

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

JOHN PAUL JONES and
SUE ELLEN JONES, as Guardians
Ad Litem for JEFFREY ALLEN JONES,
a disabled person,

Plaintiffs,

v.

C.A. No. 00C-06-075 CLS

DELAWARE COMMUNITY
CORPORATION FOR INDIVIDUAL
DIGNITY and
LEONARD E. CONYERS,

Defendants.

Submitted: January 9, 2004

Decided: April 29, 2004

On Defendants' Motion for Judgment Notwithstanding the Verdict,
or in the alternative, for a New Trial.

DENIED.

MEMORANDUM OPINION

Michael D. Bednash, Esquire, and Morton Richard Kimmel, Esquire, Kimmel
Carter Roman & Peltz, P.A., Wilmington, Delaware, Attorneys for Plaintiff.

Kevin J. Connors, Esquire, Marshall Dennehey Warner Coleman & Goggin,
Wilmington, Delaware, Attorney for Defendant Delaware Community Corporation
for Individual Dignity.

SCOTT, J.

I. INTRODUCTION

Defendant Delaware Community Corporation for Individual Dignity (“DELCCID”) has filed a Motion for Judgment Notwithstanding the Verdict pursuant to Superior Court Civil Rule 50 or, in the alternative, a Motion for a New Trial pursuant to Rule 59. Upon consideration of the evidence presented at trial and a review of DELCCID’s motions and Plaintiffs’ response, this court concludes DELCCID’s motions should be **DENIED**.

II. BACKGROUND

This case arises from Plaintiffs’ claims against Defendant DELCCID for negligent and reckless supervision and negligent and reckless failure to stop Defendant Leonard E. Conyers’ (“Conyers”) unlawful sexual assaults against Jeffrey Allen Jones (“Jones”) which occurred in 1998 and 1999. Plaintiffs obtained a default judgment against Conyers, making the only issue against Conyers at trial the amount of damages to be awarded. A jury trial was held from November 10 through 20, 2003. The jury returned its verdict in favor of Plaintiffs, awarding \$150,000 in compensatory damages and \$1.44 million in punitive damages. The jury determined that Conyers was 60% negligent and DELCCID was 40% negligent in causing to Jones. The jury determined that Conyers was 10% reckless and DELCCID was 90% reckless in awarding punitive damages.

DELCCID filed a Motion for Judgment Notwithstanding the Verdict under Superior Court Civil Rule 50 or, in the alternative, a Motion for a New Trial under Rule 59 on December 8, 2003. Plaintiffs filed a response on December 19, 2003.

III. STANDARD OF REVIEW

The court does not weigh the evidence in deciding a Motion for Judgment, but rather, views the evidence in a light most favorable to the non-moving party.¹ The court, drawing all reasonable inferences, determines if it may find a verdict for the party having the burden.² In order to grant judgment as a matter of law, the court must find “there is no legally sufficient evidentiary basis for a reasonable jury to find for the [non-movant] on that issue.”³ Thus, “the factual findings of a jury will not be disturbed if there is any competent evidence upon which the verdict could reasonably be based.”⁴

In a Motion for a New Trial, the court starts with the fundamental principle that the jury’s verdict is presumed to be correct.⁵ The court must determine whether the jury’s verdict is against the great weight of evidence.⁶ The jury’s

¹ *Mumford v. Paris*, 2003 WL 231611 at *2 (Del. Super.).

² *Id.*

³ *Brown v. Liberty Mutual Ins. Co.*, 774 A.2d 232, 245 (Del. 2001) (internal citation omitted).

⁴ *Mumford* at *2 (internal citation omitted).

⁵ *Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997).

⁶ *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979) (internal citation omitted).

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.⁷ If a case “involves a controverted issue of fact in which the evidence is conflicting and out of the conflict may be gathered sufficient evidence to support a verdict for either party, the issue of fact will be left ... to the jury....”⁸ 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.”⁹

IV. DISCUSSION

DELCCID makes nine arguments in support of its Motions:

1. DELCCID is entitled to judgment notwithstanding the verdict because the evidence presented warrants judgment in its favor as a matter of law.
2. DELCCID is entitled to a new trial because the jury’s finding that DELCCID was negligent and reckless was against the weight of the evidence.

