

SHANNON HALL : IN THE
Plaintiff : CIRCUIT COURT
v. : FOR
HAROLD O. ALEXANDER, M.D., et al : PRINCE GEORGE'S COUNTY
Defendants : Case No.: CAL 11-26731

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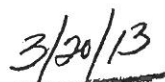

ORDER

Upon consideration of the Defendant's Request for Remittitur, or on the Alternative, Motion for New Trial, and any opposition thereto, it is this 18th day of March, 2013 hereby

ORDERED that the Jury's verdict on non-economic damages is reduced to \$650,000.00; and it is

FURTHERED ORDERED, that the remainder of the Defendant's Motion is DENIED.


Judge, Circuit Court for Prince George's County

SHANNON HALL : IN THE

Plaintiff : CIRCUIT COURT

v. : FOR

HAROLD O. ALEXANDER, M.D., et al : PRINCE GEORGE'S COUNTY

Defendants : Case No.: CAL 11-26731

**PLAINTIFF'S OPPOSITION TO DEFENDANT HAROLD O. ALEXANDER,
M.D.'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT, OR
IN THE ALTERNATIVE, FOR A NEW TRIAL**

COMES NOW the Plaintiff, by and through her attorneys, Jonathan Schochor, Jonathan E. Goldberg, Brent P. Ceryes and Schochor, Federico and Staton, P.A., and opposes the Defendant Harold O. Alexander M.D.'s Motion for Judgment Notwithstanding the Verdict, or in The Alternative, for a New Trial. In support thereof, the Plaintiff states as follows:

1. This matter is a medical malpractice case in which the Plaintiff alleged that the Defendants negligently managed and treated the Plaintiff's molar pregnancy. As a result of the Defendants' negligence, the Plaintiff underwent a hysterectomy and suffered additional injuries. A verdict in favor of the Plaintiff was entered on February 6, 2013 in the amount of \$1,070,636.27.

2. The Defendant has moved for judgment notwithstanding the verdict under Maryland Rule 2-532. Maryland Rule 2-532 permits a Defendant to move for judgment notwithstanding the verdict only if that party made a motion for judgment at the close of all evidence, and only on the grounds advanced in support of the earlier motion. The Defendant did not move for judgment at the close of evidence in this matter.

Consequently, the Maryland Rules prohibit the Defendant from moving for judgment notwithstanding the verdict, and the Defendant's motion must be denied.

3. Even if the Defendant had moved for judgment at the close of the evidence, a Motion for Judgment Notwithstanding the Verdict should be denied because there is no basis for granting the motion. Defendant argues that Plaintiff failed to meet her burden of proof as to "negligence" and its casual relationship to her injuries. This is incorrect. Plaintiff presented testimony from Andrew Bokor, M.D., a board certified obstetrician/gynecologist who was accepted as an expert witness by this Honorable Court. Dr. Bokor testified that Dr. Alexander breached the standard of care in several ways, including, but not limited to, not contacting the Plaintiff to advise her that her hcg level had increased and that she needed to be referred to a gyn oncologist. Dr. Bokor further testified that as a result of this breach of the standard of care the plaintiff suffered damages including, but not limited to, undergoing a hysterectomy. Plaintiff also offered expert witness testimony from Neil Rosenshein, M.D., a board certified ob/gyn and a board certified gynecologic oncologist. Dr. Rosenshein testified that had the Plaintiff been referred to a gynecologist oncologist when her hcg level increased, she would have received treatment that would have avoided a hysterectomy and other treatment. Plaintiff also testified as to her pain and suffering. Thus, Plaintiff offered both factual and legal evidence to meet her burden of proof.

4. The Defendant alternatively moves for a new trial. A new trial may be granted pursuant to Rule 2-533 "whenever there is a fair probability that to failure to do so would deny a party the right to a fair trial." Thodos v. Bland, 75 Md. App. 700, 708 (1988).

