IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-86

Filed: 18 December 2018

Catawba County, No. 13 CVS 2607

JERRY WAYNE ROBERTS, Plaintiff,

v.

RONALD NEWTON LOCKE AND CAROLINA SURGERY & CANCER CENTER, PLLC, Defendants.

Appeal by defendants from orders and amended judgment entered 17 March 2017 by Judge Robert T. Sumner in Catawba County Superior Court. Heard in the Court of Appeals 4 September 2018.

Melrose Law, PLLC, by Mark R. Melrose and Adam R. Melrose, for plaintiff-appellee.

Shumaker, Loop & Kendrick, LLP, by Scott M. Stevenson, Lisa M. Hoffman, and Beth Stanfield, for defendants-appellants.

ARROWOOD, Judge.

Ronald Newton Locke ("Locke") and Carolina Surgery & Cancer Center, PLLC ("CSCC") (together, "defendants") appeal from an order denying their motion for a new trial and granting their motion to amend the judgment previously entered in

favor of Jerry Wayne Roberts ("plaintiff"), and from the amended judgment. For the following reasons, the trial court's order and amended judgment are affirmed.

I. Background

On 10 October 2013, plaintiff filed a medical malpractice action against defendants as a result of complications from a surgical procedure, a laparoscopic cholecystectomy, performed by Locke on 11 January 2011. Plaintiff alleged that Locke was directly liable for the negligent medical care he provided and CSCC was liable for Locke's negligence under the theory of *respondeat superior*. Defendants filed an answer on 23 December 2013 and an amended answer on 27 May 2014. Defendants denied all allegations of negligence.

The matter was tried before a jury in Catawba County Superior Court beginning on 22 August 2016, the Honorable Robert T. Sumner, Judge presiding.

In addition to testimonial and documentary evidence presented at trial by plaintiff to establish negligence, plaintiff introduced evidence of damages. The sole evidence of economic damages was plaintiff's exhibit number 35 titled "Medical Billing Summary." Plaintiff's exhibit number 35 showed plaintiff incurred past medical expenses totaling $169,846.59. Defendants stipulated to the amount of plaintiff's medical expenses while denying any negligence. At the close of the evidence and the arguments of counsel, the trial court instructed the jury, in part: "[i]n determining the amount of actual damages you award the plaintiff, if any, you

will consider the evidence you heard as economic and non-economic damages. You've heard the following type of economic damages and that would be medical expenses." The trial court also instructed that economic and non-economic damages would be determined and entered separately on the verdict sheet and further stated to the jury as follows regarding economic damages: "I will now explain the law of damages as it relates to the types of economic damages about which are in evidence. Medical expenses include all hospital, doctor and drug bills reasonably incurred by the plaintiff as a proximate result of the negligence of the defendant."

On 9 September 2016, the jury returned a verdict in favor of plaintiff. The jury specifically found that plaintiff was injured by the negligence of Locke and that plaintiff was entitled to recover from defendants $250,000.00 in economic damages and $350,000.00 in non-economic damages.

On 26 September 2016, plaintiff submitted a proposed judgment reflecting the jury verdict and a letter to the trial court acknowledging that a hearing for entry of judgment may be necessary because defendants disagreed with the proposed judgment. Defendants also submitted a letter to the trial court on 26 September 2016. Defendants' letter confirmed that they objected to plaintiff's proposed judgment and requested that the trial court enter judgment "reflecting an award of economic damages in the amount of $169,846.59 and non-economic damages in the amount of $350,000.00." On 8 November 2016, defendants submitted a

memorandum in opposition to plaintiff's proposed judgment arguing for a new trial on all issues and that there was insufficient evidence for the jury to award economic damages greater than $169,846.59.

Following a hearing on 10 November 2016, the trial court signed plaintiff's proposed judgment on 15 November 2016 reflecting the jury's verdict awarding $250,000.00 in economic damages and $350,000.00 in non-economic damages to plaintiff. The $600,000.00 judgment was filed on 5 December 2016.

