

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BERNADETTE A. SULLIVAN,	§
	§ No. 340, 2002
Plaintiff Below,	§
Appellant,	§
v.	§ Court Below – Superior Court
	§ of the State of Delaware,
	§ in and for New Castle County
KATHERINE SANDERSON,	§ C.A. No. 98C-08-021
	§
Defendant Below,	§
Appellee.	§

Submitted: June 16, 2003

Decided: September 26, 2003

Before **VEASEY**, Chief Justice, **HOLLAND** and **STEELE**, Justices.

**ORDER**

This 26th day of September 2003, it appears to the Court that:

1) This is an appeal from a final judgment of the Superior Court.

In this civil action for negligence, the jury found that the plaintiff had failed to prove causation and judgment was entered in favor of the defendant.

2) The Superior Court's denial of the plaintiff's motion for a new trial was the basis for the plaintiff's appeal to this Court. We remanded this case to the trial judge to:

re-examine the record in light of *Amalfitano v. Baker*, 794 A.2d 575, 578 (2001) . . . and determine whether there is testimony in the record contradicting the plaintiff's expert testimony based upon objective findings of muscle spasm; and, if so, was it credible evidence upon which a reasonable juror could rely to

reject plaintiff's proffered evidence of injury proximately caused by the accident.

3) Upon remand, the trial judge determined that there "was an objective finding, which undermined this court's previous holding that plaintiff's complaints were entirely subjective." The trial judge intends to vacate the judgment denying the plaintiff's motion for a new trial, and offer the plaintiff the choice of either a \$4,500 additur or a new trial.

4) If the additur is declined, the trial judge questioned that if a new trial is warranted on all issues and, in particular, whether the second jury should hear plaintiff's shoulder complaints:

While the original jury considered evidence about the shoulder injury based on objective symptoms, the original jury nevertheless clearly relied on Defendant's counter-experts and rejected the 1996 collision as a cause of Plaintiff's shoulder problems. The court sees no reason why that finding should be disturbed, nor why Plaintiff should have another chance on that point.

5) We allowed the parties to file supplemental memos to address the trial judge's remand decision. Predictably, the plaintiff requested a new trial on all issues and the defendant recommended the trial judge's suggestion of a limited second trial. Unfortunately, neither party addressed the trial judge's suggestion of offering an additur to the plaintiff.

6) We agree that the Superior Court's judgment that denied the plaintiff's motion for a new trial should be vacated. We also agree that the

plaintiff's motion for a new trial should be granted if the additur offered by the Superior court is rejected. We have concluded that, in the interest of justice, the new trial should not be limited.<sup>1</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Superior Court that denied the plaintiff's motion for a new trial is vacated. This matter is remanded for further proceedings in accordance with this order.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>1</sup> *Accord Di Gioia v. Schetrumpf*, 251 A.2d 569, 571 (Del. Super. 1969).