5. The Defendant's motion for new trial offers arguments identical to those advanced at trial. Specifically, the Defendant claims that the Plaintiff was contributorily negligent in that she did not follow-up with the Defendant after her appointment on July 28, 2008. There is no evidence whatsoever that the Defendant's arguments regarding contributory negligence were not properly considered by the jury. Furthermore, the jury's finding as to contributory negligence is consistent with the evidence offered at trial.

6. The Defendant presented his arguments regarding contributory negligence to the jury in his opening and closing statements, as well as on cross examination of the Plaintiff's witnesses and in his own direct examination. The Defendant requested a jury instruction regarding contributory negligence, and requested a question on the verdict sheet as to whether the Plaintiff was contributorily negligent. The court permitted both the jury instruction and the entry on the verdict sheet. The jury specifically found that the Plaintiff was not contributorily negligent. There is no evidence in the record whatsoever to suggest that the question of contributory negligence was not properly considered by the jury. The jury considered this issue and found that the Plaintiff was not contributorily negligent.

7. Furthermore, contrary to the Defendant's arguments, the finding of the jury is consistent with the facts of the case. The Plaintiff testified that she was not instructed to follow-up with the Defendant Alexander, and believed that her treatment from the Defendant had concluded. Where the physician considers the treatments ended and does not instruct the patient to return, the patient is not chargeable with negligence for failure to do so. *Smith v. Pearre*, 96 Md.App. 376 (1993). The Defendant suggests

only that the Plaintiff should have known to follow-up because there was a "possibility of cancer." The Plaintiff testified clearly that she was not instructed by the Defendant as to the risk or possibility of cancer, or to follow up with the Defendant after July 28, 2008, but in any case, the question of whether Ms. Hall was negligent in not returning to the Defendant Alexander's office was a question for the jury to decide. The jury properly found that Ms. Hall's conduct was not negligent.

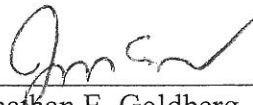
8. Additionally, even if the jury were to find that Ms. Hall was negligent, the jury could not possibly have found that her negligence contributed to her damages. Contributory negligence is an affirmative defense and the party asserting such a defense bears the burden of proof. *Walker v. National R.R. Passenger Corp.*, 703 F.Supp.2d 495 (D.Md.,2010). In establishing the affirmative defense of contributory negligence a defendant must not only prove that a reasonably prudent plaintiff would have taken certain precautions, he must also prove that the failure to take the suggested precautions was a proximate cause of the injury. *Ensor v. Ortman*, 243 Md. 81, 220 A.2d 82 (Md. 1966). As asserted by the Plaintiff in her motion for judgment at trial, the Defendant was unable to offer any evidence which would suggest that if the Plaintiff had followed up with the Defendant, her injuries would have been avoided. Specifically, the Defendant did not offer any evidence which would show that if she had presented to his office for a follow-up visit, she would have avoided her hysterectomy or any other damages Plaintiff claimed that were due to the Defendant's negligence.

9. The Plaintiff met her burden of proof, and established a *prima facie* case of negligence, with respect to duty, breach, injury and causation by a preponderance of the evidence. After all of the evidence was heard by the jury, a verdict was returned in

favor of the Plaintiff. The jury also heard any rejected the Defendant's contributory negligence defense. There is no basis to question the jury's decision in this case, as the verdict is consistent with the facts of this case, and there can be no suggestion that the Defendant received any less than a fair trial.

WHEREFORE, for the reasons stated herein, the Plaintiff requests that the Defendant's Motion for Judgment Notwithstanding the Verdict, or in The Alternative, for a New Trial be DENIED.

