

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BARBARA ANN CAHALL and	§
RONALD E. CAHALL,	§ No. 350, 2004
	§
Plaintiffs Below,	§
Appellants,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ C.A. No. 01C-12-031
DEBBIE D. THOMAS,	§
	§
Defendant Below,	§
Appellee.	§

Submitted: April 13, 2005

Decided: May 16, 2005

**ORDER**

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

This 16th day of May 2005, it appears to the Court that:

1) The plaintiffs-appellants, Barbara A. Cahall and Ronald E. Cahall, wife and husband (“plaintiffs”) brought this negligence action against the defendant-appellee, Debbie D. Thomas (“defendant”). The complaint asserts a claim for bodily injuries, pain and suffering by Barbara Cahall, and a claim for loss of consortium by Ronald Cahall. The claims arise from an automobile accident in which the defendant’s vehicle struck Barbara Cahall’s vehicle from behind.

2) The jury returned a verdict in favor of Barbara Cahall in the amount of \$2,500. The jury made no monetary award to Ronald Cahall for his loss of consortium claim.

3) The plaintiffs filed a motion for a new trial or, in the alternative, a motion for additur. The plaintiffs' motion for a new trial was limited to the issue of damages. The Superior Court denied the motion.

4) The plaintiffs' notice of appeal to this Court states that the appeal is only from the denial of the motion for a new trial and attaches a copy of the Superior Court's memorandum opinion to the notice of appeal.

5) The Cahalls have raised five issues on appeal. Only the first two contentions relate to the denial of their motion for a new trial.

6) More than fifty years ago, this Court held that a notice of appeal from the denial of a motion for a new trial did not bring the final judgment up for appellate review.<sup>1</sup> Therefore, only the first two issues raised by the plaintiffs can be considered by this Court. As a result of the limited notice of appeal, the last three issues are not properly before this Court.<sup>2</sup>

7) The plaintiffs first argue that the trial judge improperly allowed the jury to consider the financial impact upon the defendant in assessing damages. The plaintiffs contend that the trial judge, upon receipt of a note

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<sup>1</sup> *Trowell v. Diamond Supply Co.*, 91 A.2d 797 (Del. 1952).

<sup>2</sup> *Id.*

from the jury, did not instruct the jury to stop deliberating and that the jury's note confirms that they measured damages based upon the financial impact on the defendant. The jury's note asked: "If we find Debbie Thomas negligent and award Barbara damages, will Debbie incur any additional damages?"

8) How a trial judge handles a note from a jury is a matter of judicial discretion. In this case, the jury reached a verdict before the trial judge could reach counsel. The record reflects that after the jury sent the note to the trial judge, the jury consulted the trial court's instructions and answered their own question.

9) The trial judge's charge to the jury provided that "[t]he purpose of a damages award . . . is just and reasonable compensation for the harms or injury done." The trial judge also admonished the jury that the "verdict must be based solely on the evidence in the case" and that any sympathy the jury may feel for any party may not influence their verdict. It is presumed that the jury followed the trial judge's instructions.<sup>3</sup> Accordingly, the plaintiffs' first argument is without merit.

10) The plaintiffs' second challenge is to the jury's award of damages. According to the plaintiffs, the damage awards were inadequate,

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<sup>3</sup> See *Capano v. State*, 781 A.2d 556, 589 (Del. 2001).

as a matter of law, with regard to both plaintiffs. The trial judge may not disturb a jury verdict unless the evidence preponderates so heavily against the verdict that a reasonable jury could not have reached the result and the amount of the award is “so grossly out of proportion [to the injuries suffered] as to shock the [trial judge’s] conscience and sense of justice.”<sup>4</sup>

11) The record reflects that the nature and extent of Barbara Cahall’s injury was disputed. The jury was also presented with evidence that Barbara Cahall’s injuries were not related to the accident with the defendant. With respect to Ronald Cahall’s loss of consortium claim, there was sufficient evidence for the jury to find that Ronald Cahall’s marital relationship did not change or suffer as a result of the accident. The trial judge concluded that the jury rationally responded to the evidence and made its award of damages accordingly. The record supports the trial judge’s conclusion.

12) We have concluded that the plaintiffs’ motion for a new trial was properly denied for the reasons stated in the Superior Court’s memorandum opinion dated July 16, 2004.

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<sup>4</sup> *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979) (citations omitted).

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment  
of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice