NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

LEOLA BOWSER AND ANTHONY CARTER W/H, Appellees v. ALBERT EINSTEIN MEDICAL CENTER AND RAMTIN RAMSEY, M.D., Appellants	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 203 EDA 2013

Appeal from the Judgment Entered January 3, 2013
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 04271 June Term 2008

BEFORE: BOWES, OTT, and JENKINS, JJ.

MEMORANDUM BY BOWES, J.: **FILED JUNE 09, 2014**

Albert Einstein Medical Center ("AEMC") and Ramtin Ramsey, M.D., ("Dr. Ramsey") (collectively "Healthcare Providers" or "Appellants") appeal from the judgment entered on a jury verdict in favor of Leola Bowser, hereinafter Mrs. Carter, in this medical malpractice case involving claims of both battery and negligence.[1] Healthcare Providers challenge the trial court's denial of their motion for post-trial relief seeking judgment n.o.v., a new trial, or a remittitur. After a thorough review of the record and the applicable law, we affirm.

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[1] It was stipulated that Dr. Ramsey was an employee of AEMC, and that AEMC was vicariously liable for his conduct.

The facts giving rise to the instant appeal are as follows. Mrs. Carter was admitted to AEMC on July 19, 2007 for a partial gastrectomy, a surgery to remove part of her stomach. Several days post-surgery, a nurse advised her that a CAT scan was required to rule out a pulmonary embolism. The nurse explained that the intravenous access ("I.V.") in her arm was inadequate to administer dye for a CAT scan with contrast, and that a larger gauge I.V. would have to be inserted.

Late on July 25, 2007, or in the early morning hours of July 26, 2007, Dr. Ramsey attempted to place an I.V. in both of Mrs. Carter's arms and hands. He tried five or six times to insert the needle in the crease of an arm. When that failed, he tried three or four times to place it in that hand. Still unable to insert the I.V., Dr. Ramsey attempted five or six times to insert the I.V. in the patient's other arm, again without success. At that point, Mrs. Carter asked him to stop because it was painful, and he complied. N.T. Jury Trial, 6/6/11, at 69. When Dr. Ramsey told her that she "wouldn't live to see the sunrise" if she did not get the I.V. access, she relented and permitted him to try again. ***Id***. at 72. Dr. Ramsey tried two or three times to place the I.V. in her hand. When these attempts failed, Mrs. Carter told him to stop and to wait until the laboratory opened in the morning.

Instead, Dr. Ramsey returned a short time later with two nurses, and he told Mrs. Carter that he intended to place the I.V. in her neck. She said

she would not consent, and he replied that he did not need her signature or consent. He lowered the head of the bed and directed the nurses to hold down Mrs. Carter's arms as he leaned across her body to insert an I.V. in her neck. Mrs. Carter was crying and pleading with him to stop. Despite two attempts on each side of her neck, he was unsuccessful. She described Dr. Ramsey as angry and frustrated. When he left her room, she was experiencing pain in her arms, hands, and neck, as well as in her stomach area where she had a large incision from the surgery.

Mrs. Carter telephoned her husband immediately after Dr. Ramsey left the room and asked him to come to the hospital. Mr. Anthony Carter testified that he received his wife's call at 3:00 a.m., and that he arrived at the hospital approximately one-half hour later. She was upset and crying and she pointed out bruises on her arms and neck. N.T. Jury Trial, 6/8/11, at 10. He took photographs of the bruising. Mrs. Carter also discussed the incident for fifteen minutes with her roommate. Mrs. Carter testified that, while her roommate's view of the events was partially obscured by a curtain, the roommate told her that she heard what had transpired. Shortly thereafter, the roommate was moved without explanation.

At 6:00 a.m., the CAT scan was performed without incident using the original I.V. present in Mrs. Carter's arm. At approximately 9:00 a.m., Mrs. Carter placed a call to the patient advocate, Antoinette Harris. Ms. Harris came to her room, and Mrs. Carter complained about the night's events.

Mrs. Carter asked the patient advocate to ascertain the name of the doctor who was responsible for the incident. During the course of the meeting, Mrs. Carter began to regurgitate blood, and Ms. Harris summoned help. It was determined that Mrs. Carter was bleeding internally and an endoscopic surgical procedure was required to stop the bleeding.

Mrs. Carter told Dr. Paul Steerman, her surgeon, and Dr. Glenn Eiger, the physician in charge of the internal medicine residents, about the I.V. incident and enlisted their help in identifying the doctor responsible. Dr. Eiger later told her that he had identified the resident physician, but refused to supply his name. He promised to personally reprimand the resident and place a letter in his file. ***Id***. at 101. Mrs. Carter also reported the incident to another patient advocate. ***Id***. at 97.

