

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JOHN DOE,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. N13C-12-218 MMJ
)	
INFECTIOUS DISEASE)	
ASSOCIATES, P.A.,)	
)	
Defendant.)	

Submitted: December 29, 2015
Decided: February 1, 2016

On Defendant's Renewed Motion for Judgment as a Matter of Law
or in the Alternative Motion for a New Trial
or in the Alternative Remittitur

DENIED

ORDER

John R. Weaver, Jr., Esquire, John R. Weaver, Jr., P.A., Wilmington, DE, Attorney
for the Plaintiff.

Gregory S. McKee, Esquire and Lauren C. McConnell, Esquire, Wharton, Levin,
Ehrmantraut & Klein, Wilmington, DE, Attorneys for the Defendant.

JOHNSTON, J.

1. Plaintiff brought this action, alleging that Defendant was negligent in sending a fax to Defendant's employer. The fax contained confidential information regarding Plaintiff's treatment for the HIV virus. Plaintiff claimed that Defendant's negligence in revealing this protected healthcare information caused his employment termination and resulting damages.

2. Trial commenced on October 12, 2015. The jury was presented with a Special Verdict Form. The jury found that Defendant's negligence proximately caused injury to Plaintiff, and that Plaintiff was not contributorily negligent. The jury found that Plaintiff's termination from his employment was reasonably foreseeable by Defendant and that Defendant's negligence was a proximate cause of lost wages. On October 15, 2015, the jury awarded Plaintiff \$86,526.76 for lost wages and \$1,050,000 for emotional pain and mental anguish.

3. Defendant has renewed its motion for judgment as a matter of law, or in the alternative, motion for a new trial.

4. Superior Court Civil Rule 50(b)¹ permits a motion for judgment as a matter of law to be renewed after the entry of a judgment. "[B]arring exceptional circumstances, a trial judge should not set aside a jury verdict . . . unless . . . the evidence preponderates so heavily against the jury verdict that a reasonable jury could

¹ All "Rules" referred to hereinafter will be the Superior Court Civil Rules.

not have reached the result.”² Therefore, the Court must consider whether “under any reasonable view of the evidence the jury could have justifiably found for the non-moving party.”³

5. In contrast to Rule 50, when considering a Rule 59 motion for a new trial,

the Court “weighs the evidence in order to determine if the verdict is one which a reasonably prudent jury would have reached.”⁴ The Court should only set aside a verdict if it is clear that the “verdict was the result of passion, prejudice, partiality, corruption, or if it is clear that the jury disregarded the evidence or law.”⁵ A jury’s verdict with respect to damages is presumed to be correct, “unless it is so grossly disproportionate to the injuries suffered so as to shock the Court’s conscience and sense of justice.”⁶

6. Defendant argues that there was no factual evidence to prove disclosure of Plaintiff’s protected healthcare information. Additionally, Defendant asserts that Plaintiff failed to make a *prima facie* showing of causation.

7. The jury considered the testimony of several witnesses. The credibility

² *Himes v. Liu*, 2008 WL 4147579, at *1 (Del. Super.) (citing *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979)).

³ *Mazda Motor Corp. v. Lindahl*, 706 A.2d 526, 530 (Del. 1998).

⁴ *Burgos v. Hickok*, 695 A.2d 1141, 1145 (Del.).

⁵ *Cooke v. Murphy*, 2014 WL 3764177, at *2 (Del.). *See also Burgos v. Hickok*, 695 A.2d 1141, 1145 (Del. 1997) (“[T]he trial judge should set aside a jury verdict pursuant to a Rule 59 motion only when the verdict is manifestly and palpably against the weight of evidence, or for some reason, justice would miscarry if the verdict were allowed to stand.”).

⁶ *Cooke*, 2014 WL 3764177, at *2.

of the witnesses was a central issue in this case. Defendant's witnesses denied seeing any protected healthcare information. Plaintiff's evidence supported the contention that under the circumstances, his fellow employee must have seen the fax in order to deliver it to Plaintiff.

8. Plaintiff also presented circumstantial evidence that the behavior of his colleagues in his workplace changed after the fax was received. Defendant proffered evidence that Plaintiff's termination was unrelated to anything except work performance. Plaintiff provided evidence that his performance reviews did not justify termination prior to the fax, and that thereafter his employer moved inexorably toward firing him.

9. Defendant also argues that Plaintiff's evidence of physical injury was insufficient to recover damages for mental anguish and emotional distress as a result of alleged negligence. Defendant asserts that the trial evidence demonstrated that there was no physical injury and that Plaintiff's depression and emotional issues were preexisting conditions.

10. Plaintiff presented evidence that his depression increased after the incident. Plaintiff's position was corroborated by a witness who described his emotional and mental state following the fax. Further, Plaintiff's physician testified that she prescribed medication as treatment for Plaintiff's physical responses to disclosure of the information to his employer. The jury was instructed that in a

negligence case, emotional damages must have a physical manifestation.

11. Defendants alternatively moves that the Court grant remittitur “because the verdict is against the great weight of evidence and clearly was the result of passion, prejudice and partiality in direct contravention to jury instructions.”

12. In the absence of exceptional circumstances, the jury’s award of damages

should be deemed appropriate. Under Delaware law, enormous deference is given to jury verdicts. Reasonable differences of opinion are resolved in favor of the jury’s opinion. The court will set aside a jury’s verdict only in the rare case where it is “clear that the award is so grossly out of proportion to the injuries suffered, as to shock the court’s conscience and sense of justice.”⁷ Remittitur is required only when the award of damages is so excessive that it must have been based on passion, prejudice or misconduct, rather than on objective consideration of evidence presented at trial.

13. The purpose of remittitur is to remove the portion of the verdict that shocks the Court’s conscience and sense of justice. Remittitur cannot be used to replace the jury’s verdict with what the Court, sitting as a trier of fact, would have imposed. Nor is remittitur imposed to reduce the award to what an objectively reasonable jury might have determined. Out of the respect and deference which must

⁷*Mitchell v. Haldar*, 2004 WL 1790121, at *3 (Del.Super.).

be accorded to the jury, remittitur functions to reduce a verdict to the high end of the spectrum of reasonableness.⁸

14. Finally, Defendant contends that the Court committed reversible legal error in certain evidentiary rulings. The Court finds no legal error for the reasons set forth on the trial record at the time each evidentiary objection was considered. To the extent Defendant is raising evidentiary issues for the first time, those objections are waived as untimely, and not rising to the level of plain error justifying a new trial or other relief.

15. The Court finds that Defendant's motions must be denied. Both parties presented evidence that hinged in large measure on the credibility of witnesses. Credibility should be decided by a jury. Disputed facts are the province of the jury. The jury's verdicts are supported by both direct and circumstantial evidence. The jury deliberated for a reasonable amount of time and answered the questions on the Special Verdict Form in a logical manner. The Court finds that the verdicts are ones that a reasonably prudent jury could have reached. The damages awards are not grossly disproportionate to the injuries suffered, and do not shock the Court's conscience and sense of justice.

⁸*Barba v. Boston Scientific Corp.*, Del. Super., C.A. No. 11C-08-050, Johnston, J. (Oct. 9, 2015) (Slip. Op. At 36-37).

THEREFORE:

Defendant's Renewed Motion for Judgment as a Matter of Law is hereby

DENIED;

Defendant's Alternative Motion for a New Trial is hereby **DENIED;** and

Defendant's Alternative Motion for Remittitur is hereby **DENIED.**

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston