

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

STEVEN JOSEPH HALL, JR.,	:	
Plaintiff	:	
	:	
v.	:	No. 97-01,909
	:	
CHARLES M. BURZYNSKI,	:	
Defendants	:	

OPINION
Issued Pursuant to Pa. R.A.P. 1925(a)

This unsuccessful plaintiff, Steven Hall, has appealed the judgment entered after a trial where the jury found that Dr. Charles M. Burzynski was negligent, but concluded that his negligence was not a substantial factor in causing the plaintiff's injuries. This court summarily denied the plaintiff's Motion for Post-Trial Relief because we found no merit to any of Mr. Hall's complaints. In his Statement of Matters Complained of on Appeal Mr. Hall has resurrected these same arguments and the court finds them to be as meritless as ever.

Factual Background

Mr. Hall was severely injured on an all-terrain vehicle when, while driving up a hill, he hit a log and the vehicle flipped over, landing smack on his jaw. He was treated by Dr. Burzynski, who initially performed an intra-oral procedure and later performed an extra-oral procedure. After the two surgeries, Dr. Burzynski recommended that Mr. Hall allow his body six months to recover and then perhaps see an orthodontist about correcting any remaining misalignment of his teeth. Soon after surgeries Mr. Hall moved to California, where he sought care from Dr. Trevor Treasure after experiencing discomfort and growing concerned about unstableness in his jaw. Dr. Treasure performed three surgeries, allegedly to cure the errors

committed by Dr. Burzynski. Defense experts, however, testified that Dr. Burzynski's choice of procedures was entirely proper, and that Dr. Treasure's work was unhelpful and unnecessary.

Although Mr. Hall undoubtedly suffered considerable trauma and is left with facial asymmetry, his recovery from such a devastating injury is a vivid example of the miracles of modern medicine.

DISCUSSION

Mr. Hall alleges that the trial court made four errors that entitle him to a new trial or a judgment notwithstanding the verdict. The court does not agree, for the reasons we will fully explain. On the contrary, Mr. Hall received a very fair trial and there is no reason to disturb the jury's verdict or give him another chance to prove his case.

A. Substantial Factor

Mr. Hall cannot seem to understand how the jury could have found that Dr. Burzynski was negligent but that the negligence was not a substantial factor in causing his injuries. The very fact that liability for negligence must include both a finding of a negligent act *and* a finding of a substantial factor demonstrates that these are two entirely separate and distinct concepts. Negligence plus injury does not automatically equal liability. There must also be causation, which is established when the negligence is found to be a substantial factor.

This case provides a perfect example of how a jury can legitimately find negligence but no substantial factor. Defense expert Dr. Edwin Slade testified that even though Dr. Burzynski inserted the bone plates upside down, that mistake had no

effect on the outcome of the surgery.¹ Moreover, he testified that even if Dr. Burzynski had been negligent in not detecting that there were five fractures instead of four, the fifth fracture was a negligible factor and would not have altered the procedure Dr. Burzynski followed, nor the results. Similarly, Dr. Burzynski testified that had he known there were five fractures, he would not have done anything differently. Dr. Slade also testified that the work Dr. Treasure performed did nothing to improve the condition of Mr. Hall's jaw. Dr. Slade further stated that any deviation in Mr. Hall's facial symmetry was not caused by either of the surgeries performed by Dr. Burzynski, but instead was due to Mr. Hall's pre-existing condition whereby his jaw deviated to the left. And finally, Dr. Slade explicitly stated that Mr. Hall suffered no damage whatsoever as a result of the treatment he received from Dr. Burzynski.

Obviously, the members of the jury believed Dr. Burzynski and/or Dr. Slade, both of whom were impressive and credible witnesses. Therefore, it was perfectly reasonable for the jury to conclude that Dr. Burzynski committed one or more trivial errors but that those errors did not contribute to Mr. Hall's injuries. Clearly, the verdict was neither inconsistent nor against the weight of the evidence.

