

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**AMBER L. POLLEY,**  
**a married person,**

**Appellant,**

**v.**

**LINDA L. FISHER and**  
**JOHN DOE FISHER,**  
**wife and husband,**

**Respondents.**

**No. 29398-0-III**

**Division Three**

**UNPUBLISHED OPINION**

Kulik, C.J. — Linda Fisher drove her vehicle over Amber Polley’s foot while both women participated in a parade. Ms. Polley filed a negligence action against Linda and Richard Fisher (Ms. Fisher) that was tried before a jury. The jury returned a verdict for the defense. On appeal, Ms. Polley contends the trial court’s decision to place time limits on voir dire constituted an abuse of discretion and a violation of due process. We conclude the court’s decision was not an abuse of discretion by limiting voir dire and did not violate Ms. Polley’s due process. Therefore, we affirm the trial court.

## FACTS

In September 2006, Amber Polley filed a negligence action against Linda and Richard Fisher. The accident occurred while Linda Fisher was driving her vehicle in a parade at the fairgrounds during the Central Washington State Fair. Ms. Polley, wearing an animal costume, was also a participant in the parade. Ms. Polley was walking directly in front of Ms. Fisher's vehicle. At one point, Ms. Polley stepped out of the parade line and moved to the right toward the spectators. As she turned to the left, Ms. Polley stepped directly in front of Ms. Fisher's vehicle, and Ms. Fisher's right front tire rolled over Ms. Polley's left foot.

Ms. Polley's negligence action against Ms. Fisher was tried before a jury. The jury found no negligence and returned a verdict in favor of Ms. Fisher.

On the first day of trial, the court advised counsel for both parties that the court would conduct the initial questioning of the venire. This session would be followed by two rounds of questioning by counsel for each of the parties. The first round was limited to 20 minutes per side. The second round was limited to 15 minutes per side.

At this time, Ms. Polley made an objection to the initial time restrictions. Specifically, Ms. Polley's counsel stated: "Yes, Your Honor, I would like to put on the

record an objection to the court's decision to cut off the voir dire examination." Report of Proceedings (RP) at 192. The court responded: "And for the record I allowed each side 20 minutes for the first round and I had indicated 15 minutes for the second round."

RP at 193.

During the second session of voir dire, the court, on its own, granted additional time to Ms. Polley. At the close of voir dire, counsel for Ms. Polley did not ask for additional time. After the jury was sworn, the court considered Ms. Polley's objection to the initial time limits. The court answered the objection by stating:

And for the record I allowed each side 20 minutes for the first round and I had indicated 15 minutes for the second round. However, since there were a couple challenges to jurors during [Ms. Polley's] second round of questioning, I actually extended the time for [Ms. Polley's counsel] in that second round. I don't remember, it was I believe I added somewhere between an extra 5 and 10 minutes to account for the time spent on the colloquy with the challenged jurors.

Anything else for the record?

RP at 193.

During voir dire, counsel for Ms. Polley and Ms. Fisher asked questions concerning the prospective jurors' opinions regarding lawsuits, damages, chronic pain, basic background information, damage awards for pain and suffering, and bias. Several potential jurors were excused for hardship or cause. Counsel for Ms. Polley exercised all three of her preemptory challenges. Counsel for Ms. Polley and Ms. Fisher were not able

to directly question two individuals who were seated on the jury.

On appeal, Ms. Polley contends the trial court's decision to place time limits on voir dire constituted an abuse of discretion and a violation of amendment VII of the United States Constitution and article I, section 21 of the Washington Constitution.

#### ANALYSIS

*Abuse of Discretion.* The right to a jury trial includes the right to an unbiased and unprejudiced jury. *Allison v. Dep't of Labor & Indus.*, 66 Wn.2d 263, 265, 401 P.2d 982 (1965). The test is whether the court permitted the parties to "ferret out bias and partiality." *Lopez-Stayer v. Pitts*, 122 Wn. App. 45, 51, 93 P.3d 904 (2004). The trial court's decision is reviewed for an abuse of discretion. A trial court's decision constitutes an abuse of discretion when the decision is based on untenable grounds or untenable reasons. *Id.* at 50.

The primary purpose of voir dire is to allow the parties to explore prospective jurors' attitudes to determine whether the juror should be challenged. *Id.* at 51. A party can waive its right to conduct voir dire. *State v. Tharp*, 42 Wn.2d 494, 500, 256 P.2d 482 (1953). A party may also waive challenges by failing to challenge a juror for cause or by failing to exercise a preemptory challenge of a juror. *State v. Reid*, 40 Wn. App. 319, 321-22, 698 P.2d 588 (1985).

Here, Ms. Polley made an objection to the initial grant of a total of 35 minutes per side. But during voir dire, the court demonstrated its readiness to consider a grant of additional time. By granting the additional time, the court demonstrated that its initial time limitations were subject to change.

In *State v. Brady*, 116 Wn. App. 143, 147-48, 64 P.3d 1258 (2003), the appellate court found an abuse of discretion where, in a complex case with overarching issues, the trial court, in the middle of voir dire, eliminated one session of the two planned voir dire sessions, thereby removing the chance for some attorneys to ask the questions they had reserved for the second session. In contrast, this is not a complex case. Here, the trial court granted additional time beyond the two sessions initially permitted. Although the court did not indicate why it limited voir dire, we cannot conclude that the court abused its discretion.

Due Process. Civil trial by jury is a right that is well established under both the United States Constitution and the Washington Constitution. U.S. Const. amend. VII; Const. art. I, § 21. Absent a showing of an abuse of discretion and substantial prejudice, the trial court's ruling on the scope and content of voir dire should not be disturbed on appeal. *State v. Davis*, 141 Wn.2d 798, 825-26, 10 P.3d 977 (2000). Here, the court's decision to limit voir dire was not an abuse of discretion and did not violate due process.

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We affirm the trial court.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, C.J.

WE CONCUR:

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Sweeney, J.

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Korsmo, J.