding her parent's relationship with Dr. Ray. ***Id.*** at 186-87.

A jury panel was selected and [Mr. Snowden] was selected and sworn in as [a] juror. After the jury panel was selected and trial had commenced, counsel for Dr. Ray[] advised the Court that after [she] reviewed [her] patient list she recognized the name Snowden as one of her patients. The Court, with counsel present, brought Mr. Snowden into chambers. Mr. Snowden explained that the night before he and his wife were having a conversation in which she expressed her intent to get Chantix in an attempt to cease smoking. Mr. Snowden then asked her who[m] she would get the Chantix from and she said Dr. Ray. According to Juror Snowden, this was the first time he learned that his wife treated with Dr. Ray. In addition, he indicated that he had never personally met Dr. Ray and that he was able to

> decide the case fairly and without bias or prejudice. ***See*** N.T. In-Chambers Proceeding, 5/11/2011, at 2-6.
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> Again, [Appellant] claim[ed] that Juror Snowden had a close situational relationship with Dr. Ray. However, as the Court indicated on the record, Mr. Snowden was not, himself, a patient of Dr. Ray, never had any contact with Dr. Ray and had just learned that Dr. Ray was his wife's doctor. ***Id.*** at 8. Mr. Snowden had no personal relationship with Dr. Ray at all. In response to [Appellant's] counsel's extensive questioning, Mr. Snowden clearly stated that he would not feel uncomfortable entering a verdict against Dr. Ray, given the fact that she was his wife's doctor. ***Id.*** at 5. Mr. Snowden did not demonstrate any close or real relationship with Dr. Ray that would warrant his dismissal. Accordingly, the Court properly refused to dismiss this juror.

Trial Court Opinion ("T.C.O."), 9/20/2011, at 6-9 (citations modified; emphasis omitted).

On May 13, 2011, the jury returned a verdict in favor of Appellees. Appellant filed timely post-trial motions, which the trial court denied on September 20, 2011. Judgment was entered on October 20, 2011, and this timely appeal followed.[1]

Appellant raises two questions for our review:

> 1. Whether the trial court erred by failing to presume prejudice and strike two jurors who had close situational relationships with a litigant in that their immediate family members were current patients of the Defendant, Dr. Ray?

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[1] It appears that the trial court did not order Appellant to file a concise statement of errors complained on appeal pursuant to Pa.R.A.P. 1925(b). Nor did the trial court file a Rule 1925(a) opinion. However, the trial court's September 20, 2011 Opinion and Order provides us with that court's reasoning. Thus, we have what we need to review the merits of Appellant's issues.

> 2. Whether the trial court erred by failing to presume prejudice and strike a juror who had a close financial relationship with a litigant in that he was employed by the same corporation as the Defendant, Dr. Ray?

Brief for Appellant at 4 (issues reordered).

II. Legal Standard

Our standard of review of a court's decision not to strike a potential juror for cause is well-settled:

> The test for determining whether a prospective juror should be disqualified is whether he is willing and able to eliminate the influence of any scruples and render a verdict according to the evidence, and this is to be determined on the basis of answers to questions and demeanor . . . . A challenge for cause should be granted when the prospective juror has such a close relationship, familial, financial, or situational, with the parties, counsel, victims, or witnesses that the court will presume a likelihood of prejudice[,] or demonstrates a likelihood of prejudice by his or her conduct and answers to questions. Our standard of review of a denial of a challenge for cause differs, depending upon which of these two situations is presented. In the first situation, in which a juror has a close relationship with a participant in the case, the determination is practically one of law and as such is subject to ordinary review. In the second situation, when a juror demonstrates a likelihood of prejudice by conduct or answers to questions, much depends upon the answers and demeanor of the potential juror as observed by the trial judge and therefore reversal is appropriate only in the case of palpable error. When presented with a situation in which a juror has a close relationship with participants in the litigation, we presume prejudice for the purpose of [en]suring fairness.

McHugh v. P&G Paper Prods. Co., 776 A.2d 266, 270 (Pa. Super. 2001) (footnote, citations, internal quotation marks, and original modifications omitted).

This Court previously has described this inquiry in general terms as follows:

> [T]here are two types of situations in which challenges for cause should be granted: (1) when the potential juror has such a close relationship, be it familial, financial or situational, with parties, counsel, victims, or witnesses, that the court will presume the likelihood of prejudice; and (2) when the potential juror's likelihood of prejudice is exhibited by his conduct and answers to questions at voir dire. In the former situation, the determination is practically one of law and as such is subject to ordinary review. In the latter situation, much depends upon the answers and demeanor of the potential juror as observed by the trial judge and therefore reversal is appropriate only in case of palpable error.

Commonwealth v. Colon, 299 A.2d 326, 327-28 (Pa. Super. 1972). Importantly, this Court has held as follows:

> The two situations . . . are not mutually exclusive, and it is to be expected that some cases will present both situations. Thus a prospective juror may indicate by his answers on voir dire that he will not be impartial – the [second] situation – and the reasons for his attitude may be that he has a particular relationship with someone involved in the case – the [first] situation.

Commonwealth v. Johnson, 445 A.2d 509, 512 (Pa. Super. 1982).[2] Inasmuch as the first category of challenge presents a question of law, we

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[2] The learned dissent goes to great lengths to distinguish ***Johnson*** from the case at bar in ways that we do not dispute. Diss. Op. at 5-12. We cite ***Johnson*** merely to emphasize that, even in the context of the *per se* prejudice test, the trial court has more than an automaton's role to play in assessing the relationships and in ruling on whether those relationships are so close or real as to require exclusion *per se*. It is hardly uncommon for this Court to quote a case that informs a given area of law in elucidating general principles, even though that case is distinguishable in its particulars.

review the trial court's ruling *de novo*, and the scope of our review is plenary. ***Stamerro v. Stamerro***, 889 A.2d 1251, 1257 (Pa. Super. 2005).

