

342 A.3d 711
Superior Court of Pennsylvania.

Mary HEFFELFINGER
v.
Linda SHEN, DDS, Shen Smiles, PC and Drums
Dental Lab, LLC Appellants

No. 681 MDA 2024
|
Argued April 30, 2025
|
Filed: July 21, 2025

Synopsis

Background: Patient filed dental malpractice action against dentist, dentist's professional corporation, and dentist's dental lab, seeking to recover for dentist's allegedly negligent failures to refer patient for specialist care and to diagnose oral cancer lesion. The Court of Common Pleas, Luzerne County, Civil Division, No. 202008443, [Richard M. Hughes, III, J.](#), denied defendants' post-trial motions for new trial, judgment notwithstanding the **verdict** (JNOV), and to set aside the **verdict**, entered judgment on a jury **verdict** awarding patient \$3 million in compensatory damages and \$8 million in **punitive damages**, and awarded \$459,513.69 in delay damages. Defendants appealed.

OPINION BY [STEVENS, P.J.E.](#):

*716 Linda Shen, DDS (“Dr. Shen”), Shen Smiles, PC, and Drums Dental Lab, LLC, appeal from the April 30, 2024 judgment entered on the jury verdict in favor of Appellee, Mary Heffelfinger, and jointly against Appellants, in the total amount of \$11,459,513.69. After careful review, we affirm.

The relevant factual history of this case, as gleaned from the certified record, is as follows: Appellee is a 68 year-old woman who resides in Chester County, Pennsylvania. Dr. Shen is licensed to practice dentistry in the Commonwealth of Pennsylvania and is the sole owner of her professional corporation, Shen Smiles, PC (“Shen Smiles”) in Drums, Pennsylvania. Appellee had known Dr. Shen for over a decade when she became her patient in 2013. On May 13,

2018, Appellee went to Dr. Shen for dental care with a lesion present on the left side of her tongue. Throughout more than six visits in 2018, each initiated by Appellee, the lesion continued to grow and worsen. In each instance, Dr. Shen prescribed palliative treatment but failed to refer Appellee for *717 specialist care, perform an [oral cancer screening](#) or biopsy for diagnosis of the lesion, nor schedule Appellee for follow-up visits. In December of 2018, Dr. Shen's then-assistant, Dora Comstock, looked for the first time at Appellee's sore, and was immediately alarmed. When she raised her concern with Dr. Shen, Dr. Shen responded in a hostile manner and told Comstock to stay silent. Nevertheless, Comstock instructed Appellee to immediately go to an oral surgeon. Appellee visited an oral surgeon, Niral Parikh, DDS, on December 28, 2018, who immediately recognized the lesion as possible squamous cell [carcinoma](#), and referred Appellee for a biopsy, which confirmed the [cancer diagnosis](#).

Appellee underwent treatment for squamous cell [carcinoma](#) from January thru June of 2019. The resulting extensive, [invasive treatment](#) caused permanent injury to Appellee. Appellee underwent radiation and chemotherapy, and required dissection of her neck to remove the left side of her tongue and several lymph nodes. Said surgery also required a skin and blood vessel graft, taken from Appellee's arm, which restored some functionality to her tongue. Although Appellee was able to achieve remission, she suffered permanent injury including speech deficits, [lymphedema](#), scarring, and a continued risk of recurrence.

The trial court set forth the early procedural history of this case as follows:

This matter was commenced by writ of summons dated September 15, 2020. Pre-complaint discovery was conducted, and [Appellee's] complaint was filed on August 17, 2021. A series of preliminary objections and amended complaints ensued. [Appellee's] third amended complaint was filed November 9, 2021. Following disposition of [Appellee's] preliminary objections to [Appellants'] Preliminary objections to [Appellee's] third amended complaint, [Appellee's] third amended complaint became the operative complaint in this matter. The complaint alleged negligence against all [Appellants], as well as intentional infliction of emotional distress against [Dr. Shen]. The

cause of action for intentional infliction of emotional distress was subsequently withdrawn at trial. Punitive damages were sought pursuant to the negligence claim.

Trial court opinion, 8/23/24 at 1-2 (extraneous capitalization omitted).

On February 20, 2024, the parties proceeded to a jury trial before the Honorable Richard M. Hughes, III. At trial, the jury heard testimony from eight witnesses, including a number of experts. Appellee presented, *inter alia*, the expert testimony of George Just, DDS, DMD, to opine of the standard of care for general dentistry, as well as the expert testimony of Dr. Wayne Koch, MD, to opine on the causation of Appellee's injuries and the alternative treatment that would have been required with a timely diagnosis. Appellants presented, *inter alia*, Christopher Berezna, DMD as an expert in general dentistry as well as Dr. Shen as a fact witness.

At trial, the parties also contested whether Dr. Shen had in fact seen Appellee as a patient during the seven-month period between May and December of 2018. Dr. Shen's patient ledger did not reflect any appointments with Appellee during this timeframe, and Dr. Shen failed to maintain any medical records relative to Appellee. As a result, the trial court admitted testimony from Appellee's sister, Catherine Martin, Dr. Shen's former office manager from 2013 to 2019. Martin testified that Dr. Shen regularly took patients 'off-the-books' and received payments in unrecorded cash amounts, or in-kind services, which would therefore not have been *718 reflected in her patient's ledger. Additionally, the trial court admitted testimony that Dr. Shen herself was responsible for the medical records relevant to the Appellee during that time frame the records went missing. *See* notes of testimony, 2/20-22/24 at 75, 82-84, 174, 183-184.

