

Coore v Franklin Hospital Medical Center

2004 NY Slip Op 30106(U)

December 1, 2004

Supreme Court, New York County

Docket Number:

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER

PART **IA** Part 16

Justice

0111627/2000

COORE, HEATHER
VS
FRANKLIN HOSPITAL

SEQ 3

- VACATE

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION.**

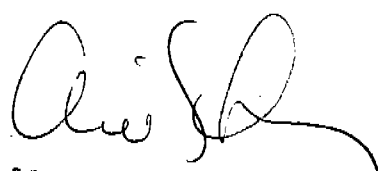
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COUNTY CLERK'S OFFICE

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Dated: _____



ALICE SCHLESINGER J.S.C.
 NON-FINAL DISPOSITION

Check one: FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
HEATHER COORE,

Plaintiff,

-against-

Index No. 111627/00

FRANKLIN HOSPITAL MEDICAL CENTER,
SHARON CASSIDY, M.D., ALAN BERGER, M.D.,
and KAREEM E. TANNOUS, M.D.,

Re: Motion Seq. 003

Defendants.

-----X
SCHLESINGER, J.:

This medical malpractice action was tried before this Court and a jury in July of this year 2004. At the conclusion of the trial, there were two defendant doctors, Sharon Cassidy and Alan Berger. They worked together in one practice and were the plaintiff Heather Coore's gynecologists.

Ms. Coore, an employee of United Parcel Service at the time of the events in issue, September 1999 and thereafter, suffered a stroke on September 15. She was admitted to Franklin Hospital Medical Center on that day, where her condition was diagnosed as a tumor. However, she was soon transferred to New York University Medical Center where the proper diagnosis was made by Dr. Peter LeRoux, a neurosurgeon there, together with other physicians. Dr. LeRoux treated Ms. Coore during her confinement at the hospital and after her discharge. Dr. LeRoux continued to treat Ms. Coore in Philadelphia after he had transferred to the University of Pennsylvania. He testified on her behalf at the trial.

The jury interrogatories contained two departure questions against Dr. Berger. The first concerned his care in evaluating Ms. Coore's condition on September 7, 1999 and the

second concerned his care six days later, on September 13. The jury unanimously found there had been no departure on either day.

However, with regard to his colleague, Dr. Sharon Cassidy, the jury found otherwise.

The sole question concerning her care read:

Did Sharon Cassidy, M.D. depart from accepted standards of gynecological care by not properly evaluating Heather Coore's condition on September 14, 1999 and by prescribing birth control pills on that day?

The jury unanimously answered "Yes," and then by a vote of 5 -1 they stated that the departure was a substantial factor in causing injury to Ms. Coore.

There were three categories of damages. As to the two concerning pain and suffering, the jury awarded \$350,000 for the past and \$1.5 million for a future 42 years. At the time of trial Ms. Coore was 39 years old. As to "lost earnings... including any earnings lost as a result of any unrealized occupation or profession or other impairment of earning ability," the jury awarded \$500,000 for 26 years.

Before me now is a motion by Dr. Cassidy pursuant to CPLR §4404 to set aside the verdict and dismiss the complaint or to set aside the verdict and order a new trial on issues of liability and damages, or to vacate the various damage awards or to reduce them. Finally, the defendant also moves, pursuant to CPLR §4546 and Article 50-A for a hearing, prior to entry of judgment, to reduce the lost earnings award for taxes and to structure future damages to the extent they exceed \$250,000. The plaintiff opposes all but the last requested relief.

On the issue of liability, defendant argues two points. First, that the plaintiff was unable to satisfactorily show that she actually ingested the birth control pill, Tri-Levlen, on

September 14, a medicine that Dr. Cassidy had prescribed for her. However, there was more than sufficient evidence presented to show that she did do this, despite counsel's pointing out now that she never explicitly testified to that fact.¹

Plaintiff testified that she filled the prescriptions given for Tri-Levlen and Motrin "right away", and the pharmacy records for these prescriptions were placed into evidence. Further, the records from NYU dated September 19, 1999, four days after her stroke, included under "medications" Tri-Levlen (and Motrin). Ms. Coore testified credibly about how her vaginal bleeding, weakness, and headaches got progressively worse from the time she first consulted Dr. Berger in early September until she saw Dr. Cassidy for treatment on the 14th, the day before her stroke. The jury had every reason to believe she conscientiously followed their advice and took the pills prescribed by her doctor in an effort to lessen those symptoms.

The other point argued is that the plaintiff failed to prove that Dr. Cassidy's departures in properly evaluating Ms. Coore's condition and prescribing the Tri-Levlen caused her to suffer the stroke. I do not agree. First of all, Dr. Michael Kreitzer, plaintiff's gynecological expert gave solid testimony as to these departures. He referred to the way in which Ms. Coore presented to Dr. Cassidy on September 14. It should be noted here that there was also a September 13 call from Ms. Coore to Dr. Berger which described severe headaches that she was having. A record of this call was placed in evidence. Dr. Cassidy never denied knowledge of it. In light of these serious symptoms, together with a history of blood loss for two months and a clinical finding by Dr. Cassidy of a blood

¹I use the word "now" because repeatedly counsel took the position during his closing argument that Ms. Coore simply and solely took "one little Tri-Levlen birth control pill".

pressure of 98/44, Dr. Kreitzer opined that the defendant should have done further tests and should not have continued the plaintiff on birth control pills, even with a change of prescription.

As to causation, as stated earlier, Dr. Peter LeRoux, a world renowned neurosurgeon specializing in strokes and Ms. Coore's treating physician, testified convincingly that strokes are preventable, even up to minutes before they happen. He stated that in Ms. Coore's case, hers was also preventable. He opined that the combination of the oral contraceptive use, aggravated by her significant loss of blood leading to a decrease in the intravascular volume of her blood, caused her to suffer an ischemic stroke. This was an opinion he formed in consultation with other physicians at N.Y.U. and an opinion he continued to hold and persuasively communicate to the jury. Thus, there was more than sufficient evidence to support the finding that the actions and inactions of Dr. Cassidy on September 14 were a cause of the stroke and its aftermath.

As to damages, defendant urges that they are too high and that they deviate materially from what would be reasonable compensation. He argues this as to all three categories. Again I disagree.

Counsel for Ms. Coore presented a compelling case for the way in which the stroke completely changed her life, both personally and professionally. On the one hand, he presented strong scientific evidence from Dr. LeRoux and Dr. Wayne Gordon, a highly qualified neuropsychologist as to the physical and cognitive permanent effects of the stroke. The jury had every right to accept the testimony of these physicians. Dr. Gordon had supervised two days of neuropsychological evaluation of the plaintiff. These confirmed substantial cognitive and motor impairments, particularly in the latter category in

Ms. Coore's left hand and arm, consistent with the right parietal stroke she suffered. Additionally, the tests showed that she had a great deal of difficulty with reading comprehension, memory, verbal learning, arithmetic, and visual perception.

On a personal level, witnesses for the plaintiff included family members and friends who described what a completely different person Heather Coore was before her stroke in mid-September 1999. She had been a social, outgoing person who planned parties and events and who exhibited masterful sewing skills. All that ended. Whatever depression she may have suffered as a result of earlier incidents in her life was now exacerbated. She could no longer do or enjoy the things she could do before. No more cooking, no more sewing, no more participating in the happy events of friends and family. She even had trouble having people touch or hug her.

And perhaps most important to her own self esteem and economic viability, Ms. Coore lost the opportunity to continue working at a job she had enjoyed, found challenging, was good at and one where she was marked for promotion. In this regard, counsel called Dan Gigliobianco as a witness. Mr. Gigliobianco had been Ms. Coore's direct supervisor at United Parcel Service since 1995. She had begun work there in 1989. He was an articulate, disinterested witness. He described first how expert Ms. Coore was at her job of loss prevention and that she had saved the company a great deal of money by the work she did. She had excellent computer skills, excellent people skills and good analytic powers. He encouraged her to get additional education and believed she could easily advance to a supervisory level. But this was all before the stroke. After, though he tried to work with her, he ultimately came to believe that she could no longer perform the job.

Ms. Coore left UPS in 2001 and relocated to Florida, where despite some success at course work, has only been able to perform minimum wage jobs, such as the one she holds now as a home health attendant. Finally, Dr. Conrad Berenson, an economist, was called to analyze the economic loss. Defendant did not challenge this testimony by calling her own economic impact expert.

Thus, I find there was more than adequate support for the jury's award for lost earnings and impairment of earning ability in the amount of \$500,000 for 26 years, just as there was support for their award for past and future pain and suffering. As noted above, plaintiff presented credible, reliable witnesses in support of the toll her injuries have taken on her. But in addition, Ms. Coore also gave testimony which was compelling and convincing in its own right as to the quality of her life today, compared to what it had been and as to how much she has suffered and lost. I decline to suggest any reduced amount or to order a new trial on damages. I believe the awards were fair, reasonable, and commensurate with other awards in the First Department.

Therefore, the motion by Dr. Cassidy is in all respects denied, except for the request for a hearing pursuant to §4546 and Article 50-A of the CPLR. Unless the parties can resolve this issue, they should report to the Court at 10:00 a.m. on Wednesday, December 22 for such a hearing.

This decision constitutes the order of the Court

Dated: ~~November~~, 2004

Dec. 1

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DEC 07 2004

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Alice Schlesinger

J.S.C.
ALICE SCHLESINGER