On 15 December 2016, defendants filed "Defendants' Motion for Judgment Notwithstanding the Verdict and/or for a New Trial or in the Alternative Motion to Amend Judgment and Motion to Stay the Enforcement of the Judgment." Defendants subsequently filed a memorandum in support of the motions before the motions were heard by Judge Sumner in Catawba County Superior Court on 6 February 2017. During the hearing, defendants argued for a new trial on all issues. When plaintiff's turn came to argue, plaintiff agreed to join the alternative portion of defendants' motions seeking to amend the judgment to reduce the economic damages to conform to the evidence of economic damages presented at trial. Upon the trial court seeking clarification, defendants asserted that the alternative motion to amend the judgment was only if the court denied the motion for a new trial.

On 17 March 2017, the trial court filed an order denying defendants' motion for judgment notwithstanding the verdict and motion for a new trial, and granting

defendants' alternative motion to amend the judgment from $600,000.00 to $519,846.59. The amendment reflected the remittitur of the economic damages awarded in the amount of $80,153.41 from jury's award of $250,000.00 to the stipulated medical expenses of $169,846.59. The trial court also filed an amended judgment reflecting the remittitur on 17 March 2017.

Defendants filed notice of appeal from the order and the amended judgment on 17 April 2017.

II. Discussion

On appeal, defendants argue the trial court erred by denying its motion for a new trial. Defendants also argue that, despite their alternative motion for an amended judgment, the trial court erred in entering the amended judgment because certain findings made by the trial court were contrary to the evidence and because a new trial should have been granted. Upon review, we disagree with defendants' arguments and affirm the trial court's order and the amended judgment.

At the outset, we address plaintiff's assertion that defendants may not seek relief from the trial court's orders. Citing *Dillon v. Wentz*, 227 N.C. 117, 41 S.E.2d 202 (1947) (holding the appellants were bound by a judgment entered in conformity with their prayer for judgment), plaintiff essentially asserts an invited error argument by contending "[d]efendants may not claim that the relief granted to [d]efendants by the trial court was an error worthy of requiring a new trial when

their very own motion was the cause for that relief being granted." In *Dillon*, the defendants appealed the trial court's dissolution of a retirement fund in a non-jury trial by the alternative method requested in the defendants' prayer for judgment. *Id.* The Court relied on cases in which it held parties could not challenge on appeal jury instructions the parties themselves had requested, *see Carruthers v. Atlantic & Yadkin Ry. Co.*, 218 N.C. 377, 11 S.E.2d 157 (1940), and *Bell v. Harrison*, 179 N.C. 190, 102 S.E. 200 (1920), and held the defendants in *Dillon* could not challenge a provision in the judgment that they requested. *Dillon*, 227 N.C. at 123, 41 S.E.2d at 207. The Court stated, "[o]rdinarily an appeal will not lie from an order entered at the request of a party, and it is immaterial that such request was in the alternative[.]" *Id.* (internal quotation marks and citations omitted). However, this Court has consistently allowed a party to appeal a judgment that is only partly in the party's favor or in circumstances where the party did not receive the complete relief requested. *See McCulloch v. North Carolina R. Co.*, 146 N.C. 316, 59 S.E. 882 (1907), *New Hanover Cnty. v. Burton*, 65 N.C. App. 544, 310 S.E.2d 72 (1983), *Casado v. Melas Corp.*, 69 N.C. App. 630, 318 S.E.2d 247 (1984).

In this case, defendants made it clear to the trial court that they sought an amended judgment only if the trial court refused to award a new trial. Because defendants did not receive the complete relief requested, review is proper in this instance.

The parties are in agreement that the jury's award of economic damages in this case was in excess of the economic damages supported by the evidence and stipulated by the parties. The question on appeal is whether the trial court erred in addressing the erroneous jury verdict by denying defendants' motion for a new trial and granting defendants' motion for an amended judgment instead.

Motions for new trial and motions to amend a judgment are both governed by Rule 59 of the North Carolina Rules of Appellate Procedure and are generally reviewed by the appellate courts for an abuse of discretion. *See Worthington v. Bynum*, 305 N.C. 478, 482, 290 S.E.2d 599, 602 (1982) ("It has been long settled in our jurisdiction that an appellate court's review of a trial judge's discretionary ruling either granting or denying a motion to set aside a verdict and order a new trial is strictly limited to the determination of whether the record affirmatively demonstrates a manifest abuse of discretion by the judge."), *Trantham v. Michael L. Martin, Inc.*, 228 N.C. App. 118, 127, 745 S.E.2d 327, 335 (2013) (" 'Motions to amend judgments pursuant to [N.C. Gen. Stat.] § 1A-1, Rule 59 are addressed to the sound discretion of the trial court, and will not be disturbed on appeal absent an abuse of that discretion.' ") (quoting *Spivey and Self, Inc. v. Highview Farms, Inc.*, 110 N.C. App. 719, 728, 431 S.E.2d 535, 540, *disc. review denied*, 334 N.C. 623, 435 S.E.2d 342 (1993)).