Appellees' expert witness, Dr. David Befeler testified, and Dr. Ramsey agreed, that consent of the patient is required for placement of a jugular I.V. There was no notation in Mrs. Carter's medical chart indicating that she consented to the procedure, and Dr. Befeler opined that the failure to obtain consent was a deviation from the standard of care. N.T. Jury Trial, 6/8/11, at 27. He also testified that the failure to obtain I.V. access should have been documented in the chart, ***id***. at 26, which was a view also espoused by Dr. Richard Allman, AEMC's associate director of the internal medicine residency program. N.T. Jury Trial, 6/8/11, at 42. Dr. Befeler opined to a reasonable degree of medical certainty that Mrs. Carter's internal bleeding

that required a transfusion and an additional endoscopic surgery "was caused by the struggling and fighting during the period of time when the I.V.s were attempted to be placed." ***Id***. at 35. He opined further that Dr. Ramsey's conduct during the night of July 25/26, 2007, deviated from the accepted standards of practice and placed Mrs. Carter at an increased risk of internal bleeding. Dr. Befeler pointed to the three-point drop in Mrs. Carter's hemoglobin level after the incident with Dr. Ramsey as evidence of a serious bleed. He concluded that it was "very unlikely" that bleeding from the anastomosis "would have happened absent the trauma." ***Id***. at 70.

On June 10, 2011, the jury returned a verdict in favor of Mrs. Carter on the battery claim. It also found negligence on the part of Dr. Ramsey, but concluded that his negligence was not a factual cause of the harm to Mrs. Carter. The jury answered "yes" to a special interrogatory asking whether "Dr. Ramsey acted recklessly, wantonly, willfully, or intentionally in his care of Leola Carter?" Verdict Sheet, 6/10/11, at 2. The jury awarded Mrs. Carter $100,000 in compensatory damages. Thereafter, additional testimony relevant solely to the issue of punitive damages was presented, and the jury returned a punitive damage award of $25,000.

Healthcare Providers timely filed post-trial motions, which were denied following briefing and argument, on December 11, 2012. The court granted Mrs. Carter's motion for sanctions against Dr. Ramsey for failing to produce discovery material relevant to punitive damages, and awarded an additional

$15,000. Delay damages of $7,777.32 were calculated and added to the verdict. Healthcare Providers timely appealed from the entry of judgment on the verdict, and complied with the trial court's order to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal.

Appellants present two issues for our review:

> A. Are the healthcare providers entitled to a new trial due to the lower court's error and abuse of discretion in providing both adverse inference and spoliation jury instructions relating to plaintiff's roommate, nurses in the area and physician sign-out sheets?
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> B. Are the healthcare providers entitled to appellate relief due to the lower court's errors and abuses of discretion in allowing plaintiffs to recover punitive damages, monetary sanctions as well as unsupported and excessive compensatory and punitive damage awards?

Appellants' brief at 5.

In reviewing an order denying a motion for a new trial, our standard of review "is whether the trial court committed an error of law, which controlled the outcome of the case, or committed an abuse of discretion. A trial court commits an abuse of discretion when it rendered a judgment that is manifestly unreasonable, arbitrary, or capricious, has failed to apply the law, or was motivated by partiality, prejudice, bias, or ill will." ***Polett v. Public Communications, Inc.***, 83 A.3d 205, 214 (Pa.Super. 2013). Where the alleged error involves a question of law, our review is plenary.

Healthcare Providers' first assignment of error involves the trial court's decision to give adverse inference instructions relative to their failure to

produce certain witnesses and their spoliation of evidence. An adverse inference charge is a matter "within the trial court's discretion which this Court will not overturn absent manifest abuse." ***Hawkey v. Peirsel***, 869 A.2d 983, 986 (Pa.Super. 2005) (no abuse of discretion to refuse such an instruction where the witnesses were identified and equally available to both parties); ***see also Creazzo v. Medtronic, Inc.***, 903 A.2d 24 (Pa.Super. 2006) (holding that when reviewing the decision to grant or deny a spoliation sanction, one of which is an instruction permitting the jury to draw an adverse inference, the issue is whether the court abused its discretion).

First, Healthcare Providers argue that the trial court abused its discretion in giving an adverse inference instruction to the jury regarding their failure to call the nurse or nurses who were indisputably present. They rely upon ***Bennett v. Sakel***, 725 A.2d 1195 (Pa. 1999), for the proposition that a new trial is required when an adverse inference charge is improperly given. They contend that the trial court impermissibly shifted the burden to Healthcare Providers to call a nurse, rather than upon the party seeking the inference, Mrs. Carter, to demonstrate her lack of access to the witness. ***See Hawkey***, ***supra***.

The certified record reveals the following. During the discovery process, the trial court ordered Healthcare Providers to produce the schedules of the personnel assigned to Plaintiff's room/floor on the night of July 25/26, 2007, as well as the names and titles of all individuals who were

in plaintiff's room and involved with her care at the time of the incident, and to inquire who was there. ***See*** Order, 12/14/09. In response, Healthcare Providers provided the Tower 6 assignment sheet for July 24, 25, and 26, 2007, and the names of nurses who were assigned to the 7:00 p.m.-7:00 a.m. shift on those three nights and who most likely were involved in Mrs. Carter's care. They also promised to supplement that response after they narrowed down the names of those actually involved in Mrs. Carter's care. Healthcare Providers never supplemented the response. Nor did Healthcare Providers call any nurses to testify at trial.

Mrs. Carter alleged that the unidentified nurse or nurses who were present in her room during the incident were within the control of AEMC, and that the hospital's failure to reasonably explain why it did not call them as witnesses to support Dr. Ramsey's version of the events warranted an adverse inference instruction. N.T. Jury Trial, 6/9/11, at 103-104. Defense counsel countered that he was unaware of the identity of any nurse who witnessed the incident, and further, that Healthcare Providers were not obligated to explain why they did not call any nurses. Counsel pointed to the fact that the names of the nurses on duty that night were produced in discovery, and Mrs. Carter could have deposed these individuals prior to trial. Moreover, counsel argued that "an adverse inference does not exist if both Dr. Ramsey and Mrs. Bowser could not identify with any specificity the

people involved other than gender and the case of Mrs. Bowser, race." ***Id***. at 106-07.

Plaintiff's counsel disagreed that the nurses were equally available. Healthcare Providers never specifically identified which nurses were involved in Mrs. Carter's care on the night in question. Nor could one discern the nurses' identities from the medical records as there were no entries regarding this incident. Counsel for Mrs. Carter maintained that it was unreasonable to expect them to depose thirty or forty nurses on duty in that wing of the hospital during a three-day period. He concluded, "We have nurses employed by Albert Einstein with special information relevant to the case, the fact that they were eyewitnesses to these events, and you would expect that if they substantiated Dr. Ramsey's version of events, that Albert Einstein would have located them and brought them in here." ***Id***.

The trial court ruled that he would give an adverse inference charge as to the nurses.[2] ***Id***. at 109. Under the circumstances, the trial court found that the testimony of the nurses would have been material. Trial Court Opinion, 12/20/12, at 10. Furthermore, "The explanation as to why these nurses were not called as witnesses was unsatisfactory. The testimony of these witnesses would not have been merely cumulative as their testimony

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[2] The court declined to give an adverse inference instruction as to Dr. Mercasey, Dr. Ramsey's supervisor. N.T. Jury Trial, 6/9/11, at 111.

would have clarified disputed facts as testified to by the Plaintiff and Dr. Ramsey." ***Id***. at 9.

With regard to the roommate, the record confirmed that the court directed AEMC to try and contact her, recognizing that under the Health Insurance Portability and Accountability Act of 1996, "HIPAA", the identity and medical records of patients are confidential. An order was entered by Judge Abramson on February 2, 2010, directing AEMC to telephone the roommate to see if she would consent to the hospital providing her name and address to a representative of her former roommate. If it did not obtain the roommate's consent, AEMC was to advise the court in writing to enable the court to "schedule a hearing to determine the ultimate resolution of the Motion of Plaintiffs . . ." N.T. Jury Trial, 6/9/11, at 114-117. AEMC did not report any problem to the court. When Mrs. Carter sought the adverse inference instruction as to her hospital roommate, counsel for Healthcare Providers represented that he tried to contact the roommate at the last known telephone number, but it was disconnected. Counsel advised the court that he offered to send a letter to the roommate at her last known address, but averred that Mrs. Carter's counsel objected to the letter's contents, specifically its lack of objectivity.

Furthermore, in opposing an adverse inference charge, Healthcare Providers argued that since Dr. Ramsey was a resident, he was not in a position to contact the former patient. Additionally, they contended that

there was no evidence that her testimony would have been adverse to Dr. Ramsey. Moreover, it was agreed that roommate did not see the event, the curtain having been drawn for privacy.

On appeal, Mrs. Carter offers a different version of the events. Plaintiff's counsel objected not to the contents of a proposed letter to the roommate, but to the fact that defense counsel rather than the hospital intended to send it, which was contrary to the court's directive. Furthermore, neither AEMC nor its counsel complied with the court's order directing it to notify the court in writing if it was unable to obtain consent so that a hearing would be scheduled. Moreover, the evidence established that the roommate heard the incident, and that she and Mrs. Carter discussed it afterwards.

The court concluded that, due to HIPAA, Healthcare Providers had exclusive access to the name and address of Mrs. Carter's roommate and could not disclose it without the roommate's consent. Thus, they "were in a unique position to contact" the roommate and failed to provide any explanation for not reaching her. N.T., 6/9/11, at 118. Pursuant to court order, AEMC was charged with seeking that woman's consent, or, failing that, informing the court so that a hearing could be scheduled on that issue. Healthcare Providers failed to comply with the court's order.

