

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 07-12319-GAO

BARBARA J. BRADLEY and MICHAEL BRADLEY,
Plaintiffs,

v.

DAVID SUGARBAKER, M.D.,
Defendant.

OPINION AND ORDER

December 23, 2014

O'TOOLE, D.J.

The plaintiffs ask this Court to order a new trial pursuant to Federal Rule of Civil Procedure 59(a)(1), arguing that “it was an error to dismiss the medical battery claim” at summary judgment. (Mem. Supp. at 1 (dkt. no. 303).)

“A district court may set aside the jury’s verdict and order a new trial only if the verdict is against the law, against the weight of the credible evidence, or tantamount to a miscarriage of justice.” Casillas-Diaz v. Palau, 463 F.3d 77, 81 (1st Cir. 2006). Here, the plaintiffs argue not that the jury’s verdict was wrong as to those theories it considered, but rather that a new trial is necessary to allow the jury to consider an additional theory not presented during the trial because the Court had previously granted the defendant’s motion for summary judgment as to that theory. This circumstance is clearly outside the scope of Rule 59.

The plaintiffs did not move for reconsideration of the grant of summary judgment on the battery theory before trial. The case went to trial on the remaining theories, and the verdict addressed those theories. The new trial motion is not addressed to trial error. The correctness of

the summary judgment ruling may be challenged on appeal, but dissatisfaction with that ruling is not a basis for the grant of a new trial.

For the foregoing reasons, the Motion for New Trial (dkt. no. 302) is DENIED. The Motion for Leave to File Reply (dkt. no. 305) is also DENIED because it likewise does not argue appropriate grounds upon which a new trial may be granted.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge