

Genza v Richardson

2008 NY Slip Op 31939(U)

July 7, 2008

Supreme Court, New York County

Docket Number: 0119757/2003

Judge: Marilyn Shafer

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

PRESENT: Marilyn Shaffer
Justice

PART 8

Genza, O

INDEX NO. 119 757/03

- v -

MOTION DATE _____

Richardson, S

MOTION SEQ. NO. 04

MOTION CAL. NO. _____

The following papers, numbered 1 to 4 were read on this motion to/for _____

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

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

1, 2

Replying Affidavits _____

3

4

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion to set the verdict aside is denied in accord with the attached memorandum.

FILED

JUL 10 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: July 7, 2008

MARLYN SHAFFER
J.S.C.

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

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

PRESENT: HON. MARILYN SHAFER
Justice

PART 8

OLIA GENZA,

INDEX NO. 119757/03

Plaintiff,

MOTION DATE _____

-against-

MOTION SEQ. NO. 004

STEPHEN B. RICHARDSON, M.D.,

MOTION CAL. NO. _____

Defendant.

The following papers, numbered 1 to 4, were read on this motion to set aside the jury verdict as to question 1(b); directing judgement for the plaintiff on question 1(b); and for a new trial on the remaining issues:

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affirmation – Exhibits	1,2
Affirmation in Opposition — Exhibits	3
Affirmation in Reply	4
Cross-Motion: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

FILED
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COUNTY CLERK'S OFFICE
NEW YORK

Upon the foregoing papers, it is ordered that this motion to set aside the jury verdict is denied.

This is a motion to set aside a defendant's verdict in a medical malpractice case.

Background

Plaintiff Olia Genza is a diabetic with serious psychological problems, including depression, anorexia and insensitivity to the symptoms of hypoglycemia. Defendant doctor Stephen B. Richardson is an endocrinologist experienced in treating patients with diabetes.

* 3]

Richardson treated Genza on May 30, 2001 and prescribed insulin. Although Richardson had not seen Genza in almost 7 months, he did not administer a blood sugar test. Although he was aware of Genza's emotional problems, and knew she had treated with other physicians, he did not contact the other physicians or review her records.

A few days prior to Genza's visit with Richardson, a treating physician noted in her chart:

... noncompliant with medical follow-up or medication as prescribed. Cannot prescribe insulin in view of history of anorexia, psych disorder and unreliability with insulin therapy as she has been found in hypoglycemic coma several times while on insulin.

On June 9, 2001, Genza was admitted to Cabrini Hospital in a hypoglycemic coma and remained in the hospital for 4 days. Richardson did not see her in the hospital and did not see her again until June 20 in his office. At that time he described her as "catatonic" and sent her to the New York University Hospital emergency room. She was diagnosed as suffering from organic brain injury.

The issues to be determined at trial were what caused Genza's hypoglycemic event and whether that event was a substantial factor in causing the neurological injuries. Following a two week trial, at which Genza, who was present in court, did not testify, the jury found that Richardson had not been negligent in prescribing insulin to Genza. They found that he had been negligent in his supervision of her following the prescription, but that negligence was not a substantial factor in causing her injuries.

Genza moves to set the verdict aside, arguing: (1) causation was established as a matter of law through Richardson's admissions; (2) Richardson failed to provide notice that his expert

witness, Dr. Haimovic, would testify she suffered her injuries before he treated her¹; (3) Haimovic, falsely testified that he had reviewed records regarding Genza's prior hospitalizations produced for the first time at trial; (4) Richardson's counsel's summation was improper and prejudicial in repeatedly misrepresenting the plaintiff's burden of proof with respect to "cause"; and (5) medical records referencing an "unconfirmed" blood test at Cabrini positive for barbiturates and benzodiazepines and other medical records referencing an "unconfirmed" suicide attempt at the time of the coma were improperly admitted and prejudicial.

Genza cites the following testimony by Richardson on direct:

Q. When she [Genza] was at NYU you had determined that she had suffered neuropsychological injuries from the insult of June 9, 2001 at Cabrini [Hospital], yes?

A. I did.

Q. Now, you knew at that time, that that severe neuropsychiatric damage had been caused by the hypoglycemic event at Cabrini?

A. Well, I believed it was likely the hypoglycemia had at least contributed to the coma, yes.

She argues these responses constitute judicial admissions establishing, as a matter of law, that (1) Richardson's negligence was the proximate cause of Genza's injuries; and (2) Genza's injuries were not caused prior to trial.

Richardson argues in opposition that the reference statements do not rise to the level of judicial admissions and, since Haimovic testified during the second week of trial, he had the opportunity to review the newly produced documents. More significantly, Richardson argues

¹ Richardson's expert disclosure, quoted in full by Genza, concludes: "The expert neurologist will offer opinions within a reasonable degree of medical certainty as to when if ever the plaintiff sustained injury and the possible causes thereof."

there was sufficient evidence to support the jury's findings. There was no evidence that Genza had even taken the prescribed insulin or, if she had, how much and when. There was evidence that she was not in a coma when she left Cabrini and that she had manifested no neurological injury while in Cabrini. She was released by Cabrini in her own care and went to a party that night. Her mother told the NYU psychiatrist, after Genza was admitted to NYU on June 20, that Genza had been doing "fairly well with no neurological problems on discharge from Cabrini and that the problems started when she took her insulin [on June 20]." Moreover, the jury was allowed to consider a missing witness charge with respect to Genza's failure to testify. They were permitted to presume, therefore, that Genza's testimony on the contested issues would have supported the defense.

Discussion

It is well-settled that a motion to set aside a jury verdict shall not be granted unless the preponderance of the evidence in favor of the moving party is so great that the verdict could not have been reached upon any fair interpretation of the evidence. (*Baker v Turner*, 200 AD2d 525 [1st Dept 1994]; *Lolik v Big V Supermarkets*, 86 NY2d 744[1995]). There must be simply "no valid line of reasoning and permissible inferences" which could possibly lead rational persons to the conclusion reached by the jury on the basis of the evidence at trial. (*Cohen v Hallmark Cards, Inc*, 45 NY2d 493 [1978]) In reviewing the jury verdict for sufficiency, the evidence is examined in the light most favorable to the prevailing party, that is, the defendant in this case. (*Baker v Turner, supra*) If there was conflicting evidence, the Court may not substitute its own, or the moving party's, judgment in place of the verdict if the verdict was one in which reasonable

people could have rendered after reviewing the conflicting evidence in favor of one party. (*Dobess Realty Corp v City of New York*, 79 AD2d 348 [1st Dept 1981]) The trial court must avoid unnecessary interference with the fact-finding function of the jury to a degree that amounts to usurpation of the jury's duty. (*Nicastro v Park*, 113 AD2d 129 [2d Dept 1985]) In the absence of indications that substantial justice has not been done, a successful litigant is entitled to the benefits of a favorable jury verdict. (*Nicastro v Park, supra*)

This Court finds that the jury's verdict is based upon a fair interpretation of the credible evidence produced at trial and supported by the record. While a finding of negligence without a finding of proximate cause may appear inconsistent, that is true only when the issues are so inextricably interwoven as to make it logically impossible to find negligence without also finding proximate cause. (*Won Sok Kim et al v New York City Transit Authority et al*, 29 AD3d 984 [2d Dept 2006]) Here there was no clear evidence connecting the insulin prescribed by Richardson, the hypoglycemic episode and the neurological damage. Therefore, the jury could rationally conclude Genza's injuries were not the result of Richardson's negligence.

We have considered the other arguments of the parties and find them to be without merit.

Accordingly, it is

ORDERED that plaintiff's motion to set aside the verdict is denied.

This reflects the decision and order of this Court.

Dated: 7/9/08

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 J.S.C.

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