

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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September 17, 2004

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RE: Soudabeh M. Burton, Widow of James T. Burton, Jr., James W. Burton, Son of James T. Burton, Jr., and James W. Burton, Personal Representative of the Estate of James T. Burton, Jr. v. Christiana Care Health Services, Inc., a/k/a Christiana Care Health System, a corporation of the State of Delaware, and Delaware Surgical Group, P.A., a corporation of the State of Delaware

C.A. No. 01C-10-267 WCC

Submitted: April 29, 2004

Decided: September 17, 2004

Dear Counsel:

The Court has before it three pending motions in the above-captioned matter. They are Plaintiff's Motion for A Partial New Trial, Christiana Care's Motion for Costs and Delaware Surgical Group's Motion to Tax Costs. The Court will address each one separately.

The first is Plaintiff's Motion for A Partial New Trial, arguing that the jury's finding of negligence on behalf of the hospital staff was not the proximate cause of Mr. Burton's death is so inconsistent and unsupported by the evidence that a new trial as to Christiana Care Health Services is warranted. The Court is unpersuaded by this argument and for the reasons set forth below, the Motion will be denied.

First, the Plaintiff's case as to the negligent conduct by the nursing staff was not particularly persuasive. At best there was perhaps some issue as to the nurses' monitoring of the NG tube the evening of Mr. Burton's death after he had returned from some additional testing or even perhaps the Plaintiff's incessant comments about the propriety of providing ice chips as comfort to Mr. Burton finally resonated with the jury. However, to the extent that there was "some" evidence to support a negligent finding, there was overwhelming evidence from the medical professionals who testified both for the Plaintiff and the Defendant that would easily provide a basis for the jury to conclude that this negligence had nothing to do with Mr. Burton's death. Doctors Roeder, Traube and Conway all would have provided a basis for the jury to reach this conclusion. While Mr. Burton's death was tragic, the evidence supported a finding by the jury that the conduct of the nursing staff did not cause his death. The jury was appropriately and correctly instructed, and their findings were not inconsistent or against the weight of the evidence.¹ As such, the Motion for A Partial New Trial is denied.

The next motion is Defendant Christiana Care Health Services, Inc.'s request that they be reimbursed for costs pursuant to Superior Court Rule 54 and 10 *Del. C.* § 8906. While costs are generally awarded to the prevailing party, the Court does have discretion to review the bills to ensure they are reasonable and appropriate.²

Doctor Traube has submitted a bill for which the Defendant Christiana Care Health Services, Inc. is requesting \$7,820.45. The Court will not award travel time, particularly at \$400 an hour, since it was the Defendant's choice to hire an expert that was not in the local vicinity. It is also impossible from the expert's billing to ascertain what hours are associated with "consultation" and those related to "court time." The Court did not

¹ *Rowe v. Kim*, 824 A.2d 19, 23 (Del. Super. Ct. 2003).

² *Donovan v. Delaware Water & Air Res. Comm'n*, 358 A.2d 717, 722-723 (Del. 1976).

record the amount of time that Dr. Traube actually spent testifying, so it will accept the Plaintiff's assertion, which is un rebutted by the defense, that it was approximately two hours of court time relating to this testimony. Allowing for a reasonable period of preparation, the Court awards 4 hours at a rate of \$500 per hour for a total of \$2,000.00

The next area of requested reimbursement is the costs associated with the RN expert, Debra Jackson. Again, the billing reflects three hours of actual testimony and preparation time on the day she testified. Unfortunately her bill does not reflect an hourly rate or anything specific as to the charge for actual testimony. If counsel for Defendant Christiana Care Health Services will provide this information to the Court by October 15, 2004, it will issue an order in relation to this testimony.

Finally, the Defendant Christiana Care Health Services also argues and requests reimbursement for the exhibits it prepared for trial. This request will be denied. The preparation of these exhibits was done in spite of the technology available to the defense in the courtroom which would have made the preparation of these exhibits totally unnecessary. While it is hard to break defense counsel's habits which he has developed over years of excellent practice, the Court should not endorse the practice by awarding these costs.

The final motion which the Court has before it is that of Defendant Delaware Surgical Group requesting reimbursement for their expert, Dr. Belgrade. Unfortunately, the bill of Dr. Belgrade provides so little detail the Court cannot perform its oversight function to determine its reasonableness. As an example, the Court is unable to determine whether the \$3000.00 bill is simply a one time established fee that Dr. Belgrade charges regardless of the amount of actual trial testimony or whether this is based upon some hourly rate. As a result, if counsel for Delaware Surgical Group will provide to the Court a more detailed submission as to Dr. Belgrade's billing, it will consider awarding an amount in reference to his testimony. The Court would ask that this information also be provided by October 15, 2004.

I believe this resolves all outstanding motions that are presently before the Court, and again I appreciate counsel's expert presentation during the trial of this matter. All of you represented your clients well and in an extremely professional manner.

Sincerely yours,

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Aimee Bowers, Case Manager