

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

MICHELE J. REID,)
) C.A. No. 01C-10-046 (JTV)
Plaintiff,)
)
v.)
)
MICHELLE A. HINDT,)
)
Defendant.)

Submitted: April 28, 2008
Decided: July 31, 2008

William D. Fletcher, Jr., Esq., Schmittinger & Rodriguez, Dover, Delaware.
Attorney for Appellant.

Jeffrey A. Young, Esq., Young & McNelis, Dover, Delaware. Attorney for
Appellee.

Upon Consideration of Plaintiff's
Motion for Re-argument
DENIED

VAUGHN, President Judge

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ORDER

Upon consideration of the plaintiff's motion for reargument, the defendant's opposition, and the record of the case, it appears that:

1. Following two jury trials, both of which resulted in zero verdicts, the Court decided the plaintiff's motion for a third trial by awarding an additur of \$2,500 and conditioning denial of a new trial upon the defendant's acceptance of the additur.¹

2. The plaintiff has filed a motion for reargument pursuant to Rule 59(e) in which she makes the following contentions: that additur has never been utilized in the manner in which the Court used it in this case; that additur is traditionally a plaintiff's remedy; that the plaintiff should have the option of accepting or rejecting the additur; that assuming, arguendo, that the defendant can request additur, all factual inferences should be resolved in the plaintiff's favor; and that the Court's decision denies the plaintiff her right to a jury trial under the Delaware Constitution of 1987.

3. The standard of review for a Rule 59(e) motion for reargument is well-established.² A motion for reargument will usually be denied unless the Court has "overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision."³ A motion for reargument should not be used merely to rehash the arguments already decided by the Court, nor will the Court consider new

¹ *Reid v. Hindt*, 2008 Del. Super. LEXIS 99.

² *State v. Brooks*, 2008 Del. Super. LEXIS 53, at *2.

³ *Lamourine v. Mazda Motor of Am.*, 2007 Del. Super. LEXIS 334, at *2.

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arguments that the movant could have previously raised.⁴ The movant “has the burden of demonstrating newly discovered evidence, a change in the law or manifest injustice.”⁵

4. The Court has previously held that neither remittur nor additur violate the right to a jury trial under the Delaware Constitution.⁶

5. In at least two cases where it appears that a plaintiff has moved only for a new trial after a zero verdict, as here, the Court has awarded an additur and conditioned the denial of a new trial upon the defendant’s acceptance of the additur.⁷ In a third, the Court did the same thing where a jury verdict was in the same amount as the plaintiff’s medical expenses and was, therefore, by inference, a zero verdict for general damages.⁸ I rely upon these precedents.

6. The plaintiff also contends that the amount of the additur is insufficient because her medical bills in evidence were \$7,552.36. However, I am not persuaded

⁴ *Brooks*, 2008 Del. Super. LEXIS 53, at *2 (internal quotation marks omitted); *St. Search Partners, L.P. v. Ricon Int’l, L.L.C.*, 2006 Del. Super. LEXIS 200, at *4; *see also Steadfast Ins. Co. v. Eon Labs Mfg.*, 1998 Del. Super. LEXIS 681, at *2 (“Motions for reargument will be denied where they rely on grounds not raised in the original proceeding or where they merely advance the same matters that were already considered in the original proceeding.”).

⁵ *Brooks*, 2008 Del. Super. LEXIS 53, at *2 (internal quotation marks omitted).

⁶ *Carney v. Preston*, 683 A.2d 47, 49–58 (Del. Super. Ct. 1996).

⁷ *Junginger v. Betts*, 2008 Del. Super. LEXIS 130; *White v. State Farm Mut. Auto. Ins. Co.*, 2004 Del. Super. LEXIS 283.

⁸ *Lyon ex rel. Denmon v. Cline*, 2005 Del. Super. LEXIS 81.

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that any of the \$7,552.36 of expenses introduced into evidence are proximately related to the injuries which the plaintiff sustained in the accident.⁹

7. Therefore, the plaintiff's motion for reargument is ***denied***.

IT IS SO ORDERED.

President Judge

oc: Prothonotary
cc: Order Distribution
File

⁹ The jury instructions included a no-fault benefits instruction which informed the jury that medical expenses incurred within two years of the accident were paid under such benefits.