Our Supreme Court recently has reminded us that "[o]ne of the most essential elements of a successful jury trial is an impartial jury." ***Bruckshaw v. Frankford Hosp.***, 58 A.3d 102, 119 (Pa. 2012) (citing ***Colosimo v. Penna. Elec. Co.***, 518 A.2d 1206, 1209 (Pa. 1986)). To that end, "[t]hrough the voir dire process individuals with bias **or a close relationship to the parties, lawyers or matters involved** are examined and excluded." ***Id.*** at 110 (emphasis added). Thus, for more than a century, our Supreme Court has held that it is incumbent upon a court faced with a for-cause challenge to consider not just the **fact** of partiality, but also **the prospect or appearance** of partiality or bias. ***See Commonwealth v. Stewart***, 295 A.2d 303, 306 (Pa. 1972) (quoting ***In re Murchison***, 349 U.S. 133, 136 (1955)) ("[O]ur system of law has always endeavored to prevent **even the probability of unfairness**." (emphasis added)); ***Seeherman v. Wilkes-Barre Co.***, 99 A. 174, 176 (Pa. 1916) ("It [is] certainly desirable that the cause should be tried by persons free even from the suspicion of partiality."); ***Hufnagle v. Delaware & H. Co.***, 76 A. 205, 206 (Pa. 1910) ("[N]o person should be permitted to serve on a jury who stands in any relation to a party to the cause that would carry with it *prima facie* evident marks of suspicion of favor . . . ." (internal quotation marks omitted)); ***Schwarzbach v. Dunn***, 381 A.2d 1295, 1297-98 (Pa. Super. 1977) (directing a mistrial in order to "tip the balance in favor of

[e]nsuring a fair trial" because "the potential for prejudice was great," even though the critical premise was "never factually established"); ***see also Commonwealth v. Stitzel***, 454 A.2d 1072, 1075 n.8 (Pa. Super. 1982) (citing ***Schwarzbach*** to reinforce the importance of erring on the side of fairness even when faced with "only the potential for prejudice"). The importance of addressing the prospect, as well as the fact, of bias is necessarily embodied in the two-pronged ***Colon*** test. That a category of exclusion is to be effectuated *per se* would make little sense if it were not animated by courts' historic concern for the **prospect** of jury bias, since application of that test forecloses any inquiry into **actual** bias.

Thus, at issue in this appeal, given the undisputed absence of admissions of partiality, is the prospect or appearance of partiality or bias with respect to three jurors: two whose close family members were patients of the defendant-Appellee physician, Dr. Ray, at the time of jury selection; and one whose employer, Heritage Valley, owned Tri-State, a named defendant in this action and defendant-Appellee Dr. Ray's employer. During *voir dire*, the latter juror attested to his belief that Heritage Valley had a financial interest in the outcome of the litigation through its subsidiary, Tri-State, and further testified that he and Dr. Ray shared a common employer.

As to the three jurors whom Appellant maintains should have been excluded for cause, Appellant focuses exclusively upon the first test articulated in ***McHugh*** and ***Colon***, which addresses potential conflicts arising from a close familial, financial, or situational relationship with the

parties. Appellant does not contend that the jurors' testimony during *voir dire* constituted a viable basis for relief. This is a natural consequence of the fact that, during *voir dire*, each challenged juror attested under oath to his or her ability to be impartial.[3] Were the fitness of the jurors in question dependent solely upon their indications under oath regarding their ability to be impartial, our deference to the trial court's findings with regard to these answers would compel affirmance. ***See McHugh***, 776 A.2d at 270. However, despite the trial court's focus on the jurors' own testimony, the challenge presented here turns instead upon the situational relationships of the challenged jurors to the parties and interested non-parties.

In ***McHugh***, an insured worker brought a premises liability claim against Proctor & Gamble Paper Products Company ("Proctor & Gamble"). At trial, Proctor & Gamble was represented in person by its employee, Patrick Fellin. Although Mr. Fellin was not a party to the litigation, he was to be seated at counsel's table during trial. Proctor & Gamble characterized Fellin as nothing more than "window dressing," and asserted that "Fellin would not testify, . . . had no involvement in the incident with McHugh, and . . . he simply would sit at counsel table . . . to represent Proctor & Gamble." ***Id.*** at 272.

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[3] ***See*** N.T., 5/6/2011, at 107-17 (Richard Majors); ***id.*** at 177-86 (Christine Kaelin); N.T. In-Chambers Proceeding, 5/11/2011, at 2-4 (Sean Snowden).

During *voir dire*, five members of the initial twenty-four member jury pool indicated that they were acquainted with Mr. Fellin. One individual indicated that he worked at the same Proctor & Gamble plant and in the same department as Mr. Fellin. Two more prospective jurors knew Mr. Fellin as a fellow employee at the same plant. A fourth prospective juror formerly had worked in the same department as Mr. Fellin, but had since retired. Finally, a fifth venireman indicated that Mr. Fellin was his son-in-law. 776 A.2d at 268.

McHugh's counsel asked the court to strike the first four of these prospective jurors based upon their employment relationships with Proctor & Gamble and Mr. Fellin, and the fifth prospective juror due to his familial relationship with Mr. Fellin. In open court, the trial court inquired of each challenged venireman whether he could "render a fair and impartial verdict based only on the evidence." When each prospective juror answered affirmatively, the trial court denied McHugh's motion to strike as to all five.

Thereafter, McHugh's counsel questioned each of the five veniremen individually. Mr. Fellin's father-in-law replied to counsel's inquiry regarding whether he would be "personally affected or [his] son-in-law [would] be affected by [him] . . . sitting on this jury and rendering" a verdict against Proctor & Gamble, as follows: "I don't know if I'd be[;] he would." ***Id.***

McHugh filed a pre-trial motion for a mistrial on the basis that the trial court erred in denying his for-cause challenges to Mr. Fellin's father-in-law and the Proctor & Gamble employees. The trial court denied McHugh's

motion, the case went to trial, and the jury "rather quickly" rendered a verdict against McHugh. ***Id.***

With regard to those who had employment relationships with Proctor & Gamble, this Court held on appeal that "the employer/employee relationship evokes a presumption of prejudice so significant as to warrant disqualification of employees of a party." ***Id.*** at 270. We explained: "Over ninety years ago, our Supreme Court recognized that, where a litigant is in a position where he might exercise control over a juror, such as the relation of master and servant, that juror should not be permitted to serve on the jury." ***Id.*** (citing ***Hufnagle***, *supra*). We further observed that "[d]ecisions to automatically exclude a prospective juror from a jury are based upon 'real' or 'close' relationships between the juror and the case due to financial, situational or familial ties with the parties, counsel, victims or witnesses." ***Id.*** at 271 (citing ***Commonwealth v. Rough***, 418 A.2d 605, 609 (Pa. Super. 1980)). After reviewing the largely consistent law of other states, we held that the employer-employee relationship comprised such a relationship due to "the presumption of loyalty of employees to their employer" and the manifest potential "that jurors who are employees of a party are unlikely to hear the case with a clean slate and an open mind." ***Id.*** (quoting ***Kusek v. Burlington N. R.R. Co.***, 552 N.W.2d 778, 782 (Neb. Ct. App. 1996)).

In light of these principles, we determined that the Proctor & Gamble employees should have been stricken for cause:

> Clearly, Proctor & Gamble maintains an overwhelming presence in the lives of its employees residing in that area, to the extent that the livelihoods of the employee and his or her family become wholly intertwined with Proctor & Gamble. We cannot reasonably expect a person whose livelihood derives from a party to render an impartial verdict in a case involving that party, regardless of that person's belief that he or she can do so.

Id. at 272. Yet, in the case now before us, the trial court cited precisely the same consideration as a basis **not** to excuse Mr. Majors from the jury. T.C.O. at 7 ("[Heritage Valley] is a large health system corporation and one of the chief employers in Beaver County. Practically, the court cannot dismiss for cause every employee of Heritage Valley.").

In ***Schwarzbach***, we reversed a trial court's refusal to excuse a juror who had an indirect relationship to case counsel. Specifically, the wife of the juror in question had some history of employment with the law firm representing the plaintiff. The plaintiff's counsel opposed exclusion, contending that the juror's wife had worked in counsel's office only on a part-time basis, and had worked only for a member of the firm unconnected to the case at bar. 381 A.2d at 1297. Moreover, plaintiff's counsel observed that, in rural Elk County, stenographers serve multiple law firms. ***Id.*** Although "it was never factually established just what the secretary's relationship was with the law office of [plaintiff's] attorney," we emphasized that "the potential for prejudice was great in that it is quite possible that a secretary in a law office could influence her husband in deciding a matter in which her employer is counsel." ***Id.*** at 1298.

We found that the potential for prejudice noted above was sufficient to declare a mistrial and to remand. Of critical importance to today's case, we couched our ruling not in the certainty or proximity of the problematic relationship but in the **uncertainty** surrounding the indirect relationship between the juror and counsel:

> The problem here is that it was never factually established just what the secretary's relationship was with the law office of [the plaintiff's] attorney. It is implied by one of the parties that she was an occasional employee of many law offices in the area. However, this was never determined as factual. In fact, her relationship with the law offices was never made clear anywhere. If she was a mere occasional employee or if a great deal of time had passed since she was so employed the potentialities of prejudice of her husband sitting on the jury would not be great enough to warrant a new trial. However, we do not have the answers to these questions and . . . we are inclined to tip the balance in favor of [e]nsuring a fair trial here.

Id.[4]

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[4] This rebuts the dissent's claim that "**all** of our cases have required record evidence of a tangible connection between a prospective juror and case participant before *per se* prejudice is found" Diss. Op. at 16 n.6 (emphasis in original). In ***Schwarzbach***, it was precisely the absence of such evidence, and our historical inclination toward caution, that prompted us to reverse the trial court's empanelment of the challenged juror. While the dissent is correct that, in ***Schwarzbach***, "the record was devoid of any facts from which the court could determine what the relationship was between the juror's wife and plaintiff's attorney," ***id.***, this observation stands beside the dissent's own central point. Were the dissent's account of ***Colon*** the final word, there could be **no** relationship of **any** character between a juror's **wife** and case counsel that would require *per se* exclusion. Rather, absent a **direct** relationship between the juror and counsel, the exclusion determination necessarily would be vested in the trial court discretion, not determined on a *per se* basis.

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From the particularities of these decisions several general principles emerge: First, indirect relationships of a juror to a party with which the juror has had no direct contact, including connections through spouses with a potential (also indirect) employment-related interest in the outcome of the trial, **may** furnish a basis for *per se* exclusion; second, that trial courts must err on the side of caution when confronted with such an indirect relationship; and third, that no matter the *per se* nature of the applicable test, the trial court retains discretion to identify and assess the quality of the specific relationship at hand, as evinced by our acknowledgment in ***Schwarzbach*** that variations on the relationship in question, including the frequency or

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Notwithstanding the deficiencies of the record in ***Schwarzbach***, however, there was no suggestion by any court or party that the juror in question might, himself, have had a direct relationship to any case participant. Thus, the dissent's attempt to focus upon this Court's discussion regarding the absence of an opportunity for the objecting party to make a record, given the late disclosure of the relationship in question, is irrelevant. The dissent offers no reason to overlook ***Schwarzbach***'s recognition that an undisputedly "indirect" relationship not only **might** require *per se* disqualification, but indeed as a matter of jurisprudential caution **did** require *per se* disqualification when the record presented the possibility that further examination might have revealed a sufficiently close, albeit necessarily indirect, situational relationship to require *per se* exclusion. Nor has the dissent any response to the necessary implication that the test for such relationships involves more than inputting the relationship category and retrieving an inexorable output, but rather requires case-specific assessments of the challenged relationship, whether direct or indirect.

remoteness in time of the employment relationship between the juror's wife and counsel, might dictate contrary results.[5]

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[5] This case law contradicts the learned dissent's rigid reading of the ***Colon*** test to require *per se* exclusion only when confronted with a relevant "direct" relationship. ***See, e.g.***, Diss. Op. at 15 ("The plain text of the rule that emerged from ***Colon*** **demands** that a disqualifying relationship be a **direct** and **immediate** connection that exists between the prospective juror and a party, case counsel, a victim, or a witness." (emphasis added)). Rather than employ the "direct" terminology favored by the dissent, our case law has characterized problematic situational relationships as "close" or "real," ***see, e.g., Colon***, 299 A.2d at 327 ("close"); ***Commonwealth v. Sheaff***, 530 A.2d 480, 483 (Pa. Super. 1987) ("real"); ***Rough***, 418 A.2d at 609 (Pa. Super. 1980) ("'real' or 'close'"), words that are not mutually exclusive of "indirect" or "mediated." Most importantly, in ***McHugh*** and ***Schwarzbach***, which both post-date ***Colon***, we found *per se* prejudice in familial relationships between a juror and individuals who were not parties, counsel, victims, or witnesses. Reading ***Colon*** narrowly, without acknowledging the complications introduced by later cases, would create more confusion than it cures by calling into question the validity of those later cases. Moreover, if ***Colon*** *sub silentio* proposed that only "direct" relationships warrant *per se* exclusion, it must yield to our more recent decisions in ***McHugh*** and ***Schwarzbach***. ***Cf. Hack v. Hack***, 433 A.2d 859, 868 (Pa. 1981) ("There is not a rule of the common law in force today that has not evolved from some earlier rule of common law, gradually in some instances . . . ." (internal quotation marks omitted)).