Rule 59(a) specifically provides that a new trial "may" be granted for any of the nine enumerated grounds. N.C. Gen. Stat. § 1A-1, Rule 59(a) (2017). Here, defendants argued for a new trial under Rule 59(a)(5) ("[m]anifest disregard by the jury of the instruction of the court"), Rule 59(a)(6) ("[e]xcessive or inadequate damages appearing to have been given under the influence of passion or prejudice"), and Rule 59(a)(7) ("[i]nsufficiency of the evidence to justify the verdict or that the verdict is contrary to law").

This Court has explained that, "[a]ccording to Rule 59, '[a] new trial may be granted' for the reasons enumerated in the Rule. By using the word 'may,' Rule 59 expressly grants the trial court the discretion to determine whether a new trial should be granted." *Greene v. Royster*, 187 N.C. App. 71, 77-78, 652 S.E.2d 277, 282 (2007) (footnote omitted). "In sum, it is plain that a trial judge's *discretionary* order pursuant to [N.C. Gen. Stat. §] 1A-1, Rule 59 for or against a new trial upon *any* ground may be reversed on appeal only in those exceptional cases where an abuse of discretion is clearly shown." *Worthington*, 305 N.C. at 484, 290 S.E.2d at 603 (emphasis in original). "[A]n appellate court should not disturb a discretionary Rule 59 order unless it is reasonably convinced by the cold record that the trial judge's ruling probably amounted to a substantial miscarriage of justice." *Id.* at 487, 290 S.E.2d at 605. "However, [this Court has also stated that] where the [Rule 59] motion involves a question of law or legal inference, our standard of review is *de novo*." *Bodie*

Island Beach Club Ass'n, Inc. v. Wray, 215 N.C. App. 283, 294, 716 S.E.2d 67, 77 (2011) (quotation marks and citation omitted).

Both defendants and plaintiff cite *Everhart v. O'Charley's Inc.*, 200 N.C. App 142, 683 S.E.2d 728 (2009), to assert that a *de novo* review is proper for Rule 59(a)(7). In *Everhart*, this Court explicitly stated, "[d]enial of a motion for a new trial pursuant to [Rule] 59(a)(5) and (6) is reviewed for an abuse of discretion, while the sufficiency of the evidence to justify the verdict is reviewed under a *de novo* standard." 200 N.C. App. at 160, 683 S.E.2d at 742. Everhart, however, is inconsistent with other decisions by this Court. *See Kor Xiong v. Marks*, 193 N.C. App. 644, 601, 668 S.E.2d 594, 601 (2008) ("A motion for new trial pursuant to Rule 59(a)(7) does not involve a question of law, therefore it is reviewed for abuse of discretion.") (citing *Greene*, 187 N.C. App. at 78, 652 S.E.2d at 282)). A closer review of *Everhart* reveals that in applying a *de novo* standard to review a Rule 59(a)(7) motion, the Court relied on *N.C. Indus. Capital, LLC v. Clayton*, 185 N.C. App. 356, 371, 649 S.E.2d 14, 25 (2007), which in turn relied on *Kinsey v. Spann*, 139 N.C. App. 370, 372, 533 S.E.2d 487, 490 (2000). In *Kinsey*, this Court acknowledged that *de novo* review is appropriate where a Rule 59 motion involves a question of law or legal inference, such as Rule 59(a)(8). 139 N.C. App. at 372, 533 S.E.2d at 490. In *Kinsey*, however, this Court applied an abuse of discretion standard to review the trial court's decision pursuant to Rule 59(a)(7), noting that a review for insufficient evidence to support the jury's verdict

involved neither questions of law nor legal inferences. *Id.* at 372-73, 533 S.E.2d at 490; *see also Green*, 187 N.C. App. at 78, 652 S.E.2d at 282 (noting that "*Kinsey* recognized a narrow exception to the general rule, applying a *de novo* standard of review to a motion for a new trial pursuant to Rule 59(a)(8), which is an '[e]rror in law occurring at the trial and objected to by the party making the motion[.]' ").

Since our Supreme Court clarified the proper standard of review for a Rule 59 motion in *Worthington*, that Court has taken the opportunity to reemphasize that the proper standard of review under Rule 59(a)(7) is abuse of discretion. *See In re Will of Buck*, 350 N.C. 621, 624, 516 S.E.2d 858, 860 (1999). In *Buck*, the Court stated that, "[l]ike any other ruling left to the discretion of a trial court, the trial court's appraisal of the evidence and its ruling on whether a new trial is warranted due to the insufficiency of evidence is *not* to be reviewed on appeal as presenting a question of law." *Id.* at 625, 516 S.E.2d at 860-61.

In this case, where the trial court specified that "[d]efendant's [m]otion for a [n]ew [t]rial should be denied *in the Court's discretion*" and that "[d]efendant's [m]otion to [a]mend [j]udgment . . . should be allowed *in the Court's discretion*[,]" (emphasis added), we limit our review to whether the trial court abused its discretion. *See Worthington*, 305 N.C. at 481, 290 S.E.2d at 602 (noting that the trial court's indication that it was awarding a new trial as a matter of "its considered discretion" was significant because it controls the scope of review). "Abuse of discretion results

where the [trial] court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

As stated above, defendants specifically argued for a new trial because of manifest disregard by the jury of the instructions of the court pursuant to Rule 59(a)(5), excessive damages appearing to have been given under the influence or passion or prejudice pursuant to Rule 59(a)(6), and insufficiency of the evidence to justify the verdict pursuant to Rule 59(a)(7). In short, there is no question in this case that the jury did not follow the trial court's instructions on economic damages and awarded economic damages in excess of what the evidence presented at trial supported. The ultimate determinations by the trial court were whether a new trial was required because of the erroneous jury verdict on economic damages, or whether defendants' alternative remedy of remittitur in an amended judgment was appropriate. In reviewing the denial of defendants' motion for a new trial for an abuse of discretion, we are mindful that the trial court granted an amended judgment in the same order. The two motions cannot be considered separately in this case.

Upon considering the arguments of the parties, the trial court issued the following pertinent findings of fact to support its discretionary determination that a new trial was not required and remittitur was appropriate:

> 11. There was substantial evidence to set forth a prima facie case of medical negligence against [d]efendants

. . . .

> 12. Aside from the award of economic damages in excess of the stipulated medical billing summary setting forth the [p]laintiff's economic medical losses, the [trial c]ourt finds that the jury followed the court's instructions.
>
> 13. The jury's award of damages in this matter was reasonable except for the $250,000 awarded for economic damages which was $80,153.41 in excess of the $169,846.59 that was stipulated to by the parties as the sole evidence regarding the [p]laintiff's past medical expenses incurred by the [p]laintiff as a result of the [d]efendants' negligence.
>
> 14. There is no reason for the [trial c]ourt to believe that the jury's award of damages in this case was given under the influence of passion or prejudice.
>
> 15. There was sufficient evidence to justify the verdict and it was consistent with the law of North Carolina as well as the [trial c]ourt's jury instructions.

While it is clear the jury erred in returning its verdict on economic damages, nothing in this Court's review of the record leads us to believe the trial court erred in making the above findings. The only questionable finding is finding of fact number 15, which appears to be inconsistent with the other findings. However, when finding of fact number 15 is considered together with those other findings, it is evident that "the verdict" the trial court is referring to is the jury's negligence verdict, not the jury's award of economic damages. In that respect, it too, is not error.

Nevertheless, with the trial court's findings in hand, defendants argue that their motion for a new trial should have been granted on each of the grounds asserted.

We reiterate that the issue before this Court is not whether the jury erred, but whether the trial court erred in addressing the jury's error by denying defendants' motion for a new trial and granting the alternative motion for an amended judgment.

Rule 59(a)(5)

Defendants first argue a new trial is warranted because of "[m]anifest disregard by the jury of the instructions of the court[.]" N.C. Gen. Stat. § 1A-1, Rule 59(a)(5). Defendants contend the trial court abused its discretion. A manifest disregard of jury instructions may be shown where the jury's verdict is not consistent with the court's instructions or is irreconcilable with the court's instructions. *See Matter of Will of Leonard*, 71 N.C. App. 714, 719, 323 S.E.2d 377, 380 (1984). In cases where there is a manifest disregard of jury instructions, it is within the trial court's discretion to order a new trial. *Id.*

Defendants rely on this Court's decision in *Industrial Circuits Co. v. Terminal Communications, Inc.*, 26 N.C. App. 536, 216 S.E.2d 919 (1975), to argue a new trial should be granted. In *Industrial Circuits*, the trial court instructed the jury not to consider a "bill back" charge in determining damages. 26 N.C. App. at 539-40, 216 S.E.2d at 922. Yet, it was evident from the jury verdict that the jury disregarded the instructions and included the bill back charge. *Id.* As a result, the trial court determined there was manifest disregard to the jury instructions, reduced the damages awarded to plaintiff on its own, and entered judgment for the reduced

damages. *Id.* Upon appeal by both parties, this Court held the trial court did not act properly or with authority where it reduced the damages without the consent of the prevailing party. *Id.* at 540, 216 S.E.2d at 922. This Court also stated that nothing in the Rules of Civil Procedure grant the trial court the authority to modify the verdict by changing the recovery. *Id.* Consequently, this Court granted a new trial on the issue of damages. *Id.* at 540, 548, 216 S.E.2d at 922, 927.

What *Industrial Circuits* makes clear is that the trial court has discretion to award a new trial where there is a manifest disregard for jury instructions.

It is clear the jury did not follow the trial court's instruction on economic damages in this case. The trial court's finding of fact number 12 alludes to the jury's error below and finding of fact number 13 quantifies the error in terms of damages. The trial court, however, decided not to grant a new trial based on the jury's disregard of the instruction on economic damages and instead opted to amend the judgment to conform to the evidence of economic damages, of which the parties stipulated. Unlike, in *Industrial Circuits*, in this case defendants included an alternative motion to amend the judgment pursuant to Rule 59(e) and plaintiff consented to defendants' alternative motion. We cannot say the trial court abused its discretion in denying defendants' motion for a new trial pursuant to Rule 59(a)(5) under these circumstances.

Rule 59(a)(6)

Defendants next argue that the trial court abused its discretion in failing to grant their motion for a new trial under Rule 59(a)(6). "In determining whether a damages award was excessive or inadequate due to the influence of passion or prejudice, the trial judge must consider the testimony and evidence presented at trial." *Guox v. Satterly*, 164 N.C. App. 578, 581, 596 S.E.2d 452, 455 (2004). "Such a determination requires a consideration of the entire record." *Id.* at 582, 596 S.E.2d at 455.

Upon review in this case, the trial court found in finding of fact number 14 that, "[t]here is no reason for the [c]ourt to believe that the jury's award of damages in this case was given under the influence of passion or prejudice."

In *Greene,* this Court upheld the trial court's denial of the defendant's alternative motion for a new trial pursuant to Rule 59(a)(6) where the "defendants offered the trial court no facts which support their argument that the jury acted with passion and prejudice." 187 N.C. App. at 81, 652 S.E.2d at 283. This Court explained that the defendants' "assertion, that the jury concluded its deliberations quickly, is hardly evidence of passion and prejudice *per se*, and even [the] defendants' Rule 59 motion states only that a short period of deliberation 'giv[es] rise to at least the perception of being influenced by passion and prejudice.' " *Id.* Similarly, in *Everhart*, this Court upheld trial court's denial of the defendant's motion for a new trial where the defendant "points to nothing in the record—except the award itself—that might

indicate that the jury disregarded the trial court's instructions or awarded punitive damages under the influence of passion or prejudice." *Everhart*, 200 N.C. App. at 161, 683 S.E.2d at 742.

In arguing the trial court abused its discretion, defendants rely exclusively on *Worthington*, in which the only issue for jury determination was the amount of damages the plaintiff should recover. 305 N.C. at 479, 290 S.E.2d at 601. Defendants compare this case to *Worthington* in that the jury's award exceeded the damages supported by the evidence and there was no evidence of future damages. However, *Worthington* was ultimately decided based on the Court's deference to the trial court's discretionary power to grant or deny motions for a new trial.

