

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 8th *day of* July, 2005.

Eric Honesty,

Appellant,

against

Record No. 042493

Circuit Court No. L216307

P and H Investments, Inc.,

Appellee.

Upon an appeal from a
judgment rendered by the Circuit
Court of Fairfax County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is error in the judgment appealed from.

"A trial court's exercise of discretion to admit or exclude evidence will not be overturned on appeal unless the court abused its discretion." Gray v. Rhoads, 268 Va. 81, 597 S.E.2d 93, 96 (2004); see also May v. Caruso, 264 Va. 358, 362, 568 S.E.2d 690, 692 (2002). However, a "trial court has no discretion to admit clearly inadmissible evidence because 'admissibility of evidence depends not upon the discretion of the court but upon sound legal principles.'" Norfolk & Western Ry. Co. v. Puryear, 250 Va. 559, 563, 463 S.E.2d 442, 444 (1995) (quoting Coe v. Commonwealth, 231 Va. 83, 87, 340 S.E.2d 820, 823 (1986)).

It is undisputed that Honesty last received medical treatment for chronic alcohol abuse a year before the fall that he asserts was the result of appellee's negligence. It is also undisputed that no factual foundation was established to permit the introduction of evidence of Honesty's past abuse of alcohol to show

either that it was an alternative or contributing cause to Honesty's fall or to establish that Honesty's claimed damages were attributable to or diminished by it. Rather, the evidence of Honesty's alcohol abuse was introduced to establish Honesty's lack of "credibility," principally upon the assertion that he had not revealed his prior condition to his physicians.

"In this Commonwealth, the rule is well established that a litigant may not cross-examine a witness about collateral independent facts irrelevant to the issues before the trier of fact." Stottlemyer v. Ghramm, 268 Va. 7, 11, 597 S.E.2d 191, 193 (2004). "A fact is wholly collateral to the main issue if the fact cannot be used in evidence for any purpose other than for contradiction." Seilheimer v. Melville, 224 Va. 323, 327, 295 S.E.2d 896, 898 (1982). Such evidence "is properly excluded for the reason that [it] tends to draw the minds of the jury away from the point in issue, to excite prejudice and mislead them." PTS Corp. v. Buckman, 263 Va. 613, 620, 561 S.E.2d 718, 722 (2002).

Evidence of Honesty's prior substance abuse was not relevant to the issues before the jury in this case. Moreover, under the circumstances of this case, it was especially likely to excite prejudice in the minds of the jury and, thus, the failure to exclude such evidence is presumed to have affected the jury's verdict. See Shelby v. Korzak, 255 Va. 411, 417, 497 S.E.2d 864, 869 (1998); DeWald v. King, 233 Va. 140, 146, 354 S.E.2d 60, 63 (1987). Accordingly, the trial court erred in permitting appellee to introduce evidence concerning Honesty's prior abuse of alcohol for the purpose of impeaching his credibility.

For these reasons, the judgment of the trial court is reversed and the case remanded for a new trial consistent with the views expressed in this order.

This order shall be certified to the said circuit court.

A Copy,

Teste:

John L. Hanington

Clerk