RENDERED: JULY 19, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000636-MR

HAZARD NURSING HOME, INC. — APPELLANT

v.

APPEAL FROM PERRY CIRCUIT COURT
HONORABLE WILLIAM ENGLE, III, JUDGE
ACTION NO. 07-CI-00518

MARK AMBROSE; AND MARK AMBROSE AS ADMINISTRATOR OF THE ESTATE OF ANNA AMBROSE, DECEASED — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Hazard Nursing Home, Inc., brings this appeal from a January 9, 2011, judgment of the Perry Circuit Court upon a jury verdict awarding Mark Ambrose, individually, and as administrator of the Estate of Anna Ambrose,

deceased, damages of $30,000 for pain and suffering and $225,000 in punitive damages for Hazard Nursing Home Inc.'s negligent treatment of Anna. We affirm.

On July 10, 2006, Anna Ambrose presented to Appalachian Regional Healthcare, Inc. (Hospital) complaining of pain and swelling in her left thigh. Anna was a sixty-year-old woman with a medical history that included blindness, hypertension, diabetes, and end stage renal disease. She was admitted to the Hospital with a diagnosis of possible cellulitis. On July 31, 2006, Anna's physician released her from the Hospital to hospice care; Anna was then transferred directly to the Hazard Nursing Home, Inc. (Nursing Home).

Upon Anna's arrival at the Nursing Home, Anna became the patient of Mitchell Wicker, M.D. Wicker admitted Anna to the Nursing Home for rehabilitation with recommendations of physical and occupational therapy, rather than hospice care. Anna remained at the Nursing Home over the next twenty-five days, and on August 24, 2006, she was transferred back to the Hospital. Anna was admitted to the Hospital to treat rectal bleeding and debridement of the pressure ulcer on her coccyx.[1] Upon Anna's readmission to the Hospital, the pressure ulcer on her coccyx was identified as Stage IV, and additional pressure sores were noted on her heels and perianal area. The pressure ulcer on Anna's coccyx also tested positive for E-coli bacteria. Anna was ultimately discharged from the Hospital and

[1] It is uncontroverted that Anna Ambrose presented to Hazard Nursing Home, Inc. (Nursing Home) with a pressure ulcer on her coccyx. Pressure ulcers are rated according to the Skin Integrity Assessment, and there is a dispute between the parties regarding the severity of Anna's pressure ulcer upon her admission to the Nursing Home. Anna's patient records reflect the ulcer was either a Stage III or a Stage IV upon her admission to the Nursing Home.

returned to the Nursing Home on September 9, 2006. She died there on November 6, 2006.

Mark Ambrose, individually and as administrator of the Estate of Anna Ambrose, deceased, (collectively referred to as Ambrose) filed a complaint in Perry Circuit Court against the Nursing Home and the Hospital. Therein, Ambrose alleged that the Nursing Home was negligent in its care of Anna and that such negligence caused her pain, suffering and ultimately her death.

A jury trial ensued. Ambrose's wrongful death claim was voluntarily dismissed at the close of Ambrose's proof. Ultimately, the jury found that the Nursing Home breached its standard of care as to Anna and awarded $75,000 in damages for Anna's physical pain and suffering; of this amount the jury apportioned $30,000 to the Nursing home.[2] The jury also found that the Nursing Home acted in reckless disregard in its care of Anna and awarded $225,000 in punitive damages. This appeal follows.

The Nursing Home initially contends that the trial court erred by denying its motion for directed verdict upon the issue of negligence. Specifically, the Nursing Home argues that there was no evidence of medical causation; thus, its motion for directed verdict upon same should have been granted.

A directed verdict is proper only when considering the evidence as a whole, reasonable jurors could not have found in favor of the nonmoving party.

[2] The jury awarded compensatory damages and apportioned 60 percent of fault to Appalachian Regional Healthcare, Inc. (Hospital) and 40 percent to the Nursing Home. The Hospital settled with Ambrose prior to trial. The Nursing Home was the only remaining defendant at trial.

Kentucky Rules of Civil Procedure (CR) 50.01; *Lee v. Tucker*, 365 S.W.2d 849 (Ky. 1963). In other words, a directed verdict is proper only where there exists "a complete absence of proof on a material issue." *Dollar Gen. Partners v. Upchurch*, 214 S.W.3d 910, 915 (Ky. App. 2006) (quoting *Taylor v. Kennedy*, 700 S.W.2d 415, 416 (Ky. App. 1985)). And, the trial court must consider the evidence in a light most favorable to the nonmoving party. *Zapp v. CSX Transp., Inc.*, 300 S.W.3d 219 (Ky. App. 2009). With the foregoing in mind, we now consider whether the trial court erred by denying the Nursing Home's motion for directed verdict.

In the complaint, Ambrose alleged that the Nursing Home was negligent in its care and treatment of Anna. To prove negligence, it is incumbent upon plaintiff to demonstrate duty, breach of duty, causation and damage. *See Baylis v. Lourdes Hosp., Inc.*, 805 S.W.2d 122 (Ky. 1991). And, in most medical negligence cases, the testimony of an expert witness is necessary as "jurors are not competent to draw their own conclusions from the evidence without the aid of such expert testimony." *Id.* at 124 (citations omitted).

In this case, Ambrose called several witnesses to testify regarding the Nursing Home's negligent care of Anna. Jeffrey Levine, M.D., a geriatric and wound care specialist, testified as Ambrose's medical expert. Levine testified that Anna suffered from numerous pressure ulcers, with one being severe. According to Levine, Anna's severe pressure ulcer extended so deep as to be near a bone. Levine was critical of the Nursing Home's care of Anna and believed that the

Nursing Home violated the standard of care and was negligent. He explained that the Nursing Home concluded that Anna should lose weight and placed her on a restricted caloric diet despite the presence of pressure ulcers. Levine testified that the Nursing Home's failure to provide adequate nutrition to Anna was a violation of the standard of care and that the inadequate nutrition prevented Anna's body from healing the pressure ulcers and contributed to further deterioration of her pressure ulcers. Levine classified the Nursing Home's breach of the standard of care as "gross" and "reckless."

Daniel Nantz also testified as a lay witness for Ambrose. Nantz was the funeral director who picked up Anna's body from the Nursing Home after she died. Nantz testified that Anna's body emanated a strong odor of feces and urine. He also testified that the pressure ulcer on her coccyx was so large he could have put his fist in it and during the embalming process embalming fluid leaked out of this pressure ulcer.

Ambrose also called Sheila Noe, the administrator of the Nursing Home. Noe testified that her job duties included ensuring the Nursing Home's compliance with all laws and relevant regulations. Noe stated that she often relies upon the Long Term Care Survey Manual (LTCSM), which is a compilation of the federal law and regulations that govern nursing homes. Noe affirmed that the LTCSM establishes the minimal standard of care required by nursing homes. Noe also acknowledged that on some occasions during Anna's stay the Nursing Home had inadequate staff to provide the minimal care required.

Janet McKee, R.D., testified as a dietary expert for Ambrose. McKee opined that adequate nutrition is essential for the health of a patient and the patient's skin. She stated that adequate nutrition is necessary to prevent pressure ulcer formation and aid in healing of pressure ulcers. McKee testified that the Nursing Home did not provide Anna adequate nutrition and that by failing to do so, Anna's pressure ulcers could not heal. And, in McKee's opinion, the lack of adequate nutrition was a substantial factor in the formation and continued presence of Anna's pressure ulcers.

Ambrose also called an expert in nursing home administration, Byron Arbeit. Arbeit testified as to the standards applicable to administration of nursing homes as set forth by the LTCSM. He testified that the LTCSM requires that certain routine preventative care be taken in order to avoid a pressure ulcer. According to Arbeit, this preventative care includes adequate nutrition, hydration, bathing, turning, and repositioning of the patient. Arbeit reviewed the Nursing Home's care plan for Anna and stated that the care plan required two complete baths per week and sponge baths on other days. According to documentation of the Nursing Home, Ambrose pointed out, and the director of nursing admitted, the Nursing Home violated Anna's care plan by not bathing her often enough. Ambrose stated that there were several weeks when Anna did not receive a complete bath or the requisite number of sponge baths. Arbeit also opined that the Nursing Home failed to reposition Anna in her bed as required by the LTCSM. In Arbeit's expert opinion, Anna did not receive the routine preventative care as

required by the LTCSM and as required by Anna's care plan as to nutrition, hydration, bathing, turning and repositioning.

