

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

July 21, 2008

Bruce L. Hudson, Esquire  
Law Office of Bruce L Hudson  
800 King Street, Suite 302  
Wilmington, DE 19801

Kenneth A. Green  
SBI #  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

RE: ***Jane Doe, a minor, by Brenda Clements, individually and as next friend  
of Jane Doe v. Kenneth A. Green***  
**C.A. No. 06C-04-005 ESB**

Date Submitted: April 14, 2008

Dear Messrs. Hudson and Green:

This is my decision on plaintiff Jane Doe's<sup>1</sup> motion for additur or a new trial in this personal injury case involving allegations of sexual abuse by an adult male against a female child. Doe lived next door to defendant Kenneth A. Green and babysat for his children. Green had sexual intercourse with Doe in his house a number of times over an eight-month period of time in 2005. Doe and Green were, at the time, 14 and 37, respectively. An expert witness for Doe testified at trial that she suffered from post-traumatic stress disorder and will require counseling for an extended period of time. The jury found that Green's acts were reckless, intentional and outrageous, but only awarded Doe \$12,500 in compensatory damages and \$200 in punitive damages.

In deciding a motion for additur or a new trial, the court must give enormous deference to the jury's verdict.<sup>2</sup> In a motion for a new trial, the court starts with the fundamental principle that the jury's verdict is presumed to be correct.<sup>3</sup> In a jury trial, the function of the fact finder does not belong to the court, but rather to the jury.<sup>4</sup> The jury's verdict should not be disturbed unless it is clearly shown to be the result of passion, prejudice, partiality or corruption, or that it was manifestly in disregard of the evidence or applicable rules of law.<sup>5</sup> Furthermore, the court will not upset the verdict of a jury unless "the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result."<sup>6</sup> The decision whether to grant additur or a new trial lies within the sound discretion of the trial court.<sup>7</sup> A court may set aside a jury award if it is so grossly out of proportion to the injury suffered as to shock the court's conscience and sense of

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<sup>1</sup> A pseudonym is used to protect her privacy.

<sup>2</sup> *Greenage v. Ward*, 2001 WL 695541, at \*1 (Del. Super. May 10, 2001).

<sup>3</sup> *Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997).

<sup>4</sup> *Caldwell v. White*, 2005 WL 1950902 at \*3 (Del. Super. May 25, 2005).

<sup>5</sup> *Young*, 702 A.2d at 1237.

<sup>6</sup> *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979).

<sup>7</sup> *Gannett Co. v. Re*, 496 A.2d 553, 558 (Del. 1985).

justice.<sup>8</sup>

The jury's verdict is so grossly out of proportion to the psychological injuries suffered by Doe that it does shock my conscience and sense of justice. Green is a child molester. He repeatedly raped Doe, leaving her suffering from post-traumatic stress disorder and needing counseling for an extended period of time. Notwithstanding this, the jury only awarded her a paltry sum of money. This verdict is truly shocking to me. Therefore, I have granted Doe's motion for a new trial.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary

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<sup>8</sup> *Id.*