Nonetheless, the dissent suggests that it has identified a line of authority that unequivocally precludes *per se* exclusion based upon indirect relationships. ***See*** Diss. Op. at 14-20. While these cases may have involved indirect relationships deemed insufficient to require *per se* exclusion, none involved close familial relationships akin to those between Ms. Kaelin and Mr. Snowden and their immediate relatives who were treating with defendant-Appellee Dr. Ray. Nor do any of the dissent's cases address a business interest conflict akin to that presented by Mr. Majors. ***See Colon***, 299 A.2d 326 (denying *per se* exclusion where juror was police commissioner for local township with "no particular relationship to the case or to the police force involved"); ***Commonwealth v. Blasioli***, 685 A.2d 151 (Pa. Super. 1996) (juror was colleague and patient of prosecutor's wife, but had not interacted with prosecutor); ***Commonwealth v. Koehler***, 737 A.2d 225 (Pa. 1999) (father of defendant was juror's "husband's sister's son," a

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Our analyses in ***McHugh*** and ***Schwarzbach*** are not entirely dispositive of our determination as to whether the trial court should have stricken the jurors at issue in the circumstances presented in the instant case. However, the exclusion of Mr. Fellin's father-in-law in ***McHugh*** provides an instructive analogy to the instant case. That prospective juror did not have a direct relationship to the parties, counsel, victims, or witnesses in that case, because his only connection to a party was mediated through Mr. Fellin, who fit none of these descriptions.[6] As well, in

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man whom she had little contact with and sometimes confused with other relations); ***Commonwealth v. Briggs***, 12 A.3d 291, 332-34 (Pa. 2011) (juror A affiliated with same athletic organization as wife of a victim, but never interacted with wife; juror B's husband practiced archery with victim twelve years earlier, but had no contact with victim after marrying juror B; juror C was Bradford County corrections officer but had no contact with victims, Bradford County sheriff's deputies); ***Commonwealth v. Wilson***, 672 A.2d 293, 299 (Pa. 1996) (juror's brother was police officer in jurisdiction of the crime but uninvolved in the case); ***Linsenmeyer v. Straits***, 166 A.2d 18, 23 & n.2 (Pa. 1960) (jurors had prior relationships with counsel that were not recent).

The mere fact that **some** indirect relationships have been found by Pennsylvania courts not to require exclusion does not necessitate the conclusion that **no** indirect relationship may require exclusion. ***McHugh*** and ***Schwarzbach*** underscore that point.

[6] The dissent rejects this characterization, maintaining that "Fellin, in his capacity as a designated representative of the corporation at trial, clearly qualified as a case participant because of his status as a party's authorized agent." Diss. Op. at 33 n.14. First, it is unclear what, if anything, Fellin was "authorized" to do at trial, given Proctor & Gamble's characterization of Fellin as "window dressing" who "simply would sit at counsel table." ***McHugh***, 776 A.2d at 272. Second, even if Fellin were a "director," officer," or "agent" of Proctor & Gamble, as the dissent appears to infer with its citation of ***Utica Mutual Insurance Co. v. Contrisciane***, 473 A.2d 1005, 1013

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Schwarzbach, a relationship between a juror and counsel mediated through a spouse was held to require exclusion *per se*, despite the insufficiency of the record to confirm the details of that relationship. Thus, to reconcile ***McHugh***, ***Schwarzbach***, and ***Colon***, as we must to the extent possible, we are bound to conclude that a close situational relationship with a party may be found even when the relationship in question is indirect. We must determine whether the trial court – in assessing the relationships in the fashion recommended by ***Schwarzbach*** and noted without criticism in ***Johnson*** – erred in determining that the particular relationships were not so close or real as to require exclusion.

We find additional guidance in other cases decided by Pennsylvania courts, as well as decisions by courts of other jurisdictions. For example, our Supreme Court and other courts have held that a stockholder in a corporation that has an interest in the matter may not be empaneled. ***See Seeherman***, 99 A. at 175; ***see also Salt River Valley Water Users' Ass'n v. Berry***, 250 P. 356, 357 (Ariz. 1926); ***McLaughlin v. Louisville***

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(Pa. 1984), this would not make Fellin a party in his individual capacity. It is not at all clear whether the dissent's rigid reading of ***Colon*** would allow *per se* exclusion of a juror with a direct but personal connection to an individual acting not on his own behalf but on behalf of a corporate party, given that it is not clear why, on such a reading, it might not be sound to infer a juror's bias in favor of a corporation based upon a juror's feelings about an individual who is appointed to act on behalf of that corporation. Under such circumstances, arguably the juror's connection to the party itself would be "indirect," and therefore not require *per se* exclusion on the dissent's account of the standard.

Elec. Light Co., 37 S.W. 851, 855 (Ky. 1896); ***Ozark Border Elec. Coop. v. Stacy***, 348 S.W.2d 586, 589 (Mo. Ct. App. 1961) (collecting cases and noting that "[t]he general rule that a stockholder in a corporation is incompetent to sit as a juror in an action to which the corporation is a party or in which it has a direct pecuniary interest is stated without qualification or exception"). Similarly, courts have found a dispositive risk of partiality in a prospective juror who is a shareholder in an insurance company bound to indemnify the defendant for any judgment entered against him. ***Citizens' Light, Heat & Power Co. v. Lee***, 62 So. 199, 205 (Ala. 1913); ***Thompson v. Sawnee Elec. Membership Corp.***, 278 S.E.2d 143, 144 (Ga. Ct. App. 1981). And, in ***Wallace v. Alabama Power Co.***, 497 So.2d 450, 453-54 (Ala. 1986), a shareholder in a corporation with an ownership stake in a party to the litigation was deemed excludable as a matter of course.[7]

When such potential conflicts arise, the trial court may not rely upon a juror's assurances that he can set aside his own interests and deliberate

