

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 NORTH KING STREET, SUITE 10400  
WILMINGTON, DE 19801-3733  
TELEPHONE (302) 255-0670

March 13, 2015

Randal E. Robbins, Esquire  
Ashby & Geddes  
500 Delaware Avenue, 8<sup>th</sup> Floor  
P.O. Box 1150  
Wilmington, DE 19899

John D. Balaguer, Esquire  
Christine Kane, Esquire  
White and Williams LLP  
824 North Market Street, Suite 902  
P.O. Box 709  
Wilmington, DE 19899

Richard Galperin, Esquire  
Courtney R. Hamilton, Esquire  
Morris James LLP  
500 Delaware Avenue, Suite 1500  
Wilmington, DE 19899

RE: Shahida Sultana, S. Abdullah Jaffery, individually and as the personal representative of the Estate of Syed Yousuf Jaffery, S. Zubair Jaffery, S. Owaise Jaffery, and Seema Jeelani, v. Inpatient Consultants of Delaware, Inc., a Delaware corporation d/b/a IPC of Delaware, Selvam Mascarenhas, M.D. and CCHS Health Services, Inc., a Delaware corporation  
C.A. No. N11C-12-069 WCC

Submitted: November 14, 2014

Decided: March 13, 2015

**OPINION**

On Plaintiffs' Motion for New Trial - **DENIED**

Dear Counsel:

The Court has before it Plaintiffs' Motion for New Trial. For the following reasons, Plaintiffs' Motion will be DENIED.

Plaintiff Mr. Jaffery was admitted to Christiana Hospital following a motor vehicle accident in December 2010. While a patient at the hospital, Mr. Jaffery was given a tracheostomy, and was cared for by the doctors of Inpatient Consultants of Delaware (“IPC”), including Defendant Dr. Mascarenhas, and by nurses and staff of Christiana Care Health Service (“CCHS”). Following his tracheostomy, Mr. Jaffery was put on cardiac monitoring and pulse oximetry monitoring by doctors at IPC. On February 21, 2011, Dr. Mascarenhas examined Mr. Jaffery, and entered an off-cardiac monitor order and a CT scan of Mr. Jaffery’s chest. As a result, Mr. Jaffery was transported to Radiology for a CT scan without cardiac or pulse oximetry monitoring. While in Radiology, awaiting his CT scan, Mr. Jaffery’s tracheostomy tube clogged with mucus and he went into respiratory arrest. Mr. Jaffery was resuscitated but suffered severe brain damage as a result of the incident and ultimately died on July 7, 2011. At trial, the jury found that neither Dr. Mascarenhas nor the nurses at CCHS breached the standard of care.

In considering a motion for new trial, the Court should give the jury’s verdict “enormous deference,”<sup>1</sup> and “should not set aside a verdict...unless, on review of all the evidence, the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result.”<sup>2</sup> “A new trial should be granted only when the great weight of the evidence is against the jury verdict.”<sup>3</sup>

Plaintiffs’ first argument in support of their Motion centers around one of the core issues at trial. That is, the interpretation of the off-cardiac monitoring order by the nurses and whether the order issued by the physician was a breach of the standard of care. Plaintiffs argue that the conduct of the physician and the nurses was so incongruous that no reasonable juror could have concluded that neither Dr. Mascarenhas nor the nurses at Christiana Care Health Services (“CCHS”) breached the standard of care no matter how the “off monitor order” was interpreted.

Plaintiffs contend now, as they did at trial, that if the order entered by Dr. Mascarenhas applied to both cardiac monitoring and pulse oximetry monitoring, the doctor breached the standard of care because he failed to confer with Mr. Jaffery’s tracheostomy team prior to taking him off of pulse oximetry monitoring as was required by the standard of care asserted by Plaintiffs. Alternatively, Plaintiffs argue that if the order entered by Dr. Mascarenhas applied only to cardiac monitoring, the nursing staff breached the standard of care because they failed to send Mr. Jaffery to Radiology with a pulse oximetry monitor which had previously been ordered and never rescinded.

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<sup>1</sup> *Cuonzo v. Shore*, 958 A.2d 840, 844 (Del. 2008).

<sup>2</sup> *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979); *see also Town of Cheswold v. Vann*, 9 A.3d 467, 472 (Del. 2010).

<sup>3</sup> *Patterson v. Coffin*, 854 A.2d 1158 (Del. 2004).

