

STATE OF MICHIGAN
COURT OF APPEALS

BONNIE OFFER and ROBERT OFFER,

Plaintiffs-Appellants,

v

EMMANUEL P. AMAYO, M.D., PREFERRED
PROVIDER ORGANIZATION OF MICHIGAN,
INC., a Michigan corporation, and NORTH
OAKLAND MEDICAL CENTER, P.C., f/k/a
PONTIAC GENERAL HOSPITAL, a Michigan
corporation, jointly and severally,

Defendants-Appellees,

and

EMMANUEL P. AMAYO, M.D., P.C.,
and CLYDE VANDERPOOL, M.D.,

Defendants.

Before: Markey, P.J., and Sawyer and Neff, JJ.

PER CURIAM.

Plaintiffs appeal from a judgment of the circuit court entered on a verdict of no cause of action in favor of defendants on plaintiffs' medical malpractice claim. We affirm.

We first consider plaintiffs' argument that the jury's verdict which found plaintiffs' damages to be zero was against the great weight of the evidence. Plaintiffs, however, failed to preserve this issue for appeal by moving for a new trial in the trial court. Absent a motion for new trial, a challenge to verdicts on the ground that they are against the great weight of the evidence is not preserved for appellate review. *Heshelman v Lombardi*, 183 Mich App 72, 83; 454 NW2d 603 (1990).

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In the case at bar, plaintiffs failed to raise this issue in a motion for new trial. Plaintiffs did, in fact, file such a motion—but only after they had filed a claim of appeal. In fact, the trial court denied plaintiffs’ motion on the basis that the trial court lacked jurisdiction because plaintiffs had already invoked the jurisdiction of this Court. We agree. MCR 7.208 clearly provides that the circuit court is divested of jurisdiction once a claim of appeal is filed, with limited exceptions. None of those exceptions includes a motion for new trial in a civil action.¹

In this case, judgment was entered on January 4, 1996. On January 24, the claim of appeal was filed with this Court. On January 25, plaintiffs filed their motion for new trial in the trial court. Therefore, this Court’s jurisdiction was invoked before the motion for new trial was filed. Accordingly, the trial court correctly concluded that it lacked jurisdiction to consider the motion for new trial.

Because no motion for new trial was properly brought before the trial court, plaintiffs have not properly preserved for appeal their argument that the jury’s determination that their damages were zero was against the great weight of the evidence. However, the import of that conclusion extends beyond that particular issue. Each of plaintiffs’ remaining issues go to the question of liability, not damages. Thus, if we agree with any of plaintiffs’ remaining issues, we would conclude that plaintiffs did not receive a fair trial with respect to the issue of liability (i.e., that the error, if any, affected the jury’s determination whether defendant Amayo committed malpractice or whether the other defendants are liable if Amayo did commit malpractice), but not as to damages. In other words, because none of plaintiffs’ remaining issues affect the jury’s determination of damages, even if we were to conclude that the trial court erred with respect to one or more of plaintiffs’ remaining issues, that conclusion would not change the jury’s determination that plaintiffs’ damages are zero.

In sum, if plaintiffs’ damages are zero, then even if there was error which affected the determination of liability, that error is harmless because the jury would still have determined that plaintiffs suffered no damages. That is, any questions regarding liability are now moot in light of the jury’s determination that there are no damages. Therefore, we need not address the merits of plaintiffs’ remaining issues.

Affirmed. Defendants may tax costs.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Janet T. Neff

¹ MCR 7.208(B)(1) does provide for concurrent jurisdiction in the trial court to consider a motion for new trial in a *criminal* case. However, the Supreme Court very clearly limited that grant of concurrent jurisdiction to criminal cases.