

Roberts v St. Luke's Cornwall Hosp.

2019 NY Slip Op 30639(U)

February 25, 2019

Supreme Court, Orange County

Docket Number: 5934/2014

Judge: Sandra B. Sciortino

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time 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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
THOMAS ROBERTS,

Plaintiff,

-against-

ST. LUKE'S CORNWALL HOSPITAL,

Defendants.
-----X

SCIORTINO, J.

DECISION AND ORDER

INDEX NO.: 5934/2014

Motion Date: 12/20/2019

Sequence No. 1

ORIGINAL

The following papers numbered 1 to 7 were read on this motion by plaintiff for an order setting aside a jury verdict, vacating the judgment entered thereon, and directing a new trial:

PAPERS

NUMBERED

Notice of Motion / Affirmation (LaSorsa) / Exhibits A - D
Affirmation in Opposition (Weiss)

1 - 6
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Upon the foregoing papers, the motion is denied.

In this medical malpractice action, jury trial was held on September 4 - 7 and 11, 2018. On September 12, 2018, the jury returned a verdict in favor of defendant, finding that defendant did not depart from good and accepted standards of care in its treatment of plaintiff. Judgment dismissing the complaint was entered on September 24, 2018.

By Notice of Motion filed on November 13, 2018, plaintiff seeks an order setting aside the jury's verdict, vacating the judgment, and directing a new trial. Plaintiff contends that the verdict is against the weight of the credible evidence. Plaintiff further contends that "the court erred in sustaining every objection made by the defendant, and ...sustaining only one objection made by

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plaintiff's counsel which prejudiced the plaintiff's case in the eyes of the jury" (LaSorsa Aff. at § 25). In addition, plaintiff asserts that it was error for the Court to remove several questions from plaintiff's proposed verdict sheet prior to deliberations. Finally, plaintiff contends that the judgment dismissing the complaint, which was entered prior to the expiration of plaintiff's time to submit a post-trial motion, should be vacated because it was entered prematurely.

In opposition, defendant contends that a jury verdict should not be set aside unless the jury could not have reached its verdict on any fair interpretation of the evidence. Defendant notes that the jury had the opportunity to hear testimony from both plaintiff's and defendant's nursing experts, and the credibility and weight to be accorded to such testimony is within the province of the jury. Defendant further contends that the Court's removal of several questions from plaintiff's proposed verdict sheet was proper as plaintiff failed to make a *prima facie* showing as to the alleged departures. Finally, defendant contends that entry of judgment prior to the expiration of the time for post-trial motions was proper.

Plaintiff has not filed any reply papers.

The Court has fully considered the submissions of the parties.

Discussion

A motion to set aside a jury verdict pursuant to Civil Practice Law and Rules section 4404 should be granted only where, upon the evidence presented, there is no valid line of reasoning and permissible inferences which could possibly lead rational persons to the conclusion reached by the jury upon the evidence presented at trial; and no rational process by which the jury could find in favor of the non-moving party (*Cohen v. Hallmark Cards, Inc.*, 45 NY 2d 493 [1978]). In any case in which it can be said that evidence is such that it would not be utterly irrational for the jury to reach

the result it has, and thus a valid question of fact exists, the Court may not conclude that the verdict is as a matter of law not supported by the evidence (*id.*). In considering a motion to set aside the verdict, the Court must afford the opposing party every inference which may be possibly drawn from the facts presented, and the facts must be considered in the light most favorable to the non-movant (*Williams v. New York City Transit Auth.*, 95 AD3d 1003 [2d Dept 2012]).

A jury verdict must not be set aside as against the weight of the evidence unless it could not have been reached by any fair interpretation of the evidence. Where a verdict can be reconciled with a reasonable view of the evidence, the successful party is entitled to the presumption that the jury adopted that view. Where there is conflicting expert testimony, the jury is entitled to accept one expert's opinion and reject that of another (*Liounis v. New York City Transit Auth.*, 92 AD3d 643 [2d Dept 2012]). The jury's resolution of such conflict is entitled to great weight as the jury had the opportunity to observe and hear each expert; and to determine each expert's credibility (*Saccone v. Gross*, 84 AD3d 1208 [2d Dept 2011]). The assessment of weight of the evidence and the credibility of witnesses is the peculiar function of the trier of fact (*Samuels v. City of New York*, 7 Misc.3d 68 [App. Term 2005]).

In the matter at bar, the jury's verdict is neither utterly irrational nor unsupportable on any fair interpretation of the evidence. The thrust of plaintiff's claim is essentially that nurse Rebecca Mitchell, defendant's employee, should have identified plaintiff as a fall risk and should have responded differently than she did after seeing plaintiff out of his bed prior to his fall on March 6, 2012. Nurse Mitchell testified at trial that, despite her fall risk assessment, which did not indicate that plaintiff was a fall risk, none of the prior fall prevention measures were withdrawn.

At trial, the jury heard testimony from both plaintiff's and defendant's experts. The jury's

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resolution of the conflicting testimony in favor of defendant is entitled to great weight (*Saccone*, 84 AD3d at 1208).

To the extent to which plaintiff complains that the Court's resolution of the objections interposed by counsel during testimony prejudiced plaintiff's case in the eyes of the jury, plaintiff's failure to supply a complete trial transcript precludes the Court from performing any meaningful review on the issue. The Court notes, however, that nothing in the portion of the transcript which was provided as Exhibit B supports plaintiff's claim of prejudice.

Plaintiff's also asserts that the Court erred in rejecting certain questions on plaintiff's proposed verdict sheet. Those questions were removed due to plaintiff's failure to make a *prima facie* showing on the issues presented. By failing to present a trial transcript, plaintiff failed to point to any evidence in the record which would warrant presenting the proposed questions to a jury. Plaintiff's proffered excuse for the failure to present a transcript is rejected as plaintiff's papers indicate that counsel's office did not attempt to obtain a transcript until more than 40 days after the conclusion of the trial.

Finally, plaintiff did not provide and the Court could not find any case supporting plaintiff's contention that the entry of judgment prior to the expiration of plaintiff's time to make post-trial motions was improper.

In light of the above, it is ORDERED that plaintiff's motion is denied..

The foregoing constitutes the Decision and Order of the Court.

Dated: February 25, 2019
Goshen, New York

ENTER:



HON. SANDRA B. SCIORTINO, J.S.C.