Following a three-day trial, the jury returned a verdict in favor of Appellee in the total amount of \$11 million. Specifically, the jury found Dr. Shen negligent and awarded Appellee \$3 million in compensatory damages; the jury also found Dr. Shen's reckless conduct warranted \$8 million in punitive damages. Jury Verdict Slip, 2/23/24 at 1-3

VI. Compensatory and Punitive Damages

[28] [29] [30] [31] [32] We now turn to Appellants' claim that the trial court abused its discretion in denying its motion for a new trial *724 on the basis that the \$3 million in compensatory damages and \$8 million in punitive damages awarded by the jury were manifestly excessive. Appellants' brief at 28-31.

The grant or refusal of a new trial due to the excessiveness of the verdict is within the discretion of the trial court. This Court will not find a verdict excessive unless it is so grossly excessive as to shock our sense of justice.... Similarly, our standard of review from the denial of a remittitur is circumspect and judicial reduction of a jury award is appropriate only when the award is plainly excessive and exorbitant. The question is whether the award of damages falls within the uncertain limits of fair and reasonable compensation or whether the verdict so shocks the sense of justice as to suggest that the jury was influenced by partiality, prejudice, mistake, or corruption. Furthermore, the decision to grant or deny remittitur is within the sole discretion of the trial court, and proper appellate review dictates this Court reverse such an Order only if the trial court abused its discretion or committed an error of law in evaluating a party's request for remittitur.

Tong-Summerford v. Abington Memorial Hospital, 190 A.3d 631, 650-651 (Pa.Super. 2018) (citation omitted).

[33] [34] With respect to compensatory damages, "this Court will not find a verdict excessive unless it is so grossly excessive as to shock our sense of justice." *Brown v. End Zone, Inc.*, 259 A.3d 473, 486 (Pa.Super. 2021) (citation omitted). A court may consider: "(1) the severity of the injury; (2) whether the Plaintiff's injury is manifested by objective physical evidence or whether it is only revealed by the subjective testimony of the Plaintiff [;] (3) whether the injury will affect the Plaintiff permanently; (4) whether the Plaintiff can continue with his or her employment; (5) the size of the Plaintiff's out-of-pocket expenses; and (6) the amount Plaintiff demanded in the original complaint." *Id.* at 486-487 (citation omitted).

[35] [36] [37] We review an award of punitive damages for an abuse of discretion. *Grossi v. Travelers Personal Insurance Co.*, 79 A.3d 1141, 1157 (Pa.Super. 2013), *appeal denied*, 101 A.3d 103 (Pa. 2014). “Under Pennsylvania law the size of a punitive damages award must be reasonably related to the State’s interest in punishing and deterring the particular behavior of the defendant and not the product of arbitrariness or unfettered discretion.” *Hollock v. Erie Insurance Exchange*, 842 A.2d 409, 419 (Pa.Super. 2004) (citation and internal quotation marks omitted). “Punitive damages may be awarded for conduct that is outrageous, because of the defendant’s evil motive or his [or her] reckless indifference to the rights of others.” *Bert Co. v. Turk*, — Pa. —, 298 A.3d 44, 61 (2023).

[38] [39] Following our review, we conclude that the trial court properly exercised its discretion in denying Appellants’ challenge to the amount of compensatory and punitive damages awarded to Appellee. Here, Appellee provided a sufficient evidentiary basis for the jury to conclude that she suffered, and continues to suffer, disfigurement, pain, and humiliation as a result of Dr. Shen’s negligent and reckless conduct. The trial court explained as follows:

Dr. Koch testified extensively about what could have been, and what actually resulted, regarding the treatment of [Appellee]. Such testimony was undisputed, and [Appellee’s] testimony described to the jury the damages upon which they were to base any award. Dr. Koch explained the resultant treatment: a [hemiglossectomy](#), which involved removing *725 half the tongue, a left sided neck dissection to remove lymph nodes, radiation and chemotherapy. At the time of the care at issue, [Appellee] was working as a medical compliance manager of a physician’s weight control office overseeing eight offices. [Appellee] described how her ability to speak declined dramatically and affected her physically and functionally. Her speech impairment was demonstrated both to the Jury and this Court. She explained that she suffers from [lymphedema](#) that frequently requires therapy, paralysis on the side of her face, no feeling under her neck, and needs a special helmet that controls the fluid in her head and neck. She testified about what she suffers as far as eating, as well as her social life. She cannot eat meat unless it is shredded, and she has become isolated due to the humiliation that comes with speaking. She now works at a garden nursery since it does not require her to speak, and finds it too difficult to pursue a romantic relationship. According to Dr. Koch’s testimony, all of these issues and

conditions stemmed from the necessary treatment. No testimony was offered to dispute that, had Dr. Shen referred [Appellee] at a reasonable time, she would have undergone a simple procedure, almost certainly avoiding all of the persistent issues she presently suffers.

* * * *

[Appellee] suffered great harm, as outlined above, solely due to Dr. Shen’s willful disregard of an oral lesion. Dr. Shen testified that she knew the lesion was suspicious. She additionally testified that she knew the lesion kept getting worse, and the treatment she prescribed would not make [Appellee’s] lesion better.

Trial court opinion, 8/23/24 at 18-20 (citations omitted).

Our review further confirms that, in light of the totality of the record developed at trial, the jury properly exercised its discretion in awarding Appellee \$8 million in punitive damages and the trial court did not abuse its discretion in denying Appellants’ motion for a new trial or JNOV based on the amount of punitive damages awarded.

Footnotes

* Former Justice specially assigned to the Superior Court.

¹ Appellants and the trial court have complied with [Pa.R.A.P. 1925](#).

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