Furthermore, the court found that the evidence was unrefuted that the roommate was present in the room at the time of the incident and that Mrs.

Carter and the roommate had a fifteen-minute discussion concerning it. While she likely could not see what occurred, she would have heard it, and could have offered critical factual testimony as to whether Mrs. Carter told Dr. Ramsey to stop, and perhaps, whether a struggle occurred.

The court also dismissed the notion that these witnesses were not within the control of Dr. Ramsey, and that the adverse inference instruction was improper as to him. The court noted that AEMC was a defendant vicariously liable for the conduct of Dr. Ramsey and that it provided a defense to him. Furthermore, Dr. Ramsey continued to work for AEMC during the pendency of the lawsuit. The trial court described Healthcare Providers' failure to come forth with the identities of the nurses and the roommate as "a game of cat and mouse." N.T. Jury Trial, 6/9/11, at 155. Thus, the court ruled that the adverse inference instruction would be given as to the roommate. ***Id***.

We find no abuse of discretion on the part of the trial court. Healthcare Providers' reliance upon ***Hawkey*** is misplaced. Therein, the trial court refused to give an adverse inference instruction against a hospital because there was no showing that the hospital exercised exclusive control over two nurses or that the nurses were not equally available to both parties. The hospital identified the two nurses, their names appeared on the relevant hospital records, and they were listed on that party's pretrial statement. Thus, they "were within the reach and knowledge of both

parties." ***Hawkey***, ***supra*** at 987. Such was not case herein. While AEMC provided a long list of the names of nurses who were assigned to work on the wing during the three-day period encompassing the incident, Healthcare Providers made no attempt to determine which nurses actually cared for Mrs. Carter and were present at the incident. Nor did AEMC offer any explanation as to why it did not or could not identify these employees.

Due to HIPAA regulations, Healthcare Providers had sole access to the identity of Mrs. Carter's roommate. AEMC failed to comply with the court's order to obtain the roommate's consent to divulge her full name and whereabouts, or report to the court its inability to do so. On these facts, we find no abuse of discretion in the trial court's decision to give an adverse inference charge as to the roommate as well as the nurses.[3]

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[3] The adverse inference instruction provided:

> Now, in this case the defendant did not call the nurse, the nurses that were allegedly in the room or the roommate, who was in the room with Mrs. Carter – was in Mrs. Carter's room during the overnight hours of July 25th to July 26th, 2007.
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> The general rule as it applies in a case for failure to call a witness is as follows: Where a potential witness is within the control of one of the parties and is shown to have special information relevant to the case so that his or her testimony would not merely be cumulative, and where the witnesses' relationship to one of the parties is such that the witness would ordinarily be expected to favor that party, then if that party does not produce the witness's testimony and there is no satisfactory explanation for the failure to do so, you may draw the inference that the testimony would not have been favorable.

(Footnote Continued Next Page)

Next, Healthcare Providers challenge the trial court's decision to give a spoliation instruction based on their routine daily destruction of "sign-out sheets," a document prepared by physicians to inform physicians arriving for the next shift about what had occurred with the patients during the prior shift. Dr. Ramsey testified that Mrs. Carter's care during the relevant time would have been summarized on a sign-out sheet for July 25 and 26, 2007, but that the document was shredded in the normal course of business. As a matter of policy, the documents were not made a part of the patient's permanent medical record and never kept. That, according to Healthcare Providers, is not spoliation because there was no obligation to keep it.

Mrs. Carter argued that the sign-out sheet contained the only known documentation of the night's events since there was nothing in her medical chart regarding her care during that period. She maintains that, since she registered her complaint with the patient advocate that morning, raising the specter of litigation, the document should have been retained.

There was no dispute that the destroyed document contained information regarding Mrs. Carter's care. This Court held in ***Creazzo v. Medtronic, Inc.***, 903 A.2d 24, 29 (Pa.Super. 2006), that in determining

(Footnote Continued) ———————————

N.T. Jury Trial, 6/10/11, at 47-8.

whether and how to sanction a party for spoliation, "the trial court must weigh three factors: (1) the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party; and (3) whether there is a lesser sanction that will avoid substantial unfairness to the opposing party and, where the offending party is seriously at fault, will serve to deter such conduct by others in the future. ***Mount Olivet*** [***Tabernacle Church v. Edwin L. Wiegand Div., Emerson Elec. Co.***], 781 A.2d [1263] at 1269-70 [(Pa.Super. 2001)]."

The first prong requires consideration of the extent of the party's duty to preserve the evidence, and whether it was destroyed in bad faith. A duty is established where one party knows that litigation is likely or pending, and it is foreseeable that discarding the evidence could be prejudicial to the other party. ***Mount Olivet***, ***supra*** at 1270-71.