⁷ *Young*, 702 A.2d at 1237 (internal citation omitted).

⁸ *Storey*, 401 A.2d at 463 (internal citation omitted).

⁹ *Id.* at 465 (internal citation omitted).

3. DELCCID is entitled to a new trial because the jury verdict, finding that DELCCID was less negligent, but more reckless, than Conyers was inconsistent and must be stricken.
4. DELCCID is entitled to a new trial because the jury's punitive damages award was unconstitutionally grossly excessive.
5. DELCCID is entitled to a new trial because the court erred in permitting Plaintiffs to introduce into evidence the discovery deposition of Michael Partie because he was not unavailable and because his testimony was inadmissible hearsay.
6. DELCCID is entitled to a new trial because the court erred in precluding evidence of Jeffrey Allen Jones' prior complaint of sexual abuse by his father.
7. DELCCID is entitled to a new trial because the court erred in precluding DELCCID from introducing Plaintiffs' Form 30 designation of Dr. Raskin as Plaintiffs' expert where Plaintiffs, despite a written letter request and a formal Request for Production, failed to produce Dr. Raskin's three expert reports until November 11, 2003 – after commencement of trial.
8. DELCCID is entitled to a new trial because the court erred in permitting the jury to decide Plaintiffs' claim of negligent and

reckless supervision where expert testimony is necessary to support such a claim, but where Plaintiffs failed to introduce expert testimony in support of such claim.

9. DELCCID is entitled to a new trial because the court erred in admitting into evidence the Delaware Department of Health and Social Services Policy Memorandum Number 46.

The court will address each of the arguments in turn.

- A. DELCCID is entitled to judgment notwithstanding the verdict because the evidence presented warrants judgment in its favor as a matter of law.

DELCCID moved for a directed verdict on Plaintiffs' claims against it at trial preserving its right to move for judgment notwithstanding the verdict.

DELCCID argues the evidence presented by Plaintiffs was insufficient as a matter of law to support Plaintiffs' claims. DELCCID argues the evidence presented at trial shows DELCCID had in place, and followed, policies and procedures to reasonably supervise Conyers. DELCCID argues the fact that Conyers successfully concealed assaults on Jones does not necessarily mean DELCCID was negligent or reckless in its supervision of Conyers. DELCCID also argues Plaintiffs never established, through expert testimony, how DELCCID should have supervised Conyers and how its conduct deviated from that standard of care.

DELCCID goes on at some length in its brief detailing actions it claims show its

employees, and therefore DELCCID, acted reasonably in dealing with Conyers. DELCCID argues that because it acted immediately once allegations about Conyers were reported, its actions, therefore, must be found reasonable.

Plaintiffs counter there was sufficient evidence presented that DELCCID employees knew something was amiss in the relationship between Conyers and Jones yet did nothing. This lack of action on DELCCID's part was sufficient to support the jury's finding that DELCCID was both negligent and reckless in failing to stop Conyers' sexual assaults on Jones.

As noted above, only if reasonable persons could reach but one conclusion is the moving party entitled to judgment.¹⁰ The court finds the actions detailed by DELCCID support the jury's finding of negligent and reckless supervision of Conyers by DELCCID. The court finds DELCCID's argument that these facts support only a conclusion of no negligence or recklessness on the part of DELCCID to be without merit. DELCCID's argument that it was not negligent or reckless because it acted immediately once allegations concerning Conyers came to light misses the point. The court finds the jury could reasonably have concluded that the failure of employees to come forward and make allegations against Conyers was enough to support a finding of negligent and reckless conduct on the part of DELCCID. DELCCID's actions after the allegations came to light may

¹⁰ *Gannett Co., Inc. v. Re*, 496 A.2d 553, 557 (Del. 1985) (internal citation omitted).

well have been reasonable, but the reprehensible conduct had already occurred by that time. The court thus concludes there is no basis for granting judgment notwithstanding the verdict.