In *Worthington*, the trial court granted the defendant's motion for a new trial, this Court reversed the trial court's decision, *see Worthington v. Bynum*, 53 N.C. App. 409, 281 S.E.2d 166 (1981), and our Supreme Court reviewed the case and reversed this Court. In reversing this Court and reinstating the trial court's order for a new trial, our Supreme Court noted that "[the] plaintiffs presented much evidence which showed that their injuries from the accident were severe and substantial, and this evidence surely warranted a large recovery of damages[.]" 305 N.C. at 486, 290 S.E.2d at 604-605. Yet, "there was also evidence which suggested that a combined recovery of $325,000 for the plaintiffs was too much" where "plaintiffs' total medical expenses were only $17,634.10" and there was no evidence of lost income or future

pain and suffering. *Id.* at 486, 290 S.E.2d at 605. However, the Court's decision to reverse this Court was constrained to its opinion that this Court "simply substituted what it considered to be its own better judgment concerning the need for a new trial in the case and did not strictly review the record for the singular cause of determining whether [the trial judge] had clearly abused *his* discretion[.]" *Id.* at 486, 290 S.E.2d at 604. The Court explained that, "[i]n these circumstances, we simply cannot say, as a matter of law, that [the trial judge] went too far in finding that there was insufficient evidence to support the jury's award and that the award was too large. In addition, it is not inconceivable on this record that the jury awarded these damages 'under the influence of passion or prejudice.' " *Id.* at 486, 290 S.E.2d at 605.

In the instant case, like in *Greene* and *Everhart*, defendants are unable to point to anything in the record that might suggest the jury awarded economic damages under the influence of passion or prejudice, except for the award itself. Although they argue that the trial court abused its discretion due to the "strong possibility that the jury awarded damages in excess of the medical expenses under the influence of passion or prejudice," they are unable to show that the jury had in fact acted under the influence of passion or prejudice, nor that the trial court abused its discretion in denying the motion for a new trial. Without substituting our own judgment, we cannot say that the trial court abused its discretion.

Rule 59(a)(7)

The last ground asserted for a new trial is the insufficiency of the evidence to justify the verdict pursuant to Rule 59(a)(7). Although defendants assert *de novo* review is appropriate, as discussed above, we review for an abuse of discretion.

Our Supreme Court has previously indicated that the term "insufficiency of the evidence" means that the verdict "was against the greater weight of the evidence." *Nationwide Mut. Ins. Co. v. Chantos,* 298 N.C. 246, 252, 258 S.E.2d 334, 338 (1979). The trial court has discretionary authority to appraise the evidence and to "order a new trial whenever in [its] opinion the verdict is contrary to the greater weight of the credible testimony." *Britt v. Allen,* 291 N.C. 630, 634, 231 S.E.2d 607, 611 (1977). Like any other ruling left to the discretion of a trial court, the trial court's appraisal of the evidence and its ruling on whether a new trial is warranted due to the insufficiency of evidence is not to be reviewed on appeal as presenting a question of law. *Id.* at 635, 231 S.E.2d at 611.

Here, there is nothing on the record to suggest that the trial judge abused his discretion in denying the motion for a new trial. Although the jury's verdict was not fully supported by the evidence presented at trial and the stipulated economic damages, the trial judge's decision to deny a motion for a new trial is a discretionary one and may only be overturned by a showing of an abuse of discretion. Rather than showing an abuse of discretion, the record suggests that the trial judge exercised sound discretion by entering judgment on the jury verdict, allowing defendants to

address the issue with the jury's award of economic damages in post-trial motions, and subsequently rectifying the damages issue by granting defendants' motion for an amended judgment and entering an amended judgment providing for remittitur of the economic damages. Although the defendants argue that the trial judge abused his discretion in denying their motion for a new trial, they are unable to show any evidence of an abuse of discretion. We therefore affirm the trial court's decision to deny the defendants' motion for a new trial.

Amended Judgment/Remittitur

Because of the jury's erroneous verdict on economic damages, defendants rely on *Robertson v. Stanley*, 285 N.C. 561, 206 S.E.2d 190 (1974) (holding the trial court abused its discretion in denying plaintiff's motion for a new trial because there was a strong suspicion of a compromise verdict where the jury's award of no damages was inconsistent with its finding that the defendant was negligent and that the plaintiff was not contributorily negligent), and *Handex of Carolinas, Inc. v. Cnty. Of Haywood*, 168 N.C. App. 1, 607 S.E.2d 25 (2005) (granting a new trial on liability and damages where it could not be determined whether the jury awarded damages pursuant to any of the four claims properly submitted to the jury), to argue not just for a new trial on damages, but for a new trial on all issues. In *Robertson*, the Court explained that "[c]ourts are reluctant to grant a new trial as to damages alone unless it is clear that

the error in assessing damages did not affect the entire verdict." 285 N.C. at 568, 206 S.E.2d at 195.

> A new trial as to damages only should be ordered if the damage issue is separate and distinct from the other issues and the new trial can be had without danger of complication with other matters in the case. It must be clear that the error in assessing damages did not affect the entire verdict. If it appears the damages awarded were from a compromise verdict, a new trial on damages alone should not be ordered.

Handex, 168 N.C. App. at 20, 607 S.E.2d at 36-37 (citing *Robertson*, 285 N.C. at 568-69, 206 S.E.2d at 195, and *Weyerhaeuser Co. v. Supply Co.,* 292 N.C. 557, 566, 234 S.E.2d 605, 610 (1977)). "A compromise verdict is one in which the jury answers the issues without regard to the pleadings, evidence, contentions of the parties or instructions of the court." *City of Burlington v. Staley*, 77 N.C. App. 175, 178, 334 S.E.2d 446, 450 (1985).

Here, given the jury's failure to return an award of economic damages that was consistent with the trial court's instructions and the evidence, defendants contend it is impossible to know whether the jury followed any of the trial court's instructions. Yet, defendants are unable to identify anything in the record besides the jury's award of economic damages to indicate that the jury's entire verdict is compromised.

Upon review, the trial court found in finding of fact number 11 that there was "substantial evidence to set forth a *prima facie* case of medical negligence[;]" the trial court found in finding of fact number 12 that, "[a]side from the award of economic

damages . . ., the [c]ourt finds that the jury followed the court's instructions[;]" and the trial court found in finding of fact number 15 that "[t]here was sufficient evidence to justify the verdict and it was consistent with the law of North Carolina as well as the [c]ourt's jury instructions." Given the trial court's findings, and without infringing on the trial court's discretion, we cannot say that the trial court erred in this case in denying defendants' motion for a new trial and instead granting defendants' alternative motion for an amended judgment.

Although defendants sought to amend the judgment pursuant to Rule 59(e) in the alternative, the trial court was within its discretion to consider the motion contemporaneously with defendants' motion for a new trial. This Court long ago explained that,

> [w]hile it is generally stated that the judgment should follow the verdict, the court has the power to reduce the verdict of its own motion so long as the party in whose favor it was rendered does not object. This practice of remittitur with the successful party's consent, as in the case here, has been followed for many years by the courts in this State, and under [N.C. Gen. Stat. §] 1A-1, Rule 59, the practice is still permissible in our courts.

Redevelopment Commission of City of Durham v. Holman, 30 N.C. App. 395, 396, 226 S.E.2d 848, 849-50 (1976) (internal citations omitted). There is no reason why a trial court could not similarly reduce the jury verdict on the motion of a party with the prevailing party's consent.

Here, the trial court's decision to amend the judgment was within their sound discretion and there is no evidence to suggest that its decision to amend the judgment upon defendants' alternative motion and with plaintiff's consent amounts to an abuse of that discretion. Therefore, we affirm the trial court's decision to amend the judgment.

III. Conclusion

For the reasons discussed, we affirm the order of the trial court and the amended judgment entered thereon. We emphasize that,

> [d]ue to their active participation in the trial, their first-hand acquaintance with the evidence presented, their observances of the parties, the witnesses, the jurors and the attorneys involved, and their knowledge of various other attendant circumstances, presiding judges have the superior advantage in best determining what justice requires in a certain case.

Worthington, 305 N.C. at 487, 290 S.E.2d at 605. Nothing in the record suggests that the trial court abused its discretion in this case.

AFFIRMED.

Judges BRYANT and HUNTER concur.

Report per Rule 30(e).