C.T. v Board of Educ. of S. Glens Falls Cent. Sch. Dist.
2018 NY Slip Op 32482(U)
August 12, 2018
Supreme Court, Saratoga County
Docket Number: 2016-829
Judge: Ann C. Crowell
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STATE OF NEW YORK
SUPREME COURT COUNTY OF SARATOGA

C.T. as Administrator of Estate of
J.T. a deceased infant,

Plaintiff,

-against-

BOARD OF EDUCATION OF SOUTH GLENS FALLS CENTRAL SCHOOL DISTRICT, SOUTH GLENS FALLS SCHOOL DISTRICT

Defendant.

DECISION and ORDER
RJI #45-1-2016-0584
Index # 2016-829

APPEARANCES:

E. Stewart Jones Hacker Murphy, LLP
Attorneys for Plaintiff
28 Second Street
Troy, New York 12180

Bartlett, Pontiff, Stewart & Rhodes, P.C.
Attorneys for Defendant
One Washington Street, PO Box 2168
Glens Falls, New York 12801

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ANN C. CROWELL, J.

The plaintiff has requested an order of this Court pursuant to CPLR 4404 (a) setting aside the jury's verdict and ordering a new trial of the case, on the grounds that the jury's verdict was inconsistent as a matter of law, the verdict is contrary to the weight of the evidence, and the verdict should be set aside in the interests of justice. The defendant has opposed the motion.

This case arose as a result of the thirteen year old decedent J.T.'s suicide on April 13, 2015. He attended the Oliver Winch Middle School in the South Glens Falls Central School District. A jury trial commenced on May 21, 2018. Jury selection was conducted on the

first day followed by four days of testimony. Initially the defendants were two teachers, a guidance counselor, a principal and the school district. At the close of proof and prior to the jury being charged, the plaintiff by voluntary stipulation between the parties discontinued the action against the individual defendants. At the same time the defendant withdrew its request for a charge of contributory negligence against J.T.'s father, R.T.

At trial the plaintiff pursued two theories of liability. One, that the defendant was negligent by failing to follow required reporting and notification procedures and by failing to act as a reasonable parent would and protect J.T. from bullying at school. Plaintiff contended that as a result of that bullying during the two years prior to J.T.'s death up until the moment he discharged the bullet from the gun that killed him, J.T. experienced compensable pain and suffering. Second, plaintiff pursued a wrongful death action claiming J.T. ultimately committed suicide because he could not endure the bullying at school. Plaintiff sought itemized compensatory damages on the wrongful death cause of action. The parties stipulated to the amount of funeral expenses. Defendant maintained it did not have any actual or constructive notice that J.T. was being mistreated or bullied at school or that J.T. may harm himself and as a result was not responsible for his alleged pain and suffering or wrongful death.

The trial testimony was elicited solely from fact witnesses. The plaintiff relied primarily on the evidence of three fellow students to offer proof that J.T. experienced bullying at school and suffered as a result. They were the decedent's friends, N.L., H.C. and M.G. Another student J.F., who was not a friend, testified he may have pushed J.T. in Home and Careers class. J.F. admitted he engaged in bullying conduct at school and was subjected to discipline by the school. The plaintiff offered proof that J.T. was the object of

three specific incidents at school that under the school's policy school officials should have written up and notified his parents about the incidents. There was also testimony about the New York State reporting policies under DASA and the defendant's failures in complying with DASA. The plaintiff also offered proof through school teachers Liberman and Spector, as to the alleged incidents and their failure to report incidents as required by the school's policy. Guidance counselor Brown, and school administrators Dawkins and Fish were examined to elicit testimony of reporting failures by the school and notice of bullying at the school. The defendant offered proof through Liberman, Spector, Brown, Dawkins and Fish that it lacked notice of J.T. being bullied or displaying any conduct to alert them of any underlying problems that would establish emotional upset or would lead to his suicide and that he did not report anything to any school official about being bullied or despondent.

Both sides vigorously cross-examined all of the witnesses and inconsistencies were emphasized. In his closing the plaintiff's attorney painstakingly went through the proof and the 51% standard he proposed would establish his burden of proof. He also went through the verdict sheet specifically highlighting proximate cause/substantial factor and the differences between the damages related to the negligence cause of action pain and suffering damages and the wrongful death cause of action compensatory damages. As to the negligence damages plaintiff's attorney set forth in detail the proposed elements of damages such as J.T.'s alleged mental anguish, embarrassment and pain during the two years he was in middle school until the moment he pulled the trigger of the gun that killed him. Counsel suggested an award of $9,000,000.00 as compensation for J.T.'s pain and suffering. Plaintiff's counsel specifically distinguished the wrongful death claim and

explained the items of proof he believed supported that claim and the requested compensatory award of $250,000.00, or $125,000.00 per parent.

In response to the Question was the Board of the South Glens Falls School District negligent? The jury by a 5-1 decision answered Yes. In response to the Question was the Board of the South Glens Falls School District's negligence a substantial factor in causing pain and suffering to J.T. while he attended Oliver Winch Middle School until the time of his death? The jury by a 5-1 decision answered No. In response to the Question was the Board of the South Glens Falls School District's negligence a substantial factor in causing J.T.'s death. The jury unanimously answered No.

