

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

VINCENT MICHAEL SIMON,	:	
	:	
Plaintiff,	:	
	:	C.A. No.: 02C-01-133 SCD
v.	:	
	:	
BEEBE MEDICAL CENTER, INC.,	:	
et al.,	:	
	:	
Defendants.	:	

Submitted: March 10, 2004
Decided: March 15, 2004

O R D E R

This 15th day of March, 2003, the application of defendants, Beebe Medical Center and Michael Salvatore, M.D., for a ruling that the standard of proof which must be applicable to an award of punitive damages is *clear and convincing evidence*, not *preponderance of the evidence*, and the plaintiff's response thereto having been considered, it appears that:

(1) Defendants argue that the standard of proof is an "open question." Plaintiff acknowledges that there is no case on point, although it is the practice in Delaware to impose the usual civil standard, *preponderance of the evidence*, in the determination of punitive damages, that practice is reflected in the Pattern Jury Instructions--Punitive Damages §22.27. The burden of proof has not been challenged directly.

(2) The Delaware Medical Malpractice statute has recently been subjected to careful review by the legislature. A modification of the statute was enacted effective July 11, 2003.¹ An earlier draft of the modification contained a change in the provision related to punitive damages.² That provision addressed the use of monies resulting from such an award, not the standard of proof applicable. Clearly, the legislature had the relevant provision under scrutiny.

WHEREFORE, It is reasonable to assume that the legislature, while engaging in a comprehensive review of the statute, would have changed the burden of proof had it desired to do so. It did not. I find no basis in public policy or in statutory language to support the adoption of a different standard of proof.

The application of the defendants is DENIED.

IT IS SO ORDERED this 15th day of March, 2004.

Susan C. Del Pesco

Original to Prothonotary
xc: Counsel of Record

¹ See DEL. CODE ANN. tit. 18, §6853, Affidavit of Merit provisions added to the section.

² See H.B. 182, 142nd Gen. Assem. (Del. 2003).