

Boyles v St. Peter's Hosp.
2017 NY Slip Op 31002(U)
April 12, 2017
Supreme Court, Dutchess County
Docket Number: 2764/2011
Judge: James D. Pagonis
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To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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BONNIE BOYLES, as Executrix of the
ESTATE OF WILLIAM BOYLES, and BONNIE
BOYLES, Individually,

Plaintiffs,

-against-

ST. PETER'S HOSPITAL,

Defendant.

-----X

PAGONES, J D., A.J.S.C.

Defendant seeks an order, pursuant to CPLR 4404(a) and CPLR §5501(c), as follows: (1) setting aside the jury's verdict in the interest of justice; (2) setting aside the jury's verdict as against the weight of the credible evidence; (3) granting defendant's application to renew its motion for summary judgment, as made during the trial; and, (4) setting aside the verdict and ordering a new trial on damages upon the grounds that the jury's award for damages is excessive and deviates materially from what would constitute reasonable compensation.

The following papers were read:

Notice of Motion-Attorney Affidavit-Exhibits A-BB-	1-32
Memorandum of Law-Affidavit of Service	
Affidavit in Opposition-Memorandum of Law	33-34

Upon the foregoing papers, the motion is decided as follows:

By way of background, a jury trial in this action commenced on January 6, 2017. At the completion of the trial, the jury answered "Yes" to questions number one and two on the verdict sheet; indicating that St. Peter's Hospital, by its nurses, departed from good and accepted medical practice by failing to carry out the doctor's order of October 28, 2008 to conduct a STAT CT scan to rule out a lumbar bleed and that this departure was a substantial factor in causing injury to plaintiff/decedent William Boyles. The jury awarded the plaintiffs' the total amount of Three Million One Hundred Thousand Dollars (\$3,100,000.00). Two Million Three Hundred Fifty Thousand Dollars (\$2,350,000.00) was attributed to plaintiff/decedent's pain and suffering and Seven Hundred Fifty Thousand Dollars (\$750,000.00) for loss of consortium.

A new trial should be granted in the interests of justice only if there is evidence that substantial justice has not been done, as would occur, for example, where the trial court erred in ruling on the admissibility of evidence, there is newly discovered evidence, or there has been misconduct on the part of the attorneys or jurors (see *Gomez v. Park Donuts, Inc.*, 249 AD2d 266 [2nd Dept 1998]). None of these factors exist here and

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therefore, the verdict should not be set aside in the interest of justice.

For a court to conclude that a jury verdict is not supported by legally sufficient evidence, there must be no valid line of reasoning and permissible inference which could possibly lead rational persons to the conclusion reached by the jury on the evidence presented at trial (see *Bolton v. Express*, 79 AD3d 779 [2nd Dept 2010]). This court finds that contrary to defendant's contention, there was a valid line of reasoning and permissible inference by which the jury could have reached its verdict on the evidence presented at trial, such as the testimony of the medical experts, documentary evidence and a fair interpretation of the aforementioned evidence which supports the jury's determination (see generally *Hendrickson v. Dynamic Med. Imaging, P.C.*, 78 AD3d 999 [2nd Dept 2010]; *Chery v. Souffrant*, 71 AD3d 715 [2nd Dept 2010]; *Segal v. City of New York*, 66 AD3d 865 [2nd Dept 2009]).

Defendant seeks renewal of its motion for summary judgment alleging that Nurse Westrick, plaintiffs' expert, perjured herself by signing an affidavit indicating that she reviewed records when in fact she had not and also based upon her lack of qualifications to render an opinion on the issue of proximate cause.

The redacted affidavit of Nurse Westrick, dated January 27,

2015, submitted in opposition to the defendant's motion for summary judgment states, as follows:

"I have reviewed the pleadings, including the plaintiff's bill of particulars, and the discovery demands and responses in this action. I have also reviewed the deposition testimony and exhibits...In addition I have reviewed William Boyles' medical records, including the St. Peter's Hospital Chart for William Boyles for his admission of October 28, 2008 through November 3, 2008."

At trial, during cross-examination, Nurse Westrick was asked a series of questions about her review of plaintiff William Boyles' medical records. The testimony was as follows:

"Q. But about five or six weeks ago you were asked to review the medical records; is that correct?

A. Yes.

Q. Was that the first time you reviewed the medical records?

A. Yes."

Upon further questioning by defendant's counsel, Nurse Westrick testified as follows:

"Q. (Handing.) Nurse Westrick, I am going to show you what's entitled a Nursing Medical Affidavit and ask you if that refreshes your recollection as to whether or not you gave a sworn affidavit in this case?

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A. Yes, I must have -- did I sign it? Yeah, that looks like I did sign it on January of 2015.

Q. Okay. Thank you.

And I believe you testified you signed this in January of 2015?

A. It looks like that, yes.

Q. And you first reviewed the medical records in the case five or six weeks ago?

A. Yes, the actual records."

The aforecited testimony coupled with the previously submitted affidavit, lead the defendant to move during the trial for renewal and reargument of this Court's decision and order of March 31, 2015. The Court reserved decision on this motion, ultimately allowing the jury to make a determination as to the credibility of the plaintiffs' expert witnesses, as is their function (*see Lopez v. City of New York*, 121 AD2d 369 [2nd Dept 1986]). The Court concurs with the plaintiff's counsel that there is truly no mechanism to permit renewal of a motion for summary judgment based upon trial testimony. Rather, defendant may, as it has, make the appropriate motion for post-trial relief pursuant to the applicable Civil Practice Laws and Rules. Accordingly, to the extent the motion was not ruled on by this Court and not rendered academic by the jury's verdict, the

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defendant's motion is denied.

The trial court has the power, on motion of the parties or on its own motion, to review the question of whether the jury's verdict on the issue of damages was against the weight of the evidence (see CPLR 4404[a]) and to set it aside if it finds that the verdict deviated materially from what would be reasonable compensation (see *Ashton v. Bobruitsky*, 214 AD2d 630 [2nd Dept 1995]). However, the trial court lacks the power to substitute its determination as to what constitutes an appropriate award for that of the jury (see *Anderson v. Stephen M. Donis, D.P.M., P.C.*, 150 AD2d 414 [2nd Dept 1989]).

This Court finds that the award of the jury deviates materially from what would constitute reasonable compensation given the injuries to the plaintiffs. After extensive research, including an exhaustive examination of New York jury verdicts relating to similar injuries, the Court has determined that reasonable compensation for the pain and suffering as sustained by plaintiff/decedent William Boyles as caused by defendant St. Peter's Hospital is Six Hundred Thousand Dollars (\$600,000.00). Likewise, the Court finds that reasonable compensation for the loss of consortium claim as alleged by plaintiff Bonnie Boyles is Two Hundred Thousand Dollars (\$200,000.00).

Within forty-five (45) days, the parties are directed to

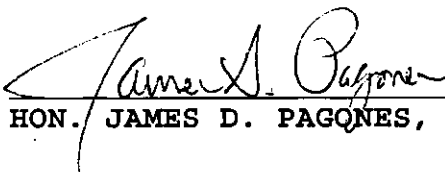
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either stipulate to the decrease in the jury award as set forth above or defendant is directed to notify this Court of its request for a new trial on the issue of damages.

Based upon the foregoing, defendant St. Peter's Hospital motion is granted to the extent aforestated.

This constitutes the decision and order of the Court.

Dated: April 12, 2017
Poughkeepsie, New York

ENTER


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