B. DELCCID is entitled to a new trial because the jury's finding that DELCCID was negligent and reckless was against the weight of the evidence.

DELCCID argues the jury's verdict was manifestly against the weight of the evidence thus entitling them to a new trial. DELCCID argues a reasonable jury would not have reached the verdict that DELCCID was negligent and reckless in its supervision of Conyers and awarded the damages that were awarded.

DELCCID incorporates the same arguments to support its request for judgment in its alternative request for a new trial. Plaintiffs counter that the evidence DELCCID propounds actually supports the jury's verdict instead of weighing heavily against it.

As noted above, the evidence must preponderate heavily against the jury verdict such that a reasonable jury could not have reached such a verdict before a trial judge should set that verdict aside.¹¹ The court finds in the case at bar that the evidence presented at trial does support the jury's verdict. The court finds

¹¹ *Storey*, 401 A.2d at 465.

DELCCID's argument to be without merit. The court, therefore, finds no basis for granting a new trial on this issue.

C. DELCCID is entitled to a new trial because the jury verdict, finding that DELCCID was less negligent, but more reckless, than Conyers was inconsistent and must be stricken.

DELCCID argues the jury's finding that DELCCID was only 40% negligent but 90% reckless is illogical and inconsistent and must be stricken. Plaintiffs counter that the allocation of negligence and recklessness are separate issues having no bearing on each other as different standards apply to each.

Delaware law is clear that when the jury's answers to special interrogatories are inconsistent, the verdict must be stricken unless there is an explanation that avoids the inconsistency.¹² "The jury's verdict will stand as long as the court finds one possible method of construing the jury's answers as consistent with one another and with the general verdict."¹³

The court finds different standards apply to the concepts of negligence and recklessness. For a party to be found negligent, the jury must find that a party acted without the care that a reasonably prudent and careful person would exercise

¹² *CitiSteel USA, Inc. v. Connell Ltd. Partnership*, 1998 WL 309801 at **4 (Del.).

¹³ *Id.* (internal citation omitted).

in similar circumstances.¹⁴ For a party to be found reckless, the jury must find that a person acted with a knowing disregard of a substantial and unjustifiable risk.¹⁵ The allocation of fault regarding negligence, therefore, has no bearing on the allocation of fault regarding recklessness. *CitiSteel* is thus distinguishable, as in that case, the jury found both that the defendant had paid the amount due but had breached the contract. In the case at bar, the court finds the differing percentages of fault between DELCCID's negligence and its recklessness is reasonable. Since Conyers, as an individual, actively committed the sexual assaults against Jones, it is logical for the jury to have concluded Conyers was more negligent in causing the harm. On the other hand, DELCCID stood in a special relationship to Jones. It is logical for the jury to have concluded that it was more egregious for DELCCID to have breached this duty to Jones, supporting a finding that DELCCID was more reckless. The court thus finds no inconsistency in the jury's findings. The court, therefore, concludes that DELCCID's argument is without merit and there is no basis for granting a new trial on this issue.

¹⁴ *Duphily v. Delaware Elec. Coop., Inc.*, 662 A.2d 821, 828 (Del. 1995).

¹⁵ *Jardell Co., Inc. v. Hughes*, 523 A.2d 518, 530 (Del. 1987).

D. DELCCID is entitled to a new trial because the jury's punitive damages award was unconstitutionally grossly excessive.

DELCCID argues the punitive damages award is excessive and must be stricken. DELCCID points to recent U.S. Supreme Court decisions suggesting only single digit multipliers between compensatory damages and punitive damages will satisfy due process.¹⁶ DELCCID notes that the ratio of DELCCID's punitive damages to its compensatory damages is almost 22x.¹⁷ DELCCID further argues the evidence does not support the finding that its behavior was reprehensible or outrageous, thus there is no support for the jury's award of punitive damages at all. DELCCID additionally argues Plaintiffs improperly appealed to the juror's passions in awarding damages by having a Catholic priest sit in the courtroom and that media accounts of alleged sexual abuse by Michael Jackson, which began just before the jurors began to deliberate, were also prejudicial.