The discretion of a trial court to set aside the jury verdict pursuant to CPLR Section 4404(a) is a broad one intended to ensure that justice is done. (see, Siegel, New York Prac. §406) CPLR §4404(a) states in pertinent part that:

> "[a]fter a trial of a cause of action or issue triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside a verdict or any judgment entered thereon and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence, in the interest of justice or where the jury cannot agree after being kept together for as long as is deemed reasonable by the court."

The proper standard for setting aside a jury verdict is elusive and has long defied precise definition. *Mann v Hunt*, 283 AD 140 [3d Dept. 1953]. Whether a jury verdict is against the weight of the evidence is essentially a discretionary and factual determination which is to be distinguished from the question of whether a jury verdict, as a matter of law, is supported by sufficient evidence. *Cohen v Hallmark Cards*, 45 NY2d 493, 498-499 [1978]. The criteria for setting aside a jury verdict as against the weight of the evidence are less stringent, for such a determination results only in a new trial and does not deprive the

parties of their right to ultimately have all disputed issues of fact resolved by a jury. *Cohen v Hallmark Cards, supra*, at 498.

> Yet, the Court's discretion is not unfettered since it must "afford[ ] due deference to the jury's role as fact-finder" (Maisonet v Kelly, 228 AD2d 780, 781), particularly with regard to "questions of proximate cause and the foreseeability of intervening events" (Baldwin v Degenhardt, 189 AD2d 941, 943 [Yesawich, Jr., J., dissenting], *revd on dissenting mem below* 82 NY2d 867, 869). *DaBiere v. Craig*, 284 AD2d 885 [3d Dept.2001].

The discretionary power to set aside a jury verdict and order a new trial must be exercised sparingly, for in the absence of indications that substantial justice has not been done, a successful litigant is entitled to the benefits of a favorable jury verdict. Fact-finding is the province of the jury, not the trial court, and a court must act cautiously or it could engage in an overzealous enforcement of its duty to oversee the proper administration of justice. *Nicastro v Park*, 113 AD2d 129, 133 [2d Dept. 1985].

> "A jury's verdict--particularly one rendered in favor of a defendant in a negligence action--will not be disturbed unless the evidence is found to preponderate so heavily in favor of the losing party that 'the jury could not have reached its verdict on any fair interpretation of the evidence.'" *Monahan v Devaul*, 271 AD2d 895, 895–96 [3d Dept. 2000], quoting *Rosabella v Fanelli*, 225 AD2d 1007, 1008 [3d Dept. 1986].

In this case the plaintiff emphasized the failings of the District and its employees to properly follow the District's policy of documenting and reporting incidents to parents and it's failings in complying with DASA. Plaintiff specifically highlighted these failings with respect to three incidents plaintiff claimed occurred concerning J.T.: (1) throwing his books in a shower in the locker room; (2) students closing a door so he couldn't enter the gym locker room; and (3) an altercation that occurred in his Home and Careers class. It is a fair interpretation of the evidence by the jury that the defendant's failing to report these incidents was negligent. But the jury did not necessarily have to find that any other action

or inaction by the defendant or its employees constituted negligence under the reasonable parent standard. There were many disputed facts as to the specific incidents, the alleged continuous acts of bullying and notice. The jury may have reasonably found the proffered proof lacking to establish proximate cause. Additionally, the record contained no medical, psychological or any expert evidence to support plaintiff's claim of foreseeability or damages by linking it to what plaintiff claimed was the unrelenting bullying of J.T. J.T.'s undated suicide note, admitted over objection, was offered only for proof of J.T.'s state of mind at the time it was written. The majority of the evidence presented at trial depicted J.T. as an average, happy, smiling boy engaged in activities and not demonstrating any obvious problems at school or at home.

If the jury believed the defendant's negligence was related to record keeping and reporting failures it is reasonable that it found such failings were not a substantial factor in causing J.T. injury or his death. Furthermore the alleged acts of negligence were not demonstrated to be so inextricably interwoven as to make it logically impossible to find negligence without finding proximate cause. *Russo v Osowiecky*, 256 AD2d 839 [3d Dept. 1998]. Since a valid line of reasoning supports the jury's verdict and it is supported by a fair interpretation of the evidence their role should not be usurped by the Court.

The Court considered the challenged evidentiary rulings before trial prior to issuing its rulings on the motions in limine and again during trial when ruling on objections raised during trial regarding the challenged evidence. The Court finds the current arguments insufficient to set aside its prior rulings or to provide a basis to grant plaintiff's motion. The plaintiff's motion pursuant to CPLR 4404(a) is denied.

Any relief not specifically granted is denied. No costs are awarded to any party. This

Decision shall constitute the Order of the Court. The original Decision and Order shall be forwarded to the attorney for the defendant for filing and entry. The underlying papers will be filed by the Court.

Dated: August 12, 2018
Ballston Spa, New York

ANN C. CROWELL, J.S.C.

Papers Received and Considered:

Notice of Motion, dated June 11, 2018

Affirmation of Ryan M. Finn, Esq., dated June 11, 2018, with Exhibits

Affidavit of John D. Wright, Esq., sworn to June 28, 2018, with Exhibits