These same arguments were presented to the jury by counsel during trial and were contested by Defendants. The fallacy in Plaintiffs' argument is that it is based upon the jury accepting the opinions of their experts and the assertions of what was required under the standard of care. This case was to a large degree a battle of experts and it is within the exclusive provision of the jury to assess the credibility of those witnesses and determine how much weight to give that testimony. Clearly there were opinions from defense experts that supported a different conclusion. While Plaintiffs may be unhappy with the jury's failure to accept their version of the events and their significance, it does not provide a basis to reverse the jury's decision. The Court will not interject itself into the jury's decision when there was evidence clearly supporting its determination as was the case here.

Plaintiffs also argue that the Court committed improper error by excluding testimony of the Plaintiffs' nursing expert on whether it was a breach of the standard of care for the doctor and the nurse to have different interpretations of the same order. During the trial, Plaintiffs' nursing expert was testifying as to the conflicting interpretations of the order and was asked whether it is "acceptable under the standard of care for a nurse to have one interpretation -- [of an order and the physician to have another?]." <sup>4</sup> Defendant Mascarenhas' counsel objected and called for a side bar expressing concern that the question implicated the standard of care applicable to a doctor and Plaintiffs' nursing expert was not qualified to give such opinion. The Court commented that:

"the fact that the doctor may have one opinion of what the note means and that the nurse has another opinion of what it means by itself isn't a violation of any standard of care....It's simply whether or not, if there was some confusion or uncertainty about the note, what would the nurse have to do and is there any indication that that occurred."<sup>5</sup>

During sidebar, Plaintiffs' counsel stated that his purpose for asking the question was to ask if the nurse had any question regarding the physician's order whether under the standard of care she was required to contact the physician.<sup>6</sup> The Court was satisfied that this line of questioning was proper and allowed Plaintiffs to rephrase the question and proceed. However now, in their motion, Plaintiffs contend that the evidentiary ruling made by the Court was improper. To the extent the Court's comments can be considered a ruling, it finds that there was no error that requires a

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<sup>4</sup> Exhibit H to Plaintiffs' Opening Br. at 36:23-37:01.

<sup>5</sup> *Id.* at 38:1-13.

<sup>6</sup> *Id.* at 38:16-19.

new trial. Plaintiffs' expert's testimony was not excluded and Plaintiffs were allowed to inquire into the precise area they represented to the Court they were actually trying to elicit from the expert. Thus, there was no improper exclusion of evidence. The Court's comment regarding what the nursing expert would be allowed to testify about was correct, and there is no error to support a new trial. The end result here was the jury was allowed to hear the testimony desired by Plaintiffs.

Plaintiffs' final contention in support of their Motion is that the Court committed plain error in the instructions it gave to the jury in response to a note. During the jury deliberations, the jury provided a note, asking, among other things, whether they were "to judge the people or the 'policies'/practices associated with the hospital." The Court conferred with counsel in formulating an answer to this question and ultimately instructed the jury that they were to judge the people under the standard of care, not the policies or practices of the hospital.<sup>7</sup>

Plaintiffs contend that if the jury found that the doctor and nurses complied with CCHS policies and practices, they had to in effect judge the policies and practices of CCHS to evaluate their conduct under the standard of care. While it is well settled that "an improper jury instruction may amount to plain error despite a [party's] acceptance of it,"<sup>8</sup> Plaintiffs here did not merely accept the instruction, they actually proposed it. In formulating a response to the note, Plaintiffs requested that the Court say "it is the conduct of the people and whether or not they met the standard of care and not the policies."<sup>9</sup> Based on the allegations in the Complaint and the testimony in this trial, this was a correct statement of the law and to have suggested otherwise to the jury would have been error. The Plaintiffs recognized this when the note was reviewed and discussed with the Court. As such, the Court finds that there was no plain error with respect to the instruction proposed by the Plaintiffs and the instruction they advocated for at trial was correct.

The circumstances here that led to the death of Mr. Jaffery were tragic and unfortunate and have dramatically affected his wife and family. The Court can appreciate why the family believes these events could have been prevented and their difficulty understanding why the standard of care was not violated. The Court agrees it is unfortunate that, regardless of the standard of care, monitoring of Mr. Jaffery did not continue, as it is likely this tragic event would have been prevented. The case was presented fully to the jury by outstanding counsel that obviously cares about this family, but these cases are difficult to establish, and tragic medical events do not always equate to medical negligence. Such is the case here.

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<sup>7</sup> There was no evidence introduced at trial that the policies and practices of the hospital were improper or inconsistent with the standard of care.

<sup>8</sup> *Bullock v. State*, 775 A.2d 1043, 1054 (Del. 2001) (citing *Wainwright v. State*, 504 A.2d 1096, 1099-1100 (1986)).

<sup>9</sup> Ex. N to Defendants' Joint Response at 4:15-21.

For all of these reasons, Plaintiffs' Motion for New Trial is hereby denied.

**IT IS SO ORDERED.**

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.

WCCjr:twp