Plaintiffs counter that the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's

¹⁶ *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, ___, 123 S.Ct. 1513, 1524 (2003).

¹⁷ DELCCID's 40% share of the \$150,000 awarded as compensatory damages amounts to \$60,000 while its 90% share of the \$1.44 million awarded as punitive damages amounts to \$1.296 million. \$1.296 million is 21.6 times greater than \$60,000.

conduct. Plaintiffs argue that DELCCID’s allowing Jones to be repeatedly sexually assaulted over a 13-month period is extremely reprehensible. Such reprehensible conduct supports the imposition of a high punitive damages award, both to punish the conduct of DELCCID as well as to send a clear message of deterrence to others similarly situated.

Delaware law is clear that mere negligence will not justify the imposition of punitive damages.¹⁸ A defendant’s conduct must exhibit at least a reckless indifference to the rights of others before punitive damages may be awarded.¹⁹ “[E]normous deference is given to jury verdicts. In the face of any reasonable difference of opinion, courts yield to the jury’s decision. It follows that, in the absence of exceptional circumstances, the validity of damages determined by the jury should likewise be presumed.”²⁰ A jury award will be “set aside only in the unusual case where it is clear that the award is so grossly out of proportion to the injuries suffered as to shock the [c]ourt’s conscience.”²¹

As noted above, the court finds DELCCID stood in a special relationship to Jones. The court finds a breach of this duty, by allowing the repeated sexual

¹⁸ *Jardell Co., Inc.*, 523 A.2d at 529.

¹⁹ *Id.*

²⁰ *Young*, 702 A.2d at 1236.

²¹ *Id.* at 1236-37 (internal citation omitted).

assaults by Conyers, is sufficient to support the jury's finding of recklessness on the part of DELCCID. The court also finds that the important ratio to consider in deciding whether a punitive damages award is excessive is the ratio of total compensatory damages to total punitive damages. In the case at bar, this ratio is 9.63x. The court finds an award of punitive damages of slightly less than ten times the compensatory damages does not rise to a level that "shocks the conscience" of the court. Nor does the court find that the total amount awarded as damages is grossly disproportionate to the injuries Jones suffered.

The court finds the presence of a priest and media accounts of Michael Jackson's alleged abuse are issues that were not objected to on the record at time of trial. The court holds that DELCCID, therefore, has no standing to raise these issues at this time. Even if DELCCID had standing to raise these issues now, the court finds DELCCID's arguments irrelevant and without merit.

The court, therefore, finds no reason to adjust or overturn the amount of the jury's award for punitive damages. The court thus finds there is no basis for granting a new trial on this issue.

E. DELCCID is entitled to a new trial because the court erred in permitting Plaintiffs to introduce into evidence the discovery deposition of Michael Partie because he was not unavailable and because his testimony was inadmissible hearsay.

DELCCID argues Michael Partie's ("Partie") absence from trial was partially the fault of Plaintiffs who did not serve Partie with a subpoena until the week prior to the commencement of trial. DELCCID argues, therefore, Partie was not "unavailable" for trial according to the definition in D.R.E. 804, which would allow his deposition testimony to be entered into evidence. DELCCID also argues portions of Partie's testimony were hearsay within hearsay and should not have been allowed into evidence.

Plaintiffs counter that Partie was served with a subpoena to testify at trial and they were not responsible in any way for Partie's nonavailability at the time of trial. Thus, Partie's deposition was properly admitted as DELCCID had opportunity to cross-examine him at the deposition. Additionally, Plaintiffs point out that Partie's testimony, concerning what he overheard, was not presented for the truth of the matter, but merely to show why Partie believed he should start an investigation. Thus, the utterance was allowable under the state of mind exception to the hearsay exclusion.

