

DOCKET NO. CV 08 5008551 S (X02) : SUPERIOR COURT
TIM DOE #1 : COMPLEX LITIGATION DOCKET
V. : J. D. OF WATERBURY
ST. FRANCIS HOSPITAL AND MEDICAL
CENTER, INC. : AUGUST 19, 2011

2011 AUG 19 P 1:55
CLERK OF SUPERIOR COURT
JUDICIAL BRANCH
WATERBURY, CT

MEMORANDUM OF DECISION
RE: MOTION #352

This matter was tried to a verdict on July 8, 2011 in favor of the plaintiff in the amount of \$2,750,000 consisting solely of noneconomic damages. The defendant has brought a post-verdict motion pursuant to Practice Book §§ 16-35, 16-36 and 16-37 seeking to address three issues: entering a directed verdict, setting aside the verdict, and, the ordering of a remittitur.

In the instant motion, the defendant has renewed its motion for directed verdict presented at the conclusion of plaintiff's evidence. Pursuant to Practice Book § 16-37, the motion was not granted at that time and therefore the court was deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Those questions are in effect addressed in the second issue raised which is the defendant's motion to set aside the verdict.

Even though a court has the power to set aside a jury verdict if it finds that it is contrary to the law and evidence, it should not do so if it finds some evidence in support of the verdict. *PAR Painting, Inc. v. Greenhouse & O'Mara, Inc.*, 61 Conn. App. 317, 322, 763 A.2d 1078, cert. denied, 255 Conn. 951, 770 A.2d 31 (2001). “[Courts] must determine, in the light most favorable to sustaining the verdict, whether the totality of the

evidence, including reasonable inferences therefrom, supports the jury's verdict In making this determination, [t]he evidence must be given the most favorable construction in support of the verdict of which it is reasonably capable. . . . In other words, [i]f the jury could reasonably have reached its conclusion, the verdict must stand. . . ." (Internal quotation marks omitted.) *Jackson v. Water Pollution Control Authority*, 278 Conn. 692, 704, 900 A.2d 498 (2006). Generally speaking, "[a] court is empowered to set aside a jury verdict when, in the court's opinion, the verdict is contrary to the law or unsupported by the evidence." (Internal quotation marks omitted.) *Auster v. Norwalk United Methodist Church*, 94 Conn. App. 617, 620, 894 A.2d 329 (2006), *aff'd*, 286 Conn. 152, 943 A.2d 391 (2008).

In evaluating the evidence presented to the jury, the court has drawn upon the court's experience as well as its knowledge of human nature, events and motives. In viewing the evidence in the light most favorable to sustaining the verdict, the court finds sufficient evidence to support the verdict. The motion to set aside is denied as is the renewed motion for directed verdict. P.B. § 16-37.

The third issue raised by the defendant is a motion for remittitur of the jury's verdict. In that the verdict was in excess of \$1,000,000, the defendant contends that the court is particularly obligated to review the verdict pursuant to the language of General Statutes § 52-228c.¹ While there may be an issue as whether the statute is applicable to

¹ §52-228c states "[w]henver in a civil action to recover damages resulting from personal injury or wrongful death, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, the jury renders a verdict specifying noneconomic damages, as defined by section 52-572h, in an amount exceeding one million dollars, the court shall review the evidence presented to the jury to determine if the amount of noneconomic damages specified in the verdict is excessive as a matter of law in that it so shocks the sense of justice as to compel the conclusion that the jury was influenced by partiality, prejudice, mistake or corruption. If the court so concludes, it shall order a

the facts of this case which the defendant concedes does not allege medical treatment or malpractice, the court has nonetheless considered the factors called for therein as they are consistent with the issues raised in any motion for remittitur.

“The only practical test to apply to [a] verdict is whether the award falls somewhere within the necessarily uncertain limits of just damages or whether the size of the verdict so shocks the sense of justice as to compel the conclusion that the jury was influenced by partiality, prejudice, mistake or corruption.” (Internal quotation marks omitted.) *Margolin v. Kleban & Samor, P.C.*, 275 Conn. 765, 783, 882 A.2d 653 (2005). “In ruling on [a] motion for remittitur, the trial court was obliged to view the evidence in the light most favorable to the plaintiff in determining whether the verdict returned was reasonably supported thereby.” (Internal quotation marks omitted.) *Eisenbach v. Downey*, 45 Conn. App. 165, 184, 694 A.2d 1376, cert. denied, 241 Conn. 926, 696 A.2d 1264 (1997). “A conclusion that the jury exercised merely poor judgment is an insufficient basis for ordering a remittitur.” (Citations omitted.) *Bruneau v. Seabrook*, 84 Conn. App. 667, 673, 854 A.2d 818, cert. denied, 271 Conn. 930, 859 A.2d 583 (2004). Moreover, “[t]he fact that the jury returns a verdict in excess of what the trial judge would have awarded does not alone establish that the verdict was excessive. . . . [T]he court should not act as the seventh juror with absolute veto power. Whether the court would have reached a different [result] is not in itself decisive.” (Internal quotation marks omitted.) *Campbell v. Gould*, 194 Conn. 35, 41, 478 A.2d 596 (1984). “[A] plaintiff need not prove damages with mathematical exactitude; rather, the plaintiff must

remittitur and, upon failure of the party so ordered to remit the amount ordered by the court, it shall set aside the verdict and order a new trial. For the purposes of this section, “health care provider” means a provider, as defined in subsection (b) of section 20-7b, or an institution, as defined in section 19a-490.”

provide sufficient evidence for the trier to make a fair and reasonable estimate.” (Internal quotation marks omitted.) *Bruneau v. Seabrook*, supra, 84 Conn. App. 673; *Willow Springs Condominium Assn., Inc. v. Seventh BRT Development Corp.*, 245 Conn. 1, 65, 717 A.2d 77 (1998).

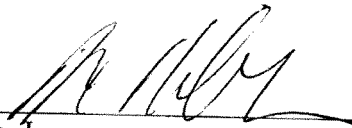
In making a decision to determine whether the amount of damages awarded is excessive, the court must begin its analysis “not on the assumption that the jury made a mistake, but, rather, on the supposition that the jury did exactly what it intended to do.” (Internal quotation marks omitted.) *Smith v. Lefebvre*, 92 Conn. App. 417, 421, 885 A.2d 1232 (2005), quoting *Wichers v. Hatch*, 252 Conn. 174, 189, 745 A.2d 789 (2000) (en banc). While the *Smith* case dealt with the issue of whether a damage award was inadequate, the same reasoning regarding the jury’s decision is applicable in reviewing a motion for remittitur.

In considering what damages might be appropriate, “[i]t is the [jury’s] exclusive province to weigh the conflicting evidence and to determine the credibility of witnesses. . . . The [jury] can . . . decide what -- all, none, or some -- of a witness’ testimony to accept or reject.” (Internal quotation marks omitted.) *Smith v. Lefebvre*, supra, 92 Conn. App. 422. In this context, the court must recognize that “[t]he amount of damages awarded is a matter peculiarly within the province of the jury.” (Internal quotation marks omitted.) *Weiss v. Bergen*, 63 Conn. App. 810, 813, 779 A.2d 195, cert. denied, 258 Conn. 908, 782 A.2d 1254 (2001); *Lingenheld v. Desjardins Woodworking, Inc.*, 105 Conn. App. 163, 177, 936 A.2d 723 (2007). However, this does not excuse the court from conducting a review of the evidential underpinnings of the verdict to ensure that the award is reasonably supported by the evidence. *Johnson v. Chaves*, 78 Conn. App. 342, 347, 826

A.2d 1286, cert. denied, 266 Conn. 911, 832 A.2d 70 (2003); *Wichers v. Hatch*, supra, 252 Conn 189.

In this instance, the court has conducted a review of the evidential underpinnings of the verdict and finds that the award is reasonably supported by evidence that was within the province of the jury to accept or reject. There has been nothing presented to the court which would cause it to conclude that the jury was influenced by partiality, prejudice, mistake or corruption. As a result, it cannot be said that the jury's verdict shocks the court's sense of justice. The motion for remittitur is denied.

BY THE COURT



Shaban, J.