It is apparent from the record that the trial court properly considered these duty factors in arriving at its decision to give the adverse inference spoliation instruction. The trial court noted that, even if such a document is ordinarily destroyed, "it seems like this is one you should have kept." N.T. Jury Trial, 6/9/11, at 127. It concluded that, "these documents should have been kept in the normal course of business" because the incident raised the issue of malpractice "right from the beginning." ***Id***. at 129. While the court did not specifically find that the destruction of the document was done in bad faith, the jury was entitled to so infer based on "a common theme

running through this case" of the defendants hiding evidence. ***Id***. The prejudice to Mrs. Carter was that, without this record, there was not one shred of medical documentation that Dr. Ramsey was in Mrs. Carter's room that night. N.T. Jury Trial, 6/7/11, at 231. We find no abuse of discretion on the record before us.

Healthcare Providers' second issue involves alleged errors and abuses of discretion on the part of the trial court in submitting the issue of punitive damages to the jury, imposing monetary sanctions for discovery violations, and in denying a remittitur on what they contend are excessive compensatory damages. They allege that judgment n.o.v. should have been entered on the punitive damages award, or, in the alternative, that they are entitled to a new trial due to error in the punitive damages charge and the verdict sheet.

> "[T]he entry of judgment notwithstanding a jury verdict is a drastic remedy. A court cannot lightly ignore the findings of a duly selected jury." ***Neal by Neal v. Lu***, 365 Pa. Super. 464, 530 A.2d 103, 110 (Pa.Super. 1987).
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> There are two bases upon which a court may enter a judgment n.o.v.: (1) the movant is entitled to judgment as a matter of law, or (2), the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant. With the first, a court reviews the record and concludes that even with all factual inferences decided adversely to the movant, the law nonetheless requires a verdict in his favor; whereas with the second, the court reviews the evidentiary record and concludes that the evidence was such that a verdict for the movant was beyond peradventure. ***Bugosh v. Allen Refractories Co.***, 2007 PA Super 215, 932 A.2d 901, 907-08 (Pa.Super. 2007).

Tindall v. Friedman, 970 A.2d 1159, 1167-1168 (Pa.Super. 2009).

> [T]he standard of review for an order granting or denying judgment notwithstanding the verdict is whether there was sufficient competent evidence to sustain the verdict. We must view the evidence in the light most favorable to the verdict winner and give him or her the benefit of every reasonable inference arising therefrom while rejecting all unfavorable testimony and inferences. Furthermore, judgment n.o.v. should be entered only in a clear case, where the evidence is such that no reasonable minds could disagree that the moving party is entitled to relief. Review of the denial of judgment n.o.v. has two parts, one factual and one legal. Concerning any questions of law, our scope of review is plenary. Concerning questions of credibility and weight accorded evidence at trial, we will not substitute our judgment for that of the finder of fact.

Whitaker v. Frankford Hosp., 984 A.2d 512, 517 (Pa.Super. 2009) (quoting ***Underwood ex rel. Underwood v. Wind***, 954 A.2d 1199, 1206 (Pa.Super. 2008)).

An award of punitive damages is authorized by the Medical Care and Reduction of Error ("MCARE") Act in certain circumstances. Section § 1303.505 of that statute provides:

> § 1303.505. Punitive damages
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> > (a) AWARD.-- Punitive damages may be awarded for conduct that is the result of the health care provider's willful or wanton conduct or reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the health care provider's act, the nature and extent of the harm to the patient that the health care provider caused or intended to cause and the wealth of the health care provider.
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> > (b) GROSS NEGLIGENCE.-- A showing of gross negligence is insufficient to support an award of punitive damages.

> (c) VICARIOUS LIABILITY.-- Punitive damages shall not be awarded against a health care provider who is only vicariously liable for the actions of its agent that caused the injury unless it can be shown by a preponderance of the evidence that the party knew of and allowed the conduct by its agent that resulted in the award of punitive damages.
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> (d) TOTAL AMOUNT OF DAMAGES.-- Except in cases alleging intentional misconduct, punitive damages against an individual physician shall not exceed 200% of the compensatory damages awarded. Punitive damages, when awarded, shall not be less than $ 100,000 unless a lower verdict amount is returned by the trier of fact.
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> (e) ALLOCATION.-- Upon the entry of a verdict including an award of punitive damages, the punitive damages portion of the award shall be allocated as follows:
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> > (1) 75% shall be paid to the prevailing party; and
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> > (2) 25% shall be paid to the Medical Care Availability and Reduction of Error Fund.

40 P.S. § 1303.505.

First, Healthcare Providers argue that the verdict sheet, specifically question 5, was improper, and that a new trial is required. That interrogatory provided:

> 5. Do you find that Dr. Ramsey acted recklessly, wantonly, willfully, or intentionally in his care of Leola Carter?
>
> _____Yes _____ No

Verdict Slip.

Defense counsel moved to strike this special interrogatory, arguing that there was insufficient evidence of recklessness, *i.e.*, that Dr. Ramsey disregarded a known risk to the patient to warrant the instruction. N.T., Jury Trial, 6/9/11, at 87-93. After the court ruled that this issue was in dispute and that it was for the jury to decide, the defense objection was noted. Healthcare Providers also moved for a directed verdict "on the issue of recklessness, wantonness, willful disregard and whatever misconduct along those lines," which the court denied. ***Id***. at 93-4.

Now Healthcare Providers argue that, since the jurors found that Dr. Ramsey's negligence was not a factual cause of harm to Mrs. Carter, "one must question how this jury simultaneously found that Dr. Ramsey's conduct, in allegedly touching plaintiff's neck without her consent, rose to such a high level of an intentionally wanton and reckless act warranting a punitive award." Appellants' brief at 41. They contend that there was no evidence that Dr. Ramsey's conduct was intentional or malicious or that he acted recklessly or with an improper motive. ***Id***. at 42. Healthcare Providers cite ***Taylor v. Albert Einstein Medical Center***, 723 A.2d 1027 (Pa.Super. 1999) *rev'd on other grounds*, 754 A.2d 650 (Pa. 2000), for the proposition that not every battery warrants imposition of punitive damages. Here, they maintain that Dr. Ramsey was merely trying to perform a life-saving medical procedure.

Mrs. Carter counters that Dr. Ramsey's allegedly good motive in attempting to place the I.V. in her neck does not excuse either the battery or the physical restraint that caused or increased the risk of complications from her recent surgery. Dr. Ramsey and all the medical experts agreed that a patient's consent is a prerequisite to the insertion of a jugular I.V., and Mrs. Carter testified that she did not consent to the procedure.

The trial court found that there was evidence introduced, which, if believed, would support a finding that Dr. Ramsey acted wilfully, wantonly, or with reckless indifference in proceeding to insert an I.V. in Mrs. Carter's neck, despite her opposition to the procedure. If the jury so found as indicated by an affirmative response to question number 5, the court reasoned that punitive damages would be warranted. The court permitted the jury to consider punitive damages only after the jury concluded that Dr. Ramsey attempted to place an I.V. in Mrs. Carter's neck without her consent, and that he "acted recklessly, wantonly, willfully, or intentionally in his care of Leola Carter." Verdict Slip.

We agree with the trial court's assessment of the evidence. Mrs. Carter's testimony alone, if credited, was sufficient to support a finding that Dr. Ramsey intentionally attempted to insert the I.V. in Mrs. Carter's neck against her will. She was forcibly restrained during the incident, and she struggled and cried. This conduct was willful, wanton, and recklessly

indifferent to her well-being. Hence, the issue was properly submitted to the jury.

Next, Healthcare Providers assail the trial court's handling of the punitive damages proceeding. Specifically, they contend that, after the jurors answered "yes" to special interrogatory number 5, "the Judge provided further charges on punitive damages, all allowing, and encouraging, the jurors to render such an award." Appellants' brief at 47. They characterize the instruction as an invitation to render such an award.

Healthcare Providers did not object to any portion of the trial court's instruction. The trial court prefaced its remarks to the jury as follows:

> Your verdict sheet, because you answered number 5 in the affirmative, we now have to have a hearing on whether or not punitive damages should be awarded or what amount of damages should be awarded. That question permits you to consider that question.

N.T. Jury Trial, 6/10/11, at 93. Following examination of Dr. Ramsey regarding his assets, the trial court instructed the jury of the proper considerations in assessing punitive damages. Again, Healthcare Providers did not register any objection to the court's instructions. Hence, any claim of error premised based on the content of the trial court's instructions is waived. ***See Passarello v. Grumbine***, 87 A.3d 285, *13 (Pa. 2014) (reaffirming that in order to preserve an issue for review, litigants must make timely and specific objections during trial to "ensure that the trial judge has a chance to correct alleged trial errors."); ***see also*** Pa.R.C.P.

227(b) (objections to jury instructions must be made before the jury retires to deliberate, unless the trial court specifically allows otherwise.).

Finally, Healthcare Providers contend that the trial court abused its discretion in imposing a $15,000 sanction against Dr. Ramsey for late disclosure of his financial information, which was relevant to the determination of a punitive damage award.

> Generally, imposition of sanctions for a party's failure to comply with discovery is subject to the discretion of the trial court, as is the severity of the sanctions imposed. ***Cove Centre, Inc.*** [***v. Westhafer Const., Inc.***], 965 A.2d [259,] 261 [(Pa.Super. 2009)](citing ***Reilly v. Ernst & Young, LLP***, 2007 PA Super 216, 929 A.2d 1193, 1199 (Pa. Super. 2007); ***Croydon Plastics Co.***[***, Inc. v. Lower Bucks Cooling & Heating***], 698 A.2d [625] 629 [(Pa. Super. 1997)].