The court finds DELCCID's arguments unavailing. The fact that the subpoena was not served until the week prior to trial is insufficient to show Plaintiffs were attempting to avoid having Partie appear in person at trial. Because the civil trial calendar is not set until the week before trial is to commence, in fact, it is logical for Plaintiffs to wait to be sure trial was going to proceed before

serving the subpoena. As DELCCID had an opportunity to cross-examine Partie at the deposition, the fact that DELCCID could not cross-examine him at trial is irrelevant.

The court also finds DELCCID's argument regarding hearsay unavailing. As Plaintiffs point out, the statements of others to Partie were not introduced for their truth, but to show evidence of Partie's state of mind. The court thus finds there is no basis for granting a new trial on this issue.

F. DELCCID is entitled to a new trial because the court erred in precluding evidence of Jeffrey Allen Jones' prior complaint of sexual abuse by his father.

DELCCID argues the court erred in granting Plaintiffs' Motion in Limine excluding evidence Jones had previously lied about his father's sexually abusing him. DELCCID argues the evidence is relevant for attacking the character for truthfulness of Jones. Plaintiffs counter the exclusion was proper for two reasons. First, the information was irrelevant. Conyers confessed to the sexual assaults and there was no allegation Jones was falsely accusing Conyers. Second, even if the information were relevant, the evidence would have been unfairly prejudicial in violation of D.R.E. 403.

The court finds DELCCID'S arguments unavailing. DELCCID'S argument that the evidence goes to Jones' truthfulness as related to damages issues, not

liability issues, is particularly meritless. The court affirms its initial decision to exclude the evidence. First, the evidence is not relevant. Whether Jones was sexually assaulted by Conyers is not at issue – Conyers pled guilty to multiple sexual assault charges. Second, even if the information were relevant, the court finds the evidence would be unfairly prejudicial because of the nature of the charges, which were later retracted. The court thus finds there is no basis for granting a new trial on this issue.

G. DELCCID is entitled to a new trial because the court erred in precluding DELCCID from introducing Plaintiffs' Form 30 designation of Dr. Raskin as Plaintiffs' expert where Plaintiffs, despite a written letter request and a formal Request for Production, failed to produce Dr. Raskin's three expert reports until November 11, 2003 – after commencement of trial.

DELCCID argues the court's refusal to admit Plaintiffs' Form 30 Interrogatory Answers to Questions 2 and 5 into evidence amounted to unfair prejudice. DELCCID argues Plaintiffs listed Dr. Raskin as an expert, but never produced his records when requested. DELCCID claims it first saw three reports, manifestly unfavorable to Plaintiffs, when Plaintiffs' expert, Dr. O'Brien, was deposed the day after trial commenced. Had the records been timely produced, DELCCID could have arranged for Dr. Raskin to appear at trial. DELCCID argues at the least, it should have been permitted to tell the jury the Plaintiffs had retained

Dr. Raskin as expert, his records were requested but never provided, and allow the jury to make the inference the records were adverse to Plaintiffs' position on injuries and damages.

Plaintiffs counter DELCCID never subpoenaed Dr. Raskin's records. Plaintiffs state they provided DELCCID with all medical records, including those of Dr. Raskin. Plaintiffs additionally argue there was no prejudice to DELCCID because it had the reports prior to cross-examination of Plaintiffs' expert witnesses.

The court finds DELCCID's arguments without merit. DELCCID was aware for some time that Dr. Raskin was listed in Plaintiffs' responses to the Form 30 Interrogatories. The court finds DELCCID's failure to act upon that information is its own shortcoming. The argument that DELCCID would have called Dr. Raskin as an expert is specious, as Delaware law is clear that a party may not convert an opposing party's expert into an expert for themselves.²² The court thus finds there is no basis for granting a new trial on this issue.

