

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D33330
G/kmb

_____AD3d_____

Argued - November 3, 2011

DANIEL D. ANGIOLILLO, J.P.
L. PRISCILLA HALL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-01226

DECISION & ORDER

Lennard Burnett, etc., et al., respondents, v
Oswald Jeffers, defendant, Interfaith Medical
Center, appellant.

(Index No. 2503/02)

Carlucci & Giardina, LLP, White Plains, N.Y. (Edward J. Guardaro, Jr., of counsel),
for appellant.

Fitzgerald & Fitzgerald, P.C., Yonkers, N.Y. (John E. Fitzgerald, John M. Daly,
Eugene S. R. Pagano, and Margaret Johnson-Pertet of counsel), for respondents.

In an action, inter alia, to recover damages for medical malpractice, the defendant Interfaith Medical Center appeals from a judgment of the Supreme Court, Kings County (Weston, J.), dated December 23, 2009, which, upon a jury verdict on the issue of liability finding it 60% at fault for the plaintiff Lennard Burnett's injuries, and 40% at fault for the plaintiff Tia Burnett's injuries, upon a jury verdict on the issue of damages awarding the plaintiff Lennard Burnett the principal sums of \$270,000 for past pain and suffering, \$1,600,000 for future pain and suffering, and \$700,000 for future medical expenses, and awarding the plaintiff Tia Burnett the principal sums of \$270,000 for past pain and suffering, \$1,500,000 for future pain and suffering, and \$700,000 for future medical expenses, upon an order of the same court dated November 12, 2008, denying that branch of its motion pursuant to CPLR 4404(a) which was to set aside the jury verdict on the issue of liability and for judgment as a matter of law or, in the alternative, to set aside the jury verdict on the issue of liability as contrary to the weight of the evidence and for a new trial, and granting that branch of its motion pursuant to CPLR 4404(a) which was to set aside as excessive the damages awards only to the extent of granting a new trial on the issue of damages unless the plaintiffs stipulated to reduce the damages awards to the plaintiff Lennard Burnett for past pain and suffering

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from the sum of \$270,000 to the sum of \$100,000, and for future pain and suffering from the sum of \$1,600,000 to the sum of \$500,000, and to the plaintiff Tia Burnett for past pain and suffering from the sum of \$270,000 to the sum of \$100,000, and for future pain and suffering from the sum of \$1,500,000 to the sum of \$450,000, and upon the plaintiffs' stipulation to reduce the verdict on the issue of damages, is in favor of the plaintiff Lennard Burnett and against it in the principal sum of \$780,000, and in favor of the plaintiff Tia Burnett and against it in the principal sum of \$500,000.

ORDERED that the judgment is affirmed, with costs.

Accepting the plaintiffs' evidence as true, and according the plaintiffs the benefit of every reasonable inference which can reasonably be drawn therefrom (*see* CPLR 4404[a]; *Szcerbiak v Pilat*, 90 NY2d 553, 556; *Christ v Law Offs. of William F. Levine & Michael B. Grossman*, 72 AD3d 721, 723; *Broadie v St. Francis Hosp.*, 25 AD3d 745, 746), there was a rational process by which the jury could find that the defendant Interfaith Medical Center (hereinafter IMC) departed from accepted medical practice by failing to perform lead poisoning risk assessments and provide lead poisoning anticipatory guidance during the infant plaintiffs' pediatric visits, and that such departures were a proximate cause of the infant plaintiffs' injuries (*see Christ v Law Offs. of William F. Levine & Michael B. Grossman*, 72 AD3d at 723; *Shallash v New Is. Hosp.*, 66 AD3d 988, 991-992; *Broadie v St. Francis Hosp.*, 25 AD3d at 746). Moreover, we are satisfied that the verdict, including the apportionment of liability, was not contrary to the weight of the evidence (*see McAleer v Geraghty*, 80 AD3d 673, 674; *Ford v Southside Hosp.*, 12 AD3d 561, 562).

The Supreme Court did not improvidently exercise its discretion in striking the testimony of one of IMC's expert witnesses, since IMC failed to reasonably comply with the expert witness disclosure requirements of CPLR 3101(d) (*see Lucian v Schwartz*, 55 AD3d 687, 688).

The damages awards for past and future pain and suffering, as stipulated to by the plaintiffs, did not deviate materially from what is reasonable compensation (*see* CPLR 5501[c]; *Solis-Vicuna v Notias*, 71 AD3d 868, 870-871; *Alvarado v Culotta*, 65 AD3d 504; *Guerrero v Djuko Realty*, 300 AD2d 542; *Jackson v Chetram*, 300 AD2d 446; *Padilla v Jols Realty Corp.*, 284 AD2d 512; *Hirald v Khan*, 267 AD2d 205). Moreover, the jury's award for future medical expenses was supported by the evidence.

IMC's remaining contentions are without merit.

ANGIOLILLO, J.P., HALL, AUSTIN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court