Considering the evidence in a light most favorable to Ambrose, as the nonmoving party, we believe more than sufficient evidence was presented demonstrating the Nursing Home breached the standard of care in its care and treatment of Anna and that such breach caused harm to Anna. Simply put, the evidence presented was sufficient to create a submissible issue to the jury and the trial court properly denied the Nursing Home's motion for directed verdict. *See Lee v. Tucker*, 365 S.W.2d 849.

The Nursing Home next contends that the trial court erred by allowing Arbeit, an expert in nursing home administration, to testify "regarding the medical standard of care." The Nursing Home specifically asserts that Arbeit is not a doctor or nurse and, thus, his testimony regarding whether Anna received adequate nutrition, hydration, bathing and repositioning was in violation of Kentucky Rules of Evidence (KRE) 702.

KRE 702 sets forth the standard for admissibility of expert testimony:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if:
>
> (1) The testimony is based upon sufficient facts or data;
>
> (2) The testimony is the product of reliable principles and methods; and

(3) The witness has applied the principles and methods reliably to the facts of the case.

KRE 702 largely codified the evidentiary pronouncements set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993). Under *Daubert*, scientific or specialized evidence must be relevant and reliable to be admissible. *Id.*; *Toyota Motor Corp. v. Gregory*, 136 S.W.3d 35 (Ky. 2004). And, the trial court serves as a gatekeeper and must initially determine the relevancy and reliability of such specialized evidence before such evidence may be admitted during trial. Our review of the trial court's ruling on the admissibility of such expert testimony under *Daubert* is limited. *Daubert*, 509 U.S. 579. We review the trial court's findings of fact as to the credibility of the evidence under the clearly erroneous standard, and the trial court's conclusion as to relevance under the abuse of discretion standard. *Lukjan v. Commonwealth*, 358 S.W.3d 33 (Ky. App. 2012).

The record reveals that counsel for both parties were at the bench during trial and were discussing the order in which witnesses would be called to testify. The Nursing Home was seeking to call a witness during Ambrose's case-in-chief. During this bench conference, the Nursing Home mentioned a *Daubert* hearing upon the qualification of Arbeit as an expert. The Nursing Home argued that Arbeit was not qualified to testify as to the medical standard of care. Ambrose agreed and stated Arbeit would not testify as to medical standard of care. Rather, Ambrose agreed that Arbeit would merely testify within his area of expertise; i.e.,

whether the Nursing Home complied with its own care plan for Anna and the standards of care set forth in the LTCSM. The trial court then offered to hold a *Daubert* hearing upon Arbeit's qualifications as an expert, but the Nursing Home withdrew the motion. From this record, we harbor grave doubt as to whether this issue is preserved for our review as the Nursing Home withdrew its *Daubert* motion.

Nevertheless, having reviewed Arbeit's testimony at trial, we believe that he testified within his realm of expertise in nursing home administration. At times, the standard of care outlined in the LTCSM may have slightly overlapped with the medical standard of care, but Arbeit was careful to base his opinion solely upon the standard of care outlined in the LTCSM and upon the Nursing Home's care plan for Anna. On several occasions, Arbeit prefaced his opinion as being purely based upon the standard of care contained in the LTCSM. Moreover, we note that the trial court sustained the Nursing Home's objections to Arbeit's testimony in several areas. Upon the whole, we are of the opinion that the trial court did not abuse its discretion or violate KRE 702 in permitting Arbeit's testimony.

The Nursing Home next contends that the trial court erred by failing to grant its motion for a new trial based upon the erroneous admission of "evidence of harm to non-parties." Specifically, the Nursing Home alleges that the trial court erred by allowing Ambrose's dietary expert, McKee, to testify regarding other instances where the Nursing Home failed to provide adequate nutrition to its

residents. The Nursing Home argues McKee's testimony violated Kentucky Rules of Evidence (KRE) 404(b).

In the case *sub judice*, the Nursing Home called its dietician, Lora Jacobs, as a witness.[3] Jacobs had worked for the Nursing Home's parent company for approximately fourteen years. During her testimony, Jacobs stated that she was only aware of one instance of the Nursing Home being cited for a dietary deficiency, which related to a "dented can." Thereafter, Ambrose's dietary expert, McKee, was asked if she was aware of nutritional citations or deficiencies imposed upon the Nursing Home, other than the dented can, during the last ten years. McKee responded "Yes, there were systemic issues with the quality control of food, with the administration of tube feedings, with . . . ." At this point, counsel for the Nursing Home objected to McKee's testimony concerning other instances of nutrition citations. The trial court sustained the objection and admonished the jury to disregard McKee's answer. McKee was instructed to give only a yes or no answer. Then, counsel for Ambrose repeated the question, and McKee simply answered "Yes, sir." When McKee mentioned the state surveys, counsel for Ambrose requested permission to approach the bench. Counsel argued that Jacobs's testimony regarding only one dietary deficiency opened the door to evidence of other dietary deficiencies. The trial court agreed and allowed Ambrose's counsel to ask McKee the question.

[3] Lora Jacobs apparently testified out of order and during the case-in-chief of Mark Ambrose, individually and as administrator of the Estate of Anna Ambrose, deceased.

KRE 404(b) generally prohibits the introduction into evidence of past acts or wrongs to prove action in conforming therewith. And, a trial court's decision as to the admission or exclusion of evidence is reviewed for abuse of discretion. *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575 (Ky. 2000). An abuse of discretion occurs if the trial court's acts were "unfair, arbitrary, unreasonable, or unsupported by sound legal practice." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). Additionally, "Kentucky has a long history of holding parties accountable who open the door to evidence." *Peters v. Wooten*, 297 S.W.3d 55, 63 (Ky. App. 2009) (citing *Harris v. Thompson*, 497 S.W.2d 422, 430 (Ky. 1973)). The legal concept of "opening the door" has been eruditely explained:

> The term "opening the door" describes what happens when one party introduces evidence and another introduces counterproof to refute or contradict the initial evidence. . . . If the first party objects to the counterproof, or loses the case and claims error in admitting it, typically the objection or claim of error is rejected because he "opened the door."

Robert G. Lawson, *The Kentucky Evidence Law Handbook* § 1.10[5] (4th ed. 2011) (quoting 1 Mueller & Kirkpatrick, *Federal Evidence*, § 12 (2d ed. 1994)).

In this case, we cannot say that the trial court abused its discretion by allowing McKee to testify that there were other instances of dietary deficiency citations as the Nursing Home clearly "opened the door" to this line of questioning. *See Norris v. Commonwealth*, 89 S.W.3d 411 (Ky. 2002). Hence, we hold that the trial court did not abuse its discretion as to McKee's testimony.

The Nursing Home next contends that the trial court erred by denying its motion for a new trial based upon Ambrose's improper references to the "wealth" of the Nursing Home during questioning of witnesses at trial and during counsel's closing argument.

We initially observe that the issue of improper references to the Nursing Home's wealth during the questioning and testimony of the witnesses was not raised in the Nursing Home's motion for a new trial; thus, the trial court could not have erred by failing to grant a new trial on this basis as it was not properly brought to the court's attention.

As concerns closing argument, we agree with the Nursing Home that Ambrose's counsel improperly injected the Nursing Home's wealth into his closing argument. However, we believe this error was waived by not making contemporaneous objections. The law is clear that an objection to statements made by counsel during closing argument must be made contemporaneously therewith. *Charash v. Johnson*, 43 S.W.3d 274 (Ky. App. 2000); 19 Sheryl G. Snyder, Griffin Terry Sumner, & Matthew C. Blickensderfer, *Kentucky Practice – Appellate Practice* § 4:4 (2012-2013 ed.). The objection must be contemporaneous so as to allow the trial court an opportunity to cure any error. *Charash*, 43 S.W.3d 274. Here, the Nursing Home did not allege that a contemporaneous objection was made to counsel's comments about the Nursing Home's wealth during closing, nor

upon review of the record can we find where an objection was made at closing. Therefore, we must conclude the error was waived.[4]

The Nursing Home next contends that the trial court erred by denying its motion for a new trial due to the prejudicial effect of an advertisement published in the local newspaper during trial. The full-page advertisement was apparently placed by a West Virginia attorney who frequently represents plaintiffs in litigation against nursing homes in the region. This advertisement ostensibly warned that the Nursing Home was cited by the government for mistreatment and negligent care of its residents.

The record reveals the trial court conducted individual *voir dire* of the jurors. Only one juror acknowledged that he had seen the advertisement in the local newspaper. Thereafter, this particular juror was excused as an alternate juror before jury deliberations began. Based upon these circumstances, we do not believe that the Nursing Home is entitled to a new trial due to the advertisement.

The Nursing Home further argues that the trial court erred by denying its motion for a new trial due to the jury receiving certain exhibits with portions highlighted by Ambrose's counsel or expert witnesses. When this issue was raised during trial, the trial court instructed both attorneys to ensure that the highlighted

[4] The Nursing Home does not state how this alleged error was preserved for appeal and specifically failed to identify any specific objections to trial counsel's references to wealth. As an appellate court, we will not search the record for objections; rather, the Nursing Home is required to begin each argument with a reference to preservation. Kentucky Rules of Civil Procedure 76.12(4)(c)(v). *See Monumental Life Ins. Co. v. Dep't. of Revenue*, 294 S.W.3d 10 (Ky. App. 2008). There were at least four objections made during Ambrose's closing argument for which prompt admonitions were given to the jury by the court. We can find nothing in the record on appeal to support the position that the trial court's admonitions did not satisfy any irregularities in the closing argument made by Ambrose's attorney.

copies were replaced with "clean" copies. Neither party complied with this directive nor did the Nursing Home bring the failure to do so to the court's attention at trial. Thus, we again conclude that any error was waived.

The Nursing Home finally contends that the trial court erred by failing to grant its CR 59 motion to alter, amend, or vacate the award of punitive damages. In this Commonwealth, punitive damages may be awarded upon a finding that the defendant acted with gross negligence. *Gibson v. Fuel Transport, Inc.*, ___ S.W.3d ___ (Ky. 2013). To justify an award of punitive damages:

> [T]here must be first a finding of failure to exercise reasonable care, and then an additional finding that this negligence was accompanied by wanton or reckless disregard for the lives, safety, or property of others.

Gibson, ___ S.W.3d at ____ (quoting *Horton v. Union Light, Heat & Power Co.*, 690 S.W.2d 382, 389–90 (Ky.1985)). And, KRS 411.184(2) mandates that clear and convincing evidence must prove reckless or wanton behavior.

Specifically, the Nursing Home makes three arguments that the trial court's jury instruction upon punitive damages was improper: (1) that there was a lack of evidentiary support, (2) that the jury based its punitive damages award upon improperly admitted evidence of "prior bad acts," and (3) that the punitive damage award was excessive. We address each argument *seriatim*.

As for the erroneous jury instructions, the Nursing Home argues that Ambrose presented no evidence that the Nursing Home acted with "wanton or reckless disregard for the lives, safety or property of others." The Nursing Home

thus asserts that the jury instruction as to punitive damages was improper and should not have been given to the jury. However, the punitive damage instruction given to the jury was the instruction actually tendered by the Nursing Home to the court at trial.

It is well-established that where a trial court adopts a proposed jury instruction of a party, that party's complaint as to the jury instruction will not be heard on appeal. *Wright v. House of Imports, Inc.*, 381 S.W.3d 209 (Ky. 2012). This rule is succinctly set forth as follows:

> The rule of appellate procedure that a party is estopped from complaining of errors committed or invited by himself applies to the instructions. A party can not [sic] complain of an instruction given in the exact, or substantially the same language of an instruction asked for by him, or if it is to the same effect. Nor can he question instructions which were prepared or requested by him, since he invited the error. This is so even though he excepted to the giving of it.

Gibson v. Thomas, 307 S.W.2d 779, 780 (Ky. 1957) (citation omitted).

In this case, the final instruction given to the jury on punitive damages was the instruction tendered by the Nursing Home. Despite the Nursing Home's argument that the instruction was erroneous, the Nursing Home cannot submit the instruction and then argue that such instruction was erroneous. Thus, we conclude the Nursing Home's argument that the jury instruction upon punitive damages was erroneous to be without merit.

The Nursing Home also asserts that the punitive damages award should be set aside because the award was based upon improper evidence of prior

bad acts. In particular, the Nursing Home argues that Ambrose's trial counsel made improper comments as to inadequate care of other residents in the Nursing Home and stated that the Nursing Home's patient care was not "what the people of Perry County deserve." Nursing Home's Brief at 33. Additionally, the Nursing Home points to the testimony of witness McKee that the Nursing Home had "systemic issues" with nutritional care. Nursing Home's Brief at 33.

It is clearly improper for a jury to award punitive damages based upon harm to nonparties. *See Sand Hill Energy, Inc. v. Smith*, 142 S.W.3d 153 (Ky. 2004). However, in this case, there is no indication that the jury's award of punitive damages was so based. As to McKee's testimony, as previously discussed, the Nursing Home opened the door to such testimony and cannot now complain. And, we are unable to conclude that Ambrose' trial counsel's remarks were of such improper character as to require reversal of the punitive award. The trial court further admonished the jury during closing argument not to consider experiences of nonparties in the Nursing Home. We, thus, reject the Nursing Home's claim that the punitive damage award should be set aside because of references to prior bad acts.

We next address the Nursing Home's argument that the award of punitive damages was excessive and unconstitutional. The Nursing Home asserts that the punitive damage award was some seven and one-half times the compensatory damage award. The United States Supreme Court has ruled that an excessive and disapportionate punitive damage award violates the constitutional

guarantee of due process under the United States Constitution. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003). When reviewing an award of punitive damages for excessiveness, we are guided by three factors set forth in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589, 134 L.Ed.2d 809 (1996). These factors are referred to as the "*Gore* guideposts." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 at 429, 123 S. Ct. 1513 at 1526. Under the *Gore* guideposts, the Court is to consider:

> (1) the degree of reprehensibility of the defendant's misconduct, (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award, and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

State Farm, 538 U.S. at 409, 123 S. Ct. at 1515. And, our review of the excessiveness of a punitive damage award proceeds *de novo*. *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 121 S. Ct. 1678, 149 L. Ed. 2d 674 (2001); *Ragland v. Diguiro*, 352 S.W.2d 900 (Ky. 2011).

As to the degree of reprehensibility of the Nursing Home's conduct, based upon the evidence introduced at trial, we must conclude that it was substantial. The Nursing Home not only failed to follow federal nursing home regulations for patient care but also failed to provide Anna the minimum care as required under its own care plan. Most importantly, the Nursing Home's failure to follow its own care plan revealed that the Nursing Home knew its care was substandard but, nevertheless, continued to provide substandard care to Anna. And, each instance

of substandard care to Anna constitutes a separate and distinct act of negligence or gross negligence on the part of the Nursing Home.

We now consider whether a disparity of harm suffered by Anna and the punitive damage award existed. Anna was terminally ill and not able to assist in her own care upon her admission to the Nursing Home. Anna required assistance with all necessities of life. In short, Anna was totally dependent on the Nursing Home and was clearly the most helpless of victims. Nevertheless, the evidence indicated that the Nursing Home's care of Anna was reckless and even failed to conform to its own care plan. Anna suffered from multiple pressure sores and one of these sores became infected with E-coli bacteria during her admission. Eventually, this pressure sore had to undergo surgical debridement. After she died, her body emanated with the odor of feces and urine. And, most disturbing, evidence indicated that Anna did not receive proper nutrition while a patient at the Nursing Home. Considering the substantial and considerable evidence of harm suffered by Anna, we do not believe a disparity exists.

As to the difference between the punitive damage award and the compensatory damage award, it is not excessive. The jury awarded a total of $75,000 in compensatory damages, with the Nursing Home being apportioned $30,000 of such award. The jury also awarded punitive damages against the Nursing Home in the amount of $225,000.[5] The Nursing Home calculates that the

[5] We also note that Ambrose asked for $500,000 in compensatory damages at trial and left open for the jury to determine what amount of punitive damages, if any, should be awarded, in his closing argument.

punitive damages were seven and one-half times the compensatory damages. On the other hand, Ambrose argues that the punitive damages were only three times the amount of the total compensatory damage award.

The United States Supreme Court has recognized there are no set limits on the ratio between compensatory damages and punitive damages. However, it observed that "single-digit multipliers are more likely to comport with due process." *State Farm Mut. Auto. Ins. Co.*, 538 U.S. at 410, 123 S. Ct. at 1516. The Kentucky Supreme Court has also rejected a concrete ratio but instead instructed the Court to consider the egregiousness of defendant's conduct. *Phelps v. Louisville Water Co.*, 103 S.W.3d 46 (Ky. 2003). In this case, the evidence supports a conclusion that the Nursing Home's conduct was highly egregious and was sufficient to justify the jury's award of punitive damages in the sum of $225,000.

For the foregoing reasons, the judgment of the Perry Circuit Court is affirmed.

ALL CONCUR.

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