

IN THE COURT OF COMMON PLEAS of PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT of PENNSYLVANIA

CIVIL TRIAL DIVISION

MERIDITH McGUIRE	:	FEBRUARY TERM, 1997
Plaintiff	:	
v.	:	
	:	
Dr. GARY A. BAIOCCHI, et al	:	
Defendants	:	No. 1730

OPINION of the COURT

APRIL 28, 2000

GOODHEART, J.

INTRODUCTION

After a three-day trial in this medical malpractice case, the jury returned a verdict in favor of the Plaintiff in the amount of \$13,700.00. The Plaintiff moved for an *additur*, or in the alternative, a new trial on damages only, on the sole basis that the jury's verdict was "clearly inadequate" based upon the evidence presented.

The Defendants – who were insured by PIE Mutual Insurance Company, which is now insolvent, and whose responsibilities to policyholders have been assumed by the Pennsylvania Insurance Guaranty Fund (the "**Fund**") – moved, without opposition, to mold the verdict, pursuant to 40 P.S. §991.1817(a), to account for \$1,000.00 in other insurance benefits received by the Plaintiff¹.

I granted the Defendants' Motion and denied the Plaintiff's; this timely appeal followed.

¹ Pursuant to the Pennsylvania Insurance Guaranty Act, the Fund is entitled to credit against verdict liability for funds received by a claimant from "any [other] kind of insurance".

THE ISSUES on APPEAL

Pennsylvania courts generally lack the power to grant an *additur* to rectify an inadequate verdict; in such an instance, the correct remedy is an award of a new trial, though perhaps on damages only. Dougherty v. McLaughlin, 432 Pa. Super. 129; 637 A.2d 1017 (1994); R.L.J. Riling, Inc. v. Schuck, et ux, 346 Pa. 169, at 171; 29 A.2d 693, at 694 (1943)². Thus, the only question to be answered in this appeal is whether the \$13,700.00 verdict was so inadequate, based upon the evidence presented, that a new trial is required to avoid injustice.

Though I did bar the Plaintiff from presenting any evidence at trial regarding future medical expenses, the Plaintiff's post-trial motion does not mention the issue, and any challenge to the correctness of my ruling has therefore been waived for appeal purposes.

THE EVIDENCE

The Plaintiff's Complaint, filed on February 14, 1997, alleged negligence on the part of the Defendant and his professional corporation, in connection with treatment rendered to the Plaintiff following an allergic reaction she had to Bactrim, an antibiotic prescribed by another physician in the Defendant's practice to treat the Plaintiff's recurring urinary tract infections.

On February 14, 1995, the Plaintiff broke out in hives upon taking the Bactrim, and visited Dr. Baiocchi that day for the first time, because her regular physician was unavailable. Dr. Baiocchi's nurse, at the doctor's direction, injected Depo-Medrol, a steroid, directly into the Plaintiff's left deltoid muscle. Several weeks later, the Plaintiff noticed a depression in the skin

² The sole possible exception to this rule is when a jury fails to award the correct amount of liquidated damages, Gaspero v. Gentile, 160 Pa. Super. 276; 50 A.2d 754 (1947), but that exception is not implicated here.

surface of her left shoulder, with accompanying pain at the injection site. The Defendants concluded that the Plaintiff had suffered an “atrophic reaction” to the Depo-Medrol, and ordered a course of physical therapy.

The indentation subsequently filled in with new tissue, and became virtually invisible, as shown in several photographs taken about two and one-half years after the Plaintiff received the shot. These photographs were shown to the jury, which was also given an opportunity to view the current condition of the Plaintiff’s shoulder.

The Plaintiff’s own expert neurologist, Jon J. Glass, M.D. testified, following an examination of the Plaintiff on July 16, 1997, that the Plaintiff suffered “no atrophy” of the deltoid muscle, “normal” motor function, muscle bulk, muscle tone, nerve reflexes and sensation, and that she had a “normal” range of motion in her shoulder and “full strength” of both arms. (Glass deposition, at Pp. 67-68)

The Plaintiff admitted that she had never sought the services of a plastic surgeon, an orthopedist or any other specialist for treatment of the temporary indentation in her arm, that she had no future plans to do so, and that she discontinued physical therapy after four visits because the pain had diminished. She also admitted that she never missed any time from work as a result of her injury, and that she had taken no medication (other than ibuprofen for occasional pain) to treat the indentation. (N.T. June 28, 1999, at Pp. 52-55).

THE JURY VERDICT

I believe that a new trial is unnecessary. The Plaintiff suffered no economic loss. There was no evidence presented to indicate that the Plaintiff will require additional medical treatment in the future, and the Plaintiff’s own expert admitted that the Plaintiff suffered no permanent injury

to her nerves, bones or muscles as a result of the injection.

CONCLUSION

Though the Plaintiff's post-trial motion characterizes her injuries as "gross and obvious", the jury apparently found – as it was entitled to do -- that the Plaintiff's injuries were actually minor and cosmetic, and that they had completely resolved in a relatively short time following the injection. The fact that a different jury might make a larger award in this case is simply irrelevant; this jury's verdict was supported sufficiently by the record, and thus should be affirmed.

BY THE COURT :

GOODHEART, J.