Rohm and Haas Co. v. Lin, 992 A.2d 132, 142 (Pa.Super. 2010) (holding appellate review stringent where a default judgment is entered as a discovery sanction). We will disturb such a sanction only where the trial court has abused its discretion. ***Philadelphia Contributionship Ins. Co. v. Shapiro***, 798 A.2d 781 (Pa.Super. 2002). "The propriety of the sanction is determined by examining: (1) the prejudice caused to the opposing party and whether that prejudice can be cured; (2) the defaulting party's willfulness or bad faith in failing to comply with the order; (3) the number of discovery violations, and; (4) the importance of the precluded evidence in light of the failure." ***Jacobs v. Jacobs,*** 884 A.2d 301, 305 (Pa.Super. 2005).

The record reveals that, well in advance of trial, the court denied Mrs. Carter leave to amend to reinstate her claim for punitive damages against AEMC, and deferred its decision as to Dr. Ramsey until trial. "Unwilling to force Dr. Ramsey to disclose his personal financial information unnecessarily," it ordered Dr. Ramsey to have that information prepared for trial. Order, 6/24/10, at 1 n.1. Two weeks prior to trial, on May 19, 2010, Mrs. Carter served Dr. Ramsey with a specific request for production of documents regarding his personal worth.

After the jury returned a verdict in favor of Mrs. Carter and awarded compensatory damages, the court ruled that the jury could consider evidence of Dr. Ramsey's net worth for purposes of punitive damages. However, Dr. Ramsey had not brought the requested financial documents to the courthouse. Mrs. Carter maintains that the physician brought with him only two bank statements and his 2010 W-2 on an inaccessible thumb drive.[4] Despite the prejudice to Mrs. Carter from the lack of documentation, she opted not to suspend the proceeding and place the punitive damage issue in the hands of another jury. Instead, Dr. Ramsey was examined

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[4] Dr. Ramsey contended that he also brought his 2010 W-2, and that he answered specific questions from the court regarding his real estate holdings and automobiles, complying with Pa.R.C.P. 4003.7, and that plaintiff was not prejudiced. Furthermore, he averred that he provided full and complete responses to the requests for production of documents on August 11, 2011. Response, In Opposition, to Plaintiff's Motion to Compel and for Award of Sanctions, 8/16/11, at 8.

regarding his assets and net worth, and the jury returned a punitive damage award of $25,000. The court ordered Dr. Ramsey, however, to produce the requested documentation upon his return home or suffer monetary sanctions.

On July 26, 2011, six weeks after the verdict, Mrs. Carter moved for sanctions since Dr. Ramsey had not complied with the court's order. The trial court heard argument on the motion on August 29, 2012. Mrs. Carter's counsel reiterated their request that Dr. Ramsey provide copies of the loan applications he completed for his home and automobile. On such applications, "applicants put all of their assets because they're looking to use them as collateral on a loan or to substantiate their worthiness to get a loan." N.T. Motions, 8/29/12, at 7. The court ordered production of these documents within thirty days. ***Id***. at 10. When Dr. Ramsey failed to comply, the court ordered that $15,000 be added to the verdict as a sanction for his failure to promptly provide the documentation. Order, 12/11/12, at 1.

On appeal, Dr. Ramsey alleges that the amount of the sanction was arbitrary and excessive. Furthermore, he relies on this Court's decision in ***Vance v. 46 & 2, Inc.***, 920 A.2d 202, 207 (Pa.Super. 2007), for the proposition that there was no basis for such a sanction since evidence of a defendant's wealth is not necessary for the imposition of punitive damages.

As the trial court correctly stated, Pa.R.C.P. 4019 permits a court to impose sanctions "when a party or person otherwise fails to make discovery or to obey an order of court respecting discovery." Pa.R.C.P. 4019(a)(1)(viii). It concluded that Dr. Ramsey failed to comply with multiple court orders, and that, as a result, Mrs. Carter incurred additional costs and fees associated with the litigation. Trial Court Opinion, 12/19/12, at 8.

We agree that Pa.R.C.P. 4019 confers broad discretion upon the trial court to impose the type of discovery sanction imposed herein. Furthermore, Pa.R.C.P. 4003.7 accords control over the discovery of information regarding a defendant's wealth for purposes of punitive damages upon the trial court. Moreover, Dr. Ramsey's reliance upon our holding in ***Vance*** is misplaced. We did not hold therein that evidence of a tortfeasor defendant's personal worth is irrelevant for purposes of determining an appropriate punitive damage award. Rather, this Court acknowledged that the wealth of the defendant is a proper consideration in the jury's determination of the *amount* of punitive damages to award, but not a necessary prerequisite to a punitive damage award. ***See*** Restatement (Second) of Torts, Section 908(2). Recognizing that the purpose of punitive damages is to punish, we found that wealth is relevant because "if a wealthy person commits a rather heinous act, nominal punitive damages will not deter either that person or any other similarly situated person from

committing a similar act." ***Kirkbride v. Lisbon Contractors, Inc.***, 555 A.2d 800, 802 (Pa. 1989). We concluded, however that, "***Kirkbride*** does not stand for the proposition that a jury cannot impose punitive damages without evidence of record pertaining to the defendant tortfeasor's wealth." ***Vance***, ***supra*** at 206.

Evidence of Dr. Ramsey's personal wealth was a proper consideration in the jury's determination of an appropriate punitive damage award and the trial court properly ordered him to produce the relevant financial information. Dr. Ramsey's failure to produce discovery materials evidencing his financial position impaired Mrs. Carter's efforts to place this information before the jury. Recognizing this fact, the trial court ordered Dr. Ramsey to produce the requested documentation after trial. Dr. Ramsey again did not comply, resulting in a court order to produce the discovery within thirty days. When Dr. Ramsey violated that order, the court imposed monetary sanctions. We discern no abuse of discretion in light of Dr. Ramsey's repeated failures to abide by the trial court's orders, and the costs and fees necessarily incurred by Mrs. Carter in seeking enforcement of those orders.

Finally, Healthcare Providers claim that the $100,000 compensatory damage award was so excessive as to shock one's sense of justice, and that the trial court should have ordered either a new trial or a remittitur. The grant or refusal of a new trial due to the excessiveness of the verdict is within the discretion of the trial court. ***Springer v. George***, 170 A.2d 367

(Pa. 1961). Similarly, our standard of review in reversing an order denying a remittitur by a trial court is confined to determining whether there was an abuse of discretion or an error of law. ***Smalls v. Pittsburgh-Corning Corp.***, 843 A.2d 410, 414 (Pa.Super. 2004). This Court will not find a verdict excessive unless it is so grossly excessive as to shock our sense of justice. ***Tindall***, ***supra***. In ***Tindall***, ***supra*** at 1176-1177, we recognized that "large verdicts are not necessarily excessive verdicts" and that "[e]ach case is unique and dependent on its own special circumstances."

The thrust of Healthcare Providers' argument is that Mrs. Carter was seeking only non-economic losses for pain and suffering, disfigurement, embarrassment and humiliation. They dispute that the bleeding experienced by Mrs. Carter after Dr. Ramsey's conduct in placing the I.V. in her neck and the endoscopic repair was related to the battery.

The trial court applied the six factors to be considered in determining whether a verdict is excessive, which were identified by this Court in ***Bey v Sacks***, 789 A.2d 232, 242 (Pa.Super. 2001). The trial court concluded that there was credible evidence, which the jury was free to believe, that Dr. Ramsey's conduct caused Mrs. Carter to suffer physical pain, internal bleeding, and to undergo an endoscopic procedure. The $100,000 compensatory damage award was not excessive in light of that evidence and did not shock its sense of justice.

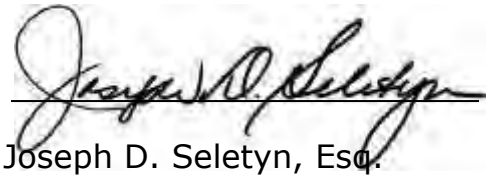
We find no abuse of discretion. We agree that the record reveals sufficient evidence, if credited by the jury, to support the $100,000 award. Mrs. Carter endured a painful medical procedure undertaken against her will and without her consent. Not long thereafter, she began regurgitating blood, necessitating an endoscopic surgical procedure to stop the bleeding. Mrs. Carter's expert, Dr. Befeler, opined that Dr. Ramsey's conduct "caused stress, strains, elevated blood pressure, straining, tearing, which led to the bleeding from the anastomosis." N.T. Jury Trial, 6/8/11, at 29-30, 35-36. We concur with the trial court that there was no basis to disturb the jury's verdict.

Furthermore, the award of $25,000 in punitive damages on a $100,000 compensatory damage award was not so disproportionate as to shock the conscience. The trial court found no indication that the jury was "guided by partiality, prejudice, mistake or corruption[,]" and the punitive damage award bore "a reasonable relationship to the award of compensatory damages." Trial Court Opinion, 12/19/12, at 7. We agree. We have upheld punitive damage awards many times larger than the compensatory damage awards. Herein, the punitive damages award was only equivalent to one-fourth of the compensatory damages. No remittitur was warranted.

Judgment affirmed.

Judge Ott Concurs in the Result.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/9/2014