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[7] The dissent insists that the financial relationships in all of these cases were "direct." Diss. Op. at 31-32 n.13 ("In those cases[, *i.e.*, ***Citizens' Light, Heat & Power*** and ***Wallace***], the jurors maintained **direct** financial relationships with parties to the respective actions . . . ." (emphasis added)). We are at a loss to discern how the dissent can maintain, for example, that a juror with a financial interest in an insurance company bound to indemnify a party, as in ***Citizens' Light***, has the **direct** relationship to a **party** that the dissent insists ***Colon*** requires. The same analytical problem arises with regard to ***Wallace***, in which the prospective juror was not directly connected to a party, but rather was a shareholder in the corporate parent of the party-defendant. These relationships are "direct" only if the word is defined so broadly as to lose all precedential utility.

without bias. On appeal, our traditional deference to the trial court's credibility determinations becomes immaterial to determining whether a given juror should have been disqualified. Thus, in ***M & A Electric Power Cooperative v. Georger***, the Missouri Supreme Court explained:

> [T]he fact that the members, when interrogated, denied that they would be prejudiced by reason of such interest is not conclusive. . . . [Venirepersons] are not to . . . determine their own qualifications, and we remain mindful of the eternal verity that, whatever else may change in this changing world, the impelling self-interest, motivating emotions and besetting frailties of members of the human family abide unchanged.

480 S.W.2d 868, 874 (Mo. 1972) (internal citations and quotation marks omitted). Our own Supreme Court's ruling in ***Seeherman*** is in accord. ***See*** 99 A. at 176.

In sum, while the weight of authority makes clear that we must defer to the trial court's discretion in assessing whether a prospective juror's assertions of impartiality are credible, this deference applies only when the issue hinges upon a question of partiality arising from the would-be juror's comments in *voir dire*. Conversely, when faced with a sufficiently close situational relationship between the venireperson and a party to the litigation, or to an entity with an interest in the outcome of the litigation, prejudice must be assumed, the venireperson's protestations of impartiality notwithstanding.

With these principles in mind, we turn now to the matter at hand, examining, in turn, the relationships of the prospective jurors in question to the litigation.

III. Analysis

A. Ms. Kaelin's and Mr. Snowden's Vicarious Relationships with Dr. Ray

During individual *voir dire*, Ms. Kaelin testified as follows:

> THE COURT: . . . The one thing we noticed is that you responded that you knew someone in this case when the witness list was read.
>
> [Ms. Kaelin]: Well, my parents go to Dr. Ray as their physician.
>
> THE COURT: All right. Does that in any way prevent you from sitting on a case where . . . Dr. Ray is the named Defendant?
>
> [Ms. Kaelin]: No.
>
> THE COURT: All right, and you're sure about that?
>
> [Ms. Kaelin]: Yes.
>
> * * * *
>
> [COUNSEL]: Can you give us an idea of how long [your parents] have been patients with her?
>
> [Ms. Kaelin]: No. I just know that they tell me they go to see Dr. Ray a lot.
>
> [COUNSEL]: Have they ever told you what they think of Dr. Ray as a doctor?
>
> * * * *
>
> [Ms. Kaelin]: They like her.
>
> * * * *
>
> [COUNSEL]: Have you ever met Dr. Ray?

> [Ms. Kaelin]: No.
>
> [COUNSEL]: Ma'am, Dr. Ray may be called to the witness stand and likely testify in this case. . . . Would you have a tendency to believe Dr. Ray over someone else given the fact that your parents have a good impression of her?
>
> [Ms. Kaelin]: Not that I would, can think of. No, I don't think I would.
>
> * * * *
>
> [COUNSEL]: And, ma'am, if the evidence was such that Dr. Ray may have been negligent in this case, are you telling me that you could find Dr. Ray negligent, even if . . . your parents are [patients] of hers?
>
> [Ms. Kaelin]: Yes.

N.T., 5/6/2011, at 177-81.

Like Ms. Kaelin, Mr. Snowden's potential conflict came through a close family member who treated with Dr. Ray – in his case, his wife. Mr. Snowden's testimony came not during individual *voir dire*, when he was unaware of his wife's clinical relationship with Dr. Ray, but after trial had commenced and before the jury deliberated. On May 11, 2011, before the day's trial proceedings got underway, Dr. Ray's counsel informed the court that, upon review of her patient list, Dr. Ray recognized the name Snowden. The court summoned Mr. Snowden to chambers, and the following discussion ensued:

> THE COURT: [Mr. Snowden], I brought you in, because during the evening, Dr. Ray, in all fairness and ethically, took a look at her list of patients and saw your name.
>
> Does your wife . . . treat with her?
>
> [Mr. Snowden]: I just found out yesterday that she does . . . .

> THE COURT: You have never met her –
>
> [Mr. Snowden]: No.
>
> THE COURT: – prior to this case, but the question comes down to, the fact that because your wife is a patient of Dr. Ray, would that in any way affect your ability to decide this case?
>
> [Mr. Snowden]: It would not.

N.T. In-Chambers Proceeding, 5/11/2011, at 2-4.

As noted *supra*, the trial court found that these jurors' connections to Dr. Ray did not warrant striking either for cause. The trial court essentially ruled that there was no real or close familial or situational relationship, and relied upon each juror's assurance that he or she impartially could assess Dr. Ray's credibility and liability. ***See*** T.C.O. at 8 ("[T]here was nothing to suggest to this Court that Ms. Kaelin, herself, had any type of relationship with Dr. Ray."), 9 ("Mr. Snowden did not demonstrate any close or real relationship with Dr. Ray that would warrant his dismissal."). Notably, the trial court was entirely silent regarding the appearance of partiality that might arise from these relationships, a consideration our cases make clear bears on a for-cause inquiry based upon a situational-relationship challenge.

