

PHYLLIS McANINCH, Administratrix of the Estate of Steven J. Fye, Deceased,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
	:	
Plaintiff	:	
	:	
vs.	:	NO. 99-01033
	:	
SUSQUEHANNA HEALTH SYSTEM; DIVINE PROVIDENCE HOSPITAL; and WILLIAM E. KIRK, M.D.,	:	CIVIL ACTION
	:	
Defendant	:	MOTION FOR POST-TRIAL RELIEF

Date: June 29, 2001

OPINION and ORDER

Before the Court is Plaintiff's Motion for Post-Trial Relief which was filed January 26, 2001. A hearing and argument were held on June 18, 2001. For the reasons to be explained in this opinion, Plaintiff's Motion will be DENIED.

Facts¹

This action was initiated by Complaint filed on or about July 2, 1999. Plaintiff's Complaint alleged negligent mental health care provided to decedent Steven Fye by Defendants in December, 1997 through January, 1998. Plaintiff alleged that this inadequate mental health care led to decedent's death from a self-inflicted gunshot wound on January 14, 1998. A jury trial resulted in a verdict returned by the jury in favor of Defendants on January 18, 2001; the jury found Dr. Kirk was not grossly negligent in treating the deceased as an inpatient in the hospital but that Dr. Kirk was negligent in his care of the deceased between the time of

¹ Statement of Facts and Procedural History are from Defendant's Brief in Opposition to Plaintiff's Motion for Post-Trial Relief.

discharge and his surrender. The jury, however, found this negligence was not a substantial factor in causing the death of Steven Fye.

Plaintiff filed a Motion for Post-Trial Relief on January 26, 2001. Plaintiff filed a brief in support of the Motion for Post-Trial Relief on February 5, 2001. Defendant filed a brief in response and in opposition to Plaintiff's motion and supporting brief.

Discussion

Plaintiff's Motion for Post-Trial Relief requests the Court to enter Judgment Notwithstanding the Verdict.² The claim is based on the Plaintiff's belief that the jury's verdict was "contrary to the weight of the evidence presented at trial." (Plaintiff Motion for Post Trial Relief ¶9).³

This Court agrees with Defendants statement of the law concerning JNOV. Defendant's cite *Rohm and Haas Co. v. Continental*, 732 A.2d 1236 (1999), which states, "a judgment n.o.v. should only be entered in a clear case and any doubts must be resolved in favor of the verdict winner." *Id.* at 1247. "In reviewing a motion for judgment n.o.v., the evidence must be considered in the light most favorable to the verdict winner, and he must be given the benefit of every reasonable inference of fact arising therefrom." *Id.*

Furthermore, *Rohm* notes, "when there is a question of fact to be resolved, it is within the sole purview of the jury." *Id.* at 1248. "JNOV should not be entered where evidence is conflicting upon a material fact." *Id.*

² Hereinafter referred to as JNOV.

³ The relevant facts surrounding this issue are; that the jury returned a verdict finding Doctor Kirk guilty of negligence in the aftercare of decedent, Steven Fye, but not in the preceding care.

Based on the Court's decision in *Rohm*, it is this Court's determination that this is not a proper JNOV case. It is clear that a reasonable mind could, as the jury obviously did, reach the conclusion that Defendant, Doctor Kirk, was not grossly negligent during the time period of decedent's admission between December 23, 1997 and January 2, 1998. And that there was no substantial causal connection between Doctor Kirk's out patient treatment and decedent's suicide. (Defendant's brief in opposition to plaintiff's motion for post trial relief, p. 4).

Testimony at trial of Steven Fye's family and friends, and of Doctor Kirk, established that decedent was not an identifiable suicide risk. The defense also submitted Doctor Mann's stipulated expert report, and presented another expert, Doctor Michaels' at trial. Both defense experts opined that Doctor Kirk acted within the standard of care and did not cause decedent's suicide. The jury was free to accept or reject this testimony which was offered in clear opposition to that of Plaintiff's expert. A summary of the evidence taken at trial is accurately referenced in Defendant's brief dated June 8, 2001. The jury obviously accepted the testimony of the defense, particularly that of Dr. Michael.

Therefore, it is adduced that the jury acted reasonably in rendering their verdict and plaintiff's motion for JNOV is denied.

Plaintiff's motion further asserts the Court's Charge and Re-Charge to the jury, defining 'gross negligence,' was prejudicial and warrants a new trial. Gross negligence was defined by the Pennsylvania Supreme Court in *Albright v. Abington Memorial Hospital*, 696 A.2d 1159, 1164 (1997). For that reason, this Court properly utilized the definition of 'gross negligence' in charging the jury. The Court feels compelled to deny this motion on the basis of

Albright, and adopts Defendants argument on this issue as stated in their brief, (pp. 7-9), and also relies upon its reasoning set forth on the record during the trial.

Finally, plaintiff's requests the Court to order a new trial based on defense counsel's statement in closing argument that, "Doctor Kirk had an unblemished record prior to this incident and that the jury should not tarnish it." While this Court recognizes that this statement was definitely objectionable, plaintiff's counsel did not so object, and therefore constitutes a waiver.⁴

The standard for upholding a verdict against a claim that opposing counsel's argument prejudiced the jury is a stringent one. Pennsylvania Trial Guide, §37.4, citing *Commonwealth v. Lacava*, 666 A.2d 221 (1995). While Plaintiff's raise a legitimate complaint, viewing the defense closing in its entirety, this Court also now determines the comment, which objectionable, was not so prejudicial as to warrant a new trial.

Plaintiff's Post-Trial Motion raised two additional points. The first is that defense counsel's closing argument inappropriately referenced articles and material purportedly written by Plaintiff's expert, Dr. Kaye. At argument Plaintiff's counsel conceded that this material was the subject of Dr. Kaye's cross-examination and withdrew this Post-Trial Relief contention.

Plaintiff in Post-Trial argument also again asserts that the requirement of the Mental Health Procedures Act require Plaintiff to plead and prove gross negligence in connection with the care and treatment rendered to a hospitalized individual such as the

⁴ Again, this Court adopts Defendant's argument on this issue as stated in their brief, page 13. This is not to imply nor say that Plaintiff's counsel did not have a reasonable basis for not objecting at the time the remark was made or at the end of the defense closing argument.

deceased in this case is unconstitutional. This Court has previously ruled that the requirement of the Act, 50 P.S. §7114 is constitutional and relies upon that prior decision in denying the requested relief.

Finally, it should be noted that the Defendants' contention that Plaintiff failed to preserve right to pursue post-trial relief, particularly in seeking a judgment n.o.v. and/or a new trial because of failure to request a directive verdict is found to be without merit. The Court finds the Plaintiff did submit a supplemental point for charge requesting that a directive verdict be entered which point was denied. Accordingly, Plaintiff properly reserved the arguments set forth in the post-trial relief motion.

ORDER

For the foregoing reasons, the Plaintiff's Motions for Judgment Not Withstanding The Verdict and New Trial are hereby DENIED.

BY THE COURT:

William S. Kieser, Judge

cc: Gary T. Harris, Esquire
David R. Bahl, Esquire
Kenneth B. Young, Esquire
Judges
Suzanne R. Lovecchio, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)