

STATE OF MICHIGAN  
COURT OF APPEALS

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BRENDA CLYBURN, Personal Representative of  
the Estate of KELLY CLYBURN, Deceased,

UNPUBLISHED  
June 19, 2001

Plaintiff-Appellant,

v

VIVIAN JOHNSON, M.D., EMERGENCY  
PHYSICIANS MEDICAL GROUP, P.C., and  
MERCY HEALTH SERVICES,

No. 220699  
Wayne Circuit Court  
LC No. 97-716020-NH

Defendants-Appellees.

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Before: Hoekstra, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

In this medical malpractice action, plaintiff appeals as of right from an order entered on a jury verdict in the amount of \$111,820.05 against defendants and denying plaintiff's motion for additur or a new trial on the issue of future non-economic damages. We affirm.

Plaintiff argues that the trial court erred in denying her motion for additur based upon the jury's failure to award future non-economic damages. Except for decedent's daughter, the jury did not award decedent's family any future non-economic damages. Plaintiff contends that she is entitled to additur because the jury ignored the great weight of the evidence in this regard. We disagree.

"This Court accords due deference to a trial court's decision regarding the grant or denial of additur and reverses a trial court's decision only if an abuse of discretion is shown. Likewise, trial courts have discretion in granting a new trial, and appellate courts will not interfere absent a palpable abuse of discretion." *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 172; 568 NW2d 365 (1997). "The proper consideration in granting or denying additur is whether the jury award is supported by the evidence." *Id*. The trial court's inquiry is limited to objective considerations regarding the evidence presented and the conduct of the trial. *Settingington v Pontiac General Hospital*, 223 Mich App 594, 608; 568 NW2d 93 (1997).

After carefully reviewing the record, we cannot conclude that the trial court abused its discretion in denying plaintiff's motion for additur or a new trial. Contrary to plaintiff's argument that the evidence of future non-economic damages was uncontested, evidence was

presented that may have raised doubts on this issue. For example, evidence was introduced on cross-examination that decedent was mentally disabled and suffered from depression. There was also evidence that decedent was estranged from certain family members, such as his father, and plaintiff withdrew any claim for damages on behalf of the father. Moreover, although defendants may not have presented any evidence regarding future non-economic damages, it was the province of the jury to accept or reject the testimony of plaintiff's witnesses. *Joerger, supra* at 172.

Several of decedent's family members briefly testified regarding the loss of the decedent and how much they continue to miss him. Johnny Clyburn testified that decedent was like his best friend and they did everything together. It was difficult to get over the death of his brother and he did not think he would ever get over it. Decedent's sister, Christina Clyburn, testified that she still misses decedent and that he was like a best friend. Decedent's brother, Carlos Clyburn, testified that he misses decedent "a lot." Lastly, decedent's mother testified that she misses decedent and still thinks about him. However, "[t]he jury was free to accept or reject plaintiff's testimony regarding their damages." *Joerger, supra* at 172. It should also be noted that plaintiff's testimony regarding the family's future non-economic damages was minimal, and the jury could have concluded that an award of future non-economic damages was not warranted. Furthermore, the jury did award decedent's daughter \$123,700 in damages, including an award for future non-economic damages. The jury recognized the other family members' grief and loss as evidenced by the award of \$35,000 in past non-economic damages. The jury may have found that this amount was sufficient based on the evidence presented. Moreover, "[t]he trial court presided over the lengthy trial, observed the evidence and witnesses and had the unique opportunity to evaluate the jury's reaction to the witnesses and proof[s]." *Setterington, supra* at 609. Accordingly, we cannot conclude that the trial court abused its discretion in denying plaintiff's motions as the evidence supported the jury's verdict.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Michael J. Talbot  
/s/ Brian K. Zahra