Were Ms. Kaelin and Mr. Snowden patients of Dr. Ray, our decision might be more simple and direct. ***See, e.g., Marcin v. Kipfer***, 454 N.E.2d 370 (Ill. Ct. App. 1983) (reversing trial court's refusal to disqualify jurors who were patients of defendant physician). The single degree of remove between those two jurors and Dr. Ray prompts the question of whether that subtle distinction suffices to avoid a finding of *per*

se prejudice. Although neither our Supreme Court nor this Court has confronted precisely this question, in ***Estate of Hannis v. Ashland State General Hospital***, 554 A.2d 574 (Pa. Cmwlth. 1989), our sister Commonwealth Court rejected the argument that a juror was disqualified in a medical malpractice action because that juror's child was a patient of the defendant physician. ***Id.*** at 578-79. In so ruling, the Commonwealth Court cited its deferential standard of review over the trial court's reliance upon the juror's assertion that she could rule impartially. ***Id.*** However, the court failed even to acknowledge the *per se* prejudice that we have recognized arises in the context of certain close relationships, and made no assessment as to whether the relationship there at issue caused such prejudice as a matter of law. Instead, like the trial court in the instant matter, the Commonwealth Court took the juror's testimony regarding her impartiality at face value. We are not bound to follow the decisions of the Commonwealth Court. ***Petow v. Warehime***, 996 A.2d 1083, 1089 n.1 (Pa. Super. 2010). While we often find that esteemed court's decisions persuasive, we do not do so in the instant case, given the incomplete analysis of the relevant part of the governing standard. ***Cf. Commonwealth v. Tilghman***, 673 A.2d 898 (Pa. 1996) (holding that a *per curiam* affirmance by the Supreme Court is not binding authority, because such an order does not relate its rationale).

We hold that the clinical relationships of Ms. Kaelin's and Mr. Snowden's close family members with Dr. Ray were sufficiently close and real to warrant a finding of *per se* prejudice. Thus, we conclude that the

trial court failed to pay due regard to the precept that the mere appearance of partiality on the part of a juror may suffice to undermine confidence in the outcome of the trial. ***See, e.g., Seeherman***; ***Hufnagle***; ***Schwarzbach***, *supra*. Moreover, contrary to the trial court's stated concern for such a ruling's effect on the jury pool, ***see*** T.C.O. at 7, we find no indication that excluding these jurors or others with similar situational relationships to Dr. Ray would in any way have impeded the empaneling of a qualified jury. Nothing suggests that Heritage Valley was so pervasive an employer, or that Dr. Ray was so popular a physician, that a jury free of such ties could not be assembled from the citizenry of Beaver County so as to ensure the return of an untainted verdict.[8]

The record indicates that Ms. Kaelin's parents and Mr. Snowden's wife both had treated and would continue to treat with Dr. Ray as their primary care physician. This implicit – and in the case of Ms. Kaelin's parents, explicit – endorsement of Dr. Ray's competence by close family members created the prospect or appearance that these jurors' ability to judge Dr. Ray's credibility and liability impartially would be compromised, given the presumptive strength of their immediate family members' established physician-patient relationships. ***Cf. Thierfelder v. Wolfert***, 52 A.3d 1251,

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[8] We share wholeheartedly Judge Donohue's sentiment that "[a] trial is either fair or it is not[,] and litigants are entitled to a jury free from bias and prejudice." Judge Donohue's Opinion in Support of Reversal ("D.O.S.R.") at 2 n.1.

1284-85 (Pa. 2012) (Todd, J., dissenting) (characterizing the physician-patient relationship as "one of the closest recognized in our law").

Ms. Kaelin's and Mr. Snowden's close familial relationships with patients of Dr. Ray warrant a finding of *per se* prejudice. We do not posit that no one may be qualified to sit in judgment of a physician simply for knowing or being related in some way to a patient thereof. But the bonds between parent and child, and husband and wife, are too strong, and the attendant interests too inextricably intertwined, to allow us to draw the distinction between direct and vicarious clinical relationships that we would require in order to affirm the trial court's decision. It cannot be gainsaid that the spousal and filial relationships are among the closest of human connections. Accordingly, the trial court erred when it declined to disqualify Ms. Kaelin and Mr. Snowden as jurors.[9]

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[9] Judge Donohue would not exclude all jurors whose parents have a connection to a party-physician, such as Ms. Kaelin, but rather favors a case-by-case inquiry. ***See*** D.O.S.R. at 11-12. We do not disagree with Judge Donohue's observations regarding the varied nature of parent-adult child relationships (or its opinion that, given an appropriate case, a blanket exclusion of jurors who have minor children who are patients of a physician party would be appropriate). ***Id.*** at 12 n.8. However, while some parent-adult child relationships are weak or remote, to require a court to tease out the details of each such relationship (which may be emotionally fraught even if not "close") would invite the very shoehorning of jurors that Judge Donohue identifies as troubling. ***See id.*** at 2 ("[T]oo often, trial courts almost inexplicably find it necessary to shoehorn certain prospective jurors into the jury box when faced with **information that at the very least gives the appearance of an inability to be impartial.**" (emphasis added)). The issue is not whether the appearance of partiality is "for" or "against," but whether there is an appearance of partiality generally. Just as

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B. Mr. Majors' Employment-Related Relationship with Appellees

The question of Mr. Majors' qualification hinges on a different, but related, question. As is the case with Ms. Kaelin and Mr. Snowden, Mr. Majors' qualification turned upon a relationship that resembles the close financial or situational relationships that courts have found create the prospect or appearance of partiality. In Mr. Majors' case, the connection at issue was a business relationship with an employer-employee dimension, rather than a familial or doctor-patient relationship.

During *voir dire*, Mr. Majors attested that he did not know Dr. Ray personally, but that he "work[ed] for Heritage Valley Health System." N.T., 5/6/2011, at 107. He further testified as follows:

> [COUNSEL]: Sir, do you know who owns Dr. Ray and Dr. Heinle and Dr. Farland's medical practice?
>
> [Mr. Majors]: It's [Tri-State], which is an entity of [Heritage Valley].
>
> [COUNSEL]: So do you understand that you and Dr. Ray technically have the same employer?
>
> [Mr. Majors]: I do.

(Footnote Continued) ———————————

a loving adult child might be partial **to** a parent's opinions or interests, a distant or estranged one might be biased **against** those interests. There are passing few filial relationships that would not create the appearance of one or the other variety of partiality, especially when examined only briefly during *voir dire*. It is in the interest of ensuring the fact and appearance of an impartial jury not to rely on an inquiry so fine-grained that it cannot erase the stain of potential bias.

> [COUNSEL]: . . . [D]o you think that may in some way inhibit or make you in any way hesitant to find Dr. Ray negligent if the jury, if the evidence is to that effect?
>
> [Mr. Majors]: That wouldn't influence my decision, no.
>
> [COUNSEL]: Do you have any opinions or beliefs that if you entered a verdict in favor of the [Appellant] and awarded money damages that that may somehow adversely affect the Heritage Valley Health System's financial status?
>
> [Mr. Majors]: Sure, it could.

