

STATE OF MICHIGAN
COURT OF APPEALS

IRENE ZDROJEWSKI,

Plaintiff-Appellee/Cross-Appellant,

v

JOHN W. MURPHY, M.D. and WILLIAM
BEAUMONT HOSPITAL,

Defendants-Appellants/Cross-
Appellees.

FOR PUBLICATION
November 15, 2002

Nos. 224274; 226399
Oakland Circuit Court
LC No. 97-539598-FH

Before: Fitzgerald, P.J., and Bandstra and Gage, JJ.

FITZGERALD, P.J. (*dissenting.*)

I respectfully dissent because I believe the damages cap in MCL 600.1483, the statute that places a cap on noneconomic damages in medical malpractice actions, violates the right to trial by jury as guaranteed by the Michigan Constitution. I would reverse the trial court's finding that the statute is constitutionally sound.

In *Phillips v Mirac, Inc*, 251 Mich App 586; 651 NW2d 437 (2002), a panel of this Court analyzed an analogous provision of MCL 257.401(3)¹ and held that a statutory damages cap imposed by MCL 257.401(3) does not violate a plaintiff's right to a jury trial because (1) the Legislature had the authority to abolish or modify common law and statutory rights and remedies, and (2) the statute did not infringe on a jury's right to decide cases because the damages cap "in no way removes from the jury the determination of the facts and of the amount of damages . . . incurred." The majority in the present case has concluded that the reasoning in *Phillips* is equally applicable to the facts of this case and the requirements of MCL 600.1483.

In his dissenting opinion in *Phillips, supra*, Judge Meter found the damages cap in MCL 257.401(3) violates the right to trial by jury as guaranteed by the Michigan Constitution because our constitution confers a right to trial by jury, and because the right to trial by jury in Michigan extends to a determination of damages. *Id.* at slip op p 599. In addressing the *Phillips* majority's statement that "Where the Legislature can abolish a cause of action, it necessarily follows that it can limit the damages recoverable for the cause of action," Judge Meter opined:

¹ MCL 257.401(3) addresses the civil liability of persons engaged in the leasing of motor vehicles for injury caused by the negligent operation of the leased vehicle.

The fatal flaw with this argument is that the existence of a particular cause of action, at least in many instances, is not mandated *by the constitution*. Many causes of action are creatures of the Legislature, and therefore the Legislature is free to abolish these causes of action. The right to a jury trial, on the other hand, is indeed mandated by the constitution, as discussed earlier. Accordingly, the Legislature is *not free* to abrogate this right. In other words, while the Legislature may take away what *it* has given, it may not take away what *the constitution* has given. [*Id.* at slip op p 600.]²

In addressing the *Phillips* majority's statement that "the damages cap . . . in no way removes from the jury the determination of facts and of the amount of damages that the injured plaintiff incurred," Judge Meter opined:

Once again, this logic is fatally flawed. Indeed, in a case such as the instant one, having the jury "determin[e] . . . [the] facts and . . . the amount of damages that the injured plaintiff incurred" but then arbitrarily reducing this amount to a prescribed statutory number renders the jury's function purely illusory. [*Id.* at slip op p 601.]

In distinguishing the doctrine of remittitur, Judge Meter explained that:

this type of diminution, unlike one that occurs as a result of a statutory damages cap, does not render the jury's role illusory. Indeed, in cases of remittitur, a court may lower the jury's determination of damages *as a matter of law only after determining that the award is unsupported by the evidence introduced at trial*. See *Szymanski v Brown*, 221 Mich App 423, 431; 562 NW2d 212 (1997). By contrast, a statutory damages cap mandates a reduction solely because of legislative fiat, notwithstanding that a much greater amount of damages may be supported by the evidence introduced at trial. [*Id.* at 602.]

Thus, Judge Meter concluded that

the statute at issue required the trial court to arbitrarily reduce the amount of damages awarded by the jury without any determination regarding whether the award was supported by the evidence at trial. The necessary component of judicial discretion was eviscerated, and the constitutional right to trial by jury was violated. [*Id.* at 603.]

² I disagree with the majority's interpretation of this analysis. My position is not that the cause of action at issue here is guaranteed by any constitutional provision. Indeed the language quoted from Judge Meter's analysis indicates that particular causes of action are generally not mandated by the constitution. Rather, once the Legislature creates a cause of action, the Legislature cannot take away the right to a jury trial for that cause of action because the right to a jury trial is mandated by the constitution. As discussed earlier, the right to a jury trial extends to a determination of damages.

I agree with Judge Meter's reasoning and find that it applies equally to the statutory provision at issue in this case. For the reasons stated by Judge Meter in his dissent in *Phillips*, I would hold that the damages cap in MCL 600.1483 violates the right to trial by jury as guaranteed by the Michigan Constitution.

/s/ E. Thomas Fitzgerald