B. Omitted Point for Charge

Mr. Hall next complains that the court neglected to include Plaintiff's Proposed Point for Charge No. 18, which states that although a physician is not liable for mere mistakes in judgment, a physician may be liable if he or she was negligent in collecting the factual data essential to arriving at a proper conclusion or judgment. The court had agreed to give the charge and fully intended to do so. However, this

¹ Because this opinion is prepared without the benefit of a transcript, the court cannot cite to the notes of testimony.

charge was lost in the shuffle and the court realized too late that it had been omitted.

As fate would have it, the court got another chance to inform the jury of this point of law when the jury sent the court a question stating, “Please provide us with a written definition of negligence as it pertains to medical negligence.” Because professional negligence of a physician is a fairly complicated concept, the court considered it appropriate and perhaps even necessary to give not only the standard jury charge 10.02 (Professional Negligence of a Physician), but also the associated charges the court had originally given which further explain the concept. This time, however, the court was careful to include Plaintiff’s Proposed Point for Charge No. 18. Therefore, the error was cured and Mr. Hall has no cause to complain. The jury heard this important point of law, and did so at a point in its deliberations when it was focusing specifically on negligence.

Moreover, even if the jury never had the benefit of hearing this charge, such a mistake could well constitute harmless error for after all, the members of the jury found that Dr. Burzynski was negligent. They simply did not believe the negligence was a substantial factor in causing Mr. Hall’s injuries.

C. Additional Charges

Mr. Hall next alleges that the court erred in repeating the charges associated with negligence,² which included the previously omitted charge, in response to the

² The court gave the following charges in response to the jury’s question: (1) Defendant’s Proposed Point #12, Plaintiff must show the injury complained of was directly caused by the defendant’s negligence; (2) Standard Charge #10.02, Professional Negligence of Physician; (3) Standard Charge #10.03(A), Standard of Care, Physicians; (4) Standard Charge #10.03(B), Legal Cause, Physicians; (5) Defendant’s Proposed Point #8, If a physician exercises the skill, knowledge and care customarily exercised in his profession he is not liable for a mere mistake in judgment; (6) Plaintiff’s Proposed Point #18, Physician is liable for not collecting the data essential to arriving at a judgment; (7) Defendant’s Proposed Point #10, Health

jury's question on physician negligence. It is highly ironic and somewhat hypocritical that Mr. Hall, after complaining that the court *omitted* one of his charges, then complains that the court *gave* that charge, along with others. It is also interesting to note that Mr. Hall is not objecting to the legitimacy of any of the charges given—he merely objects to the *giving* of them. The fact that Mr. Hall objected to the additional charges both before and after they were given makes this court suspect that he was more interested in *preserving* the error regarding the omitted charge than *curing* it.

In any case, the court was certainly justified in giving the associated charges because they amplify and explain physician negligence. Certainly there was no harm in repeating the additional charges, as they were all proper points of law. Therefore, giving the additional charges could at best constitute no more than harmless error, since the plaintiff suffered no prejudice whatsoever when the jury heard those charges. In fact, the plaintiff was benefitted because the jury got to hear the charge previously omitted, which was favorable to the plaintiff.

D. Reference to Local Standard of Care

Mr. Hall's last complaint is that he suffered prejudice when defense counsel and a defense expert referred to a community standard of care. Because this opinion is prepared without the benefit of a transcript this court cannot address the points during the trial where such references were made. The court does recollect, however, that it happened more than once, but we have no doubt that when Mr. Hall documents these instances, as it is his duty to do, the record will show that on each and every occasion counsel for Mr. Hall objected and this court gave a very strong advisory to

care providers are not warrantors of a cure or guarantors of the results of treatment; and (8) Defendant's Proposed Point #11, No presumption of negligence merely because of an unfortunate result.

the jury that there was a national standard of care, which did not vary according to the community in which a physician practices. Therefore, any potential prejudice to the plaintiff was immediately and totally cured.

Conclusion

For the reasons stated in the foregoing opinion, the court finds that there are no grounds for a new trial nor for a judgment N.O.V., and the court reaffirms its denial of the plaintiff's Motion for Post-Trial Relief.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Richard Callahan, Esq.
Robert Seiferth, Esq.
Gary Weber, Esq.