H. DELCCID is entitled to a new trial because the court erred in permitting the jury to decide Plaintiffs' claim of negligent and reckless supervision where

²² *Schmidt v. Hobbs*, 1988 WL 31989 at *1 (Del. Super.) (declining to compel expert witnesses retained by defendants to testify for plaintiff, holding that that would place the experts in the untenable position of breaching their duty of loyalty to their employer).

expert testimony is necessary to support such a claim, but where Plaintiffs failed to introduce expert testimony in support of such claim.

DELCCID argues expert testimony was necessary to establish the standard for negligent supervision of Conyers. As Plaintiffs introduced no such expert testimony, there was no basis for allowing the claim for negligent supervision to remain, as lay persons are not knowledgeable about what proper policies should be for supervision of employees providing assistance to the mentally disabled.

Plaintiffs counter that the matter was not beyond the comprehension of an ordinary person and thus expert testimony was not necessary. Plaintiffs point out that jurors may use their own common sense and logic in deciding issues presented.

In Delaware, if the matter is not beyond the comprehension of non-experts and is within the grasp of the jury, expert testimony is not necessary.²³ The jury's use of logic and common sense are permissible.²⁴

In the case at bar, the court finds the issue of whether DELCCID was negligent in supervising Conyers was not complicated and thus within the

²³ *Lewis v. State*, 416 A.2d 208, 209 (Del. 1980); *Gannett Co., Inc. v. Kanaga*, 750 A.2d 1174, 1181 (Del. 2000).

²⁴ *Chudnofsky v. Edwards*, 208 A.2d 516, 518 (Del. 1965); *Mazda Motor Corp. v. Lindahl*, 706 A.2d 526, 533 n.28 (Del. 1998).

understanding of the jury. The court finds common sense and logic were sufficient to make a determination on the issue of negligent supervision. The jury could reasonably find the conduct of DELCCID was reprehensible enough that it breached whatever the applicable standard might have been, without a need to articulate that particular standard. The court thus finds expert testimony was not necessary to determine what proper procedures might be for DELCCID's supervision of Conyers. The court thus finds there is no basis for granting a new trial on this issue.

I. DELCCID is entitled to a new trial because the court erred in admitting into evidence the Delaware Department of Health and Social Services Policy Memorandum Number 46.

DELCCID argues Delaware Department of Health and Social Services Policy Memorandum Number 46 ("P.M. 46") was introduced into evidence over its objection. P.M. 46 was then used to establish a standard of care that was breached by DELCCID by not acting on a suspicion of a sexual relationship between Conyers and Jones. DELCCID argues P.M. 46 does not set forth an applicable standard of care and was therefore, inadmissible.

Plaintiffs counter P.M. 46 was listed as one of DELCCID's exhibits in the pre-trial stipulation. In addition, DELCCID questioned one of its witnesses at length concerning the document.

The court finds DELCCID's arguments to be without merit. By listing P.M. 46 in its list of exhibits in the pre-trial stipulation as well as utilizing the document extensively during examination of one of its witnesses, DELCCID waived its right to object to introduction of the document into evidence.²⁵ The court properly ruled P.M. 46 could not be used to support a jury charge that violation of the policy in P.M. 46 was negligence *per se*, because there was no evidence P.M. 46 had been validly adopted by legislative directive as the law of the State. However, the jury could properly use the document to infer an applicable standard of care, even if violation of P.M. 46 did not amount to negligence *per se*. The court thus finds there is no basis for granting a new trial on this issue.

²⁵ While not directly applicable, as P.M. 46 was not used to refresh the memory of the testifying witness in the case at bar, the court finds the principles stated in D.R.E. 612 applicable. D.R.E. 612(a) entitles an adverse party to have a document used to refresh the memory of a witness produced. D.R.E. 612(c) further allows the adverse party to introduce into evidence the portions of the document that relate to the testimony of the witness.

V. CONCLUSION

For the above reasons, the court finds no legal basis for granting either of DELCCID's motions. Therefore, DELCCID's Motion for Judgment Notwithstanding the Verdict is **DENIED**. DELCCID's Motion for a New Trial is **DENIED**.

IT IS SO ORDERED.

Calvin L. Scott, Jr.
Superior Court Judge