Id. at 111-12. Thus, *voir dire* established that Mr. Majors believed himself to stand in the position of a *de facto* co-employee with Dr. Ray of Heritage Valley, which owned Tri-State. He further indicated his belief that a plaintiff's verdict would have an adverse financial impact on Heritage Valley, his employer.[10]

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[10] Mr. Majors revealed a detailed understanding of the corporate structure of his employer, Heritage Valley. Mr. Majors testified that Dr. Ray's and her colleagues' practice, Appellee Associates of Internal Medicine was owned by Appellee "Tri-State Medical Group, which is an entity of" Heritage Valley. N.T., 5/6/2011, at 111. Mr. Majors then averred under oath that he and Dr. Ray "technically ha[d] the same employer." ***Id.*** The dissent nonetheless maintains that, "[a]lthough [Mr. Majors] testified that he and Dr. Ray 'technically ha[d] the same employer,' . . . **this clearly was not the case**." Diss. Op. at 30 (emphasis added). It is unclear upon what the dissent bases its conclusion that Mr. Majors' testimony so "clearly" was wrong, or, if so, that his erroneous belief that the case implicated his employer's interests is less material to the prospect or appearance of bias due to his misunderstanding.

The *voir dire* process does not allow for discovery, nor for testing venirepersons' assertions for accuracy; their sworn statements must be taken at face value when evaluating their relationships to the parties, counsel, victims, or witnesses in a given case. It is clear that Mr. Majors believed that he "technically" shared his employer with Dr. Ray. This certainly created the prospect and appearance of bias in favor of the

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Once again, the trial court assessed Mr. Majors' qualification based exclusively upon Mr. Majors' testimony that his employment status would not impede his ability to deliberate impartially. The court failed meaningfully to assess the closeness of Mr. Majors' relationship with Heritage Valley and, by extension, Tri-State and Dr. Ray.

In so doing, the trial court failed to pay due regard to the consonant holdings of ***McHugh***, ***Hufnagle***, ***Schwarzbach***, and other similar cases that, when a prospective juror is employed by a business with a financial interest in the litigation, he or she must be excluded. The weight of authority holds that even the financial interest of a non-party business entity may disqualify a juror. Thus, courts have deemed stockholders in companies with an interest in the outcome of a trial – without regard to whether the companies in question are parties to the litigation – to be disqualified as a matter of law. ***See, e.g., Seeherman***; ***Ozark Border***; ***Citizens' Light & Heat***, *supra*.

While Mr. Majors was not employed by a named defendant in this case, he was employed by an entity that he believed loomed over himself and the other defendants. Moreover, Mr. Majors illustrated precisely the

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financial interests of Heritage Valley. Moreover, regardless of who signs Mr. Majors' paychecks, it is self-evident that defendant-Appellee Tri-State's parent, Heritage Valley, had an interest in an adverse judgment against its subsidiary. Mr. Majors testified accordingly when he agreed that a verdict adverse to Tri-State might affect Heritage Valley's "financial status." N.T., 5/6/2011, at 111-12.

concern that required his exclusion as an employee of Heritage Valley when he acknowledged that his employer could be injured by a verdict adverse to Appellees. The prospect or appearance of bias not only was implicit as a consequence of Mr. Majors' employment by an entity with an ownership interest in the defendants, but was made explicit when Mr. Majors shared his subjective belief regarding the consequences of a plaintiff's verdict.[11]

Consequently, we hold that Mr. Majors' employment relationship with Heritage Valley, which had an undisputed financial interest in the outcome of the litigation recognized by Mr. Majors, created a sufficient risk of partiality

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[11] Not only does the learned dissent err when it suggests that in ***Wallace*** there was a "direct" financial relationship between the juror in question and a party, attorney, victim, or witness in that case, ***see*** *supra* at 19 n.7, it also overlooks the obvious parallel between that case and this one. In ***Wallace***, the juror deemed unqualified had a financial interest as a shareholder in a corporate parent of a party defendant. ***See*** 497 So.2d at 452-54. Moreover, the ***Wallace*** court deemed the juror disqualified based upon a review of cases from numerous other jurisdictions that honored the same rule regarding non-party stakeholders with ownership interests in defendant entities. ***See id.*** at 453 (citing, *inter alia*, ***Gladhill v. Gen. Motors Corp.***, 743 F.2d 1049, 1050 (4th Cir. 1984); ***Thompson***, 278 S.E.2d at 144; ***Salina v. Commonwealth***, 225 S.E.2d 199, 200 (Va. 1976); ***Texas Power & Light***, 404 S.W.2d at 943). The dissent notes correctly that a "direct" financial interest – as of a shareholder in a party – requires exclusion, and manifestly it is a species of this consideration that requires exclusion of an employee of a party who has a personal financial interest in protecting his employer's financial interests. To the extent that it is an employee's bias in favor of an employer's financial interest that animates the time-honored employee exclusion, it is difficult to distinguish this case sufficiently to justify a different outcome, especially when Mr. Majors testified that his employer had a financial interest in the outcome of the case.

to establish prejudice *per se* arising from his jury service.[12] Absent any clearly countervailing principles in our case law, Mr. Majors' employment relationship with Heritage Valley warranted disqualification, notwithstanding his asserted ability to judge the case without bias. Consequently, we find that the trial court erred in declining to dismiss Mr. Majors for cause.

IV. Conclusion

The critical consideration that animates our ruling regarding all three jurors in this case is the importance of ensuring not only a jury that is impartial in fact, but one that **appears** to be free of the taint of partiality to a disinterested observer, for it is disinterested observers' faith in the integrity of our judicial system that must be assured. ***See Marcin***, 454 N.E.2d at 372 ("The trend of authority is to exclude from juries all persons who by reason of their business or social relations, past or present, with [the] parties, could be suspected of possible bias." (internal quotation marks

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[12] Judge Donohue would hold that Mr. Majors' employer's relationship with Tri-State, without more, does not support a for-cause challenge. D.O.S.R. at 14-15. Rather, Judge Donohue would focus primarily or exclusively on Mr. Major's stated perception of his employer's financial interest in the outcome of the trial. ***Id.*** We do not hold otherwise. Rather, the employment relationship, viewed in tandem with Mr. Majors' comments during *voir dire*, created the appearance of a financial conflict of interest. Whether an attenuated employment relationship analogous to the relationship at issue in this case suffices to disqualify a venireperson, absent his stated belief that his employer has a financial interest in the litigation, is a question for another day. ***Cf. id.*** at 15 n.10 ("If a co-employee relationship between a party and a juror is not obvious and a prospective juror is not aware of the potential economic impact of a verdict, I do not see a basis for a presumption of prejudice.").

and citation omitted)); ***Stewart***, 295 A.2d at 306 (quoting ***In re Murchison***, 349 U.S. 133, 136 (1955)) ("[O]ur system of law has always endeavored to prevent **even the probability of unfairness**." (emphasis added)); ***Seeherman***, 99 A. at 176 ("It [is] certainly desirable that the cause should be tried by persons free even from the suspicion of partiality."); ***Hufnagle***, 76 A. at 206 (Pa. 1910) ("[N]o person should be permitted to serve on a jury who stands in any relation to a party to the cause that would carry with it *prima facie* evident marks of suspicion of favor . . . ." (internal quotation marks omitted)). Were a prospective juror's assurances of impartiality alone sufficient in all cases to cure the taint of a potential conflict of interest, the well-established *per se* exclusion would be stripped of its reason for being.

Precedent makes clear that even a vicarious relationship between a juror and a party, case counsel, victim, or witness may create a risk of partiality great enough to warrant disqualification without regard to the juror's assurances regarding his ability to review the case without bias. In ***McHugh***, to review only one example, Mr. Fellin was not a party to the litigation, nor a witness, a victim, or an attorney; hence, the close, situational relationship with a party requiring dismissal necessarily was indirect. In ***Schwarzbach***, the problematic relationship was even more remote.

We do not herein disturb the overarching principle that a party's right to an impartial jury does not entitle him to a jury of his choice. ***See***

Commonwealth v. Carson, 913 A.2d 220, 235 (Pa. 2006); ***Wright v. City of Scranton***, 194 A. 10, 12 (Pa. Super. 1937). Nor do we intend in any way to establish a new bright-line rule disqualifying all jurors with any family or business relationships in all cases to come; there are innumerable variations on the facts and circumstances of this case that cannot be anticipated.[13]

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[13] The dissent contends that this statement is inconsistent with our "declaration that immediate family members of individuals who treat with defendant physicians will no longer be eligible to serve as jurors." Diss. Op. at 22 n.7. As well, the dissent asserts that, under this decision, "all employees of companies with **any** potential adverse financial exposure to the outcome of litigation will be forbidden to serve on juries in such cases." ***Id.*** (emphasis in original). Thus, the dissent concludes that our approach "will needlessly complicate the empanelment of juries." ***Id.*** at 21-22 n.6.

With regard to familial relationships, this case indeed would militate strongly in favor of the exclusion of **immediate** family members of individuals who treat with a defendant physician, except perhaps in truly extraordinary circumstances not presently before us. Immediate family relationships are defined commonly, and by familiar reference sources as the sibling, spousal, and parent-child relationships. ***See*** Black's Law Dictionary 620 (7th ed.). This plainly is not the same as holding that "any family relationship" would require exclusion. Similarly, while this opinion will affect some jurors with indirect financial and/or employment ties to a party, that merely reflects a rule consistent with Pennsylvania precedent concerning similar ties, aligns Pennsylvania with other jurisdictions that require exclusion in such circumstances, and generally honors *stare decisis*. ***See generally In re Burtt's Estate***, 44 A.2d 670, 677 (Pa. 1945) ("Stare decisis simply declares that . . . a conclusion reached in one case should be applied to those which follow, **if the facts are substantially the same** . . . ." (emphasis added)).

The dissent would institute a bright-line rule with no room for case-specific determinations, theoretically one that can be reduced to a pocket list of qualifying relationships. However, the many relationships that might appear on that list are not before us. It is a time-honored principle at the very heart of judicial review that an appellate court must not pass on issues

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We conclude only that the close situational, familial, and financial relationships presented in the instant case necessarily stripped the trial court of its discretion to rely upon the challenged jurors' assurances of impartiality. Rather, those relationships required exclusion *per se*. Given the presence on the jury of Ms. Kaelin and Messrs. Snowden and Majors, the trial resulted in a verdict more readily questioned, and more vulnerable to the taint of partiality, than a jury comprised solely of individuals with no such relationship to case participants. Justice aspires to avoid circumstances in which lurks the specter of partiality or bias. We seek with today's holding to reinforce the importance of erring on the side of caution emphasized in ***Schwarzbach***, ***Stewart***, and other pertinent cases, and, in so doing, to protect the reputation of Pennsylvania courts for the fair and impartial administration of justice.

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not before it. ***See Sedat, Inc., v. Fisher***, 617 A.2d 1, 4 (Pa. Super. 1992) ("An advisory opinion is one which is unnecessary to decide the issue before the court, and . . . the courts of this Commonwealth are precluded from issuing such advisory opinions."). Our extensive review of Pennsylvania's and other states' jurisprudence has made nothing so clear as the fact that determining whether to exclude a given juror, whether in an exercise of discretion or as a matter of law, is a complex inquiry. Rather than attempt to fashion a one-size-fits-all rule to anticipate a practically infinite array of permutations of relationships like and unlike those at bar, we trust – as appellate courts often do, and as we implicitly did in ***McHugh*** and ***Schwarzbach*** (and cases cited therein) – that Pennsylvania courts carefully will apply this decision to the peculiar circumstances presented in future cases, with the benefit of adversarial presentations tailored to the circumstances then at bar.

Consequently, we vacate the trial court's entry of judgment, reverse the trial court's order denying Appellant's post-trial motion for a new trial, deem the proceedings in this matter a mistrial, and remand.

Judgment vacated. Order denying a mistrial reversed. Case remanded for further proceedings. Jurisdiction relinquished.

OPINION IN SUPPORT OF REVERSAL by WECHT, J. joined by

BENDER, J.

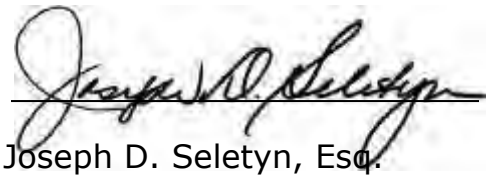
BOWES, J. and GANTMAN, J. concur in the result.

OPINION IN SUPPORT OF REVERSAL by DONOHUE, J. joined by GANTMAN, J. and OTT, J.

BOWES, J. concurs in the result.

DISSENTING OPINION by OLSON, J. joined by ALLEN, J.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/12/2014