Respectfully submitted,



Jonathan E. Goldberg
Schochor, Federico and Staton, P.A.
1211 Saint Paul Street
Baltimore, MD 21202
(410) 234-1000
Attorneys for the Plaintiff

L11-26731

SHANNON HALL : IN THE
Plaintiff : CIRCUIT COURT
v. : FOR
HAROLD O. ALEXANDER, M.D., et al : PRINCE GEORGE'S COUNTY
Defendants : Case No.: CAL 11-26731

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**PLAINTIFF'S OPPOSITION TO DEFENDANT HAROLD O. ALEXANDER,
M.D.'S REQUEST FOR REMITTITUR, OR IN THE ALTERNATIVE, MOTION
FOR NEW TRIAL**

COMES NOW the Plaintiff, by and through her attorneys, Jonathan Schochor, Jonathan E. Goldberg, Brent P. Ceryes and Schochor, Federico and Staton, P.A., and opposes the Defendant Harold O. Alexander, M.D.'s Request for Remittitur, or on the Alternative, Motion for New Trial. In support thereof, the Plaintiff states as follows:

1. This matter is a medical malpractice case in which the Plaintiff alleged that the Defendant negligently managed and treated the Plaintiff's molar pregnancy. As a result of the Defendants' negligence, the Plaintiff underwent a hysterectomy and suffered additional injuries.

2. The trial of this matter took place from January 28, 2013 to February 4, 2013. After hearing all of the evidence from each of the parties, the jury returned a verdict in favor of the Plaintiff, and a judgment was entered in the amount of \$1,070,636.27. The judgment consisted of \$1,000,000 in non-economic damages and \$70,636.27 in economic damages.

3. The Defendant requests a remittitur of the jury award in this case on the basis of the statutory cap on non-economic damages found in Maryland Code, Annotated,

Courts and Judicial Proceedings Article §11-108(b)(2). The Defendant further argues that the damages awarded in this case were excessive, substantially beyond any reasonable amount of compensation, and well beyond the damages proven by the Plaintiff.

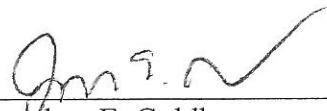
4. The Plaintiff does not dispute that the non-economic damages in this case are capped by statute. Pursuant to Md. Courts and Judicial Proceedings Code Annotated, the limitation on non-economic damages for this case is \$650,000.00.

5. The Defendant also moves for a remitter or new trial on the basis that the verdict entered by the court is excessive. The standard to be applied by a trial judge in determining whether a new trial should be granted on the ground of excessiveness of the verdict has been variously stated as whether the verdict is 'grossly excessive,' or 'shocks the conscience of the court,' or is 'inordinate' or 'outrageously excessive,' or even simply 'excessive.'" Banegura v. Taylor, 312 Md. 609 (1988) (quoting Conklin v. Schillinger, 255 Md. 50, 69 (1969)). The Defendant does not set forth how the jury's verdict in this case is excessive or shocks the conscience. Indeed, this verdict is not excessive. It is consistent with verdicts reached in similar cases, and properly reflects the damages which were suffered by the Plaintiff as a consequence of the Defendant's negligence. *See e.g. Miller v. LAMMICO*, 973 So.2d 693 (La. 2008) (upholding a jury's monetary damages award of \$866,000, but reduced to a cap of \$566,400 in compliance with Medical Malpractice Act where patient suffered a hysterectomy as a result of malpractice); Exhibit 1 (Journal Article noting a \$1 million settlement in a Connecticut case involving an unnecessary hysterectomy); Exhibit 2 (Press Release regarding a \$5 million verdict in a case involving an unnecessary hysterectomy).

6. Ms. Hall has been forced to undergo a hysterectomy at the age of 21 as a result of the negligence of the Defendant, and has thereby permanently lost the ability to bear her own children. Ms. Hall has also suffered with excruciating physical pain before and after her hysterectomy, and has endured extensive chemotherapy, which itself caused pain, depression, nausea and other injuries. There is no basis whatsoever to conclude that the damages in this case are excessive, and deserving of a *remittitur* or a new trial.

WHEREFORE, for the reasons stated herein, the Plaintiff respectfully requests that the Defendant's Request for Remittitur, or in the Alternative, Motion for New Trial be DENIED.

Respectfully submitted,



Jonathan E. Goldberg
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1211 Saint Paul Street
Baltimore, MD 21202
(410) 234-1000
Attorneys for the Plaintiff

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

Shannon Hall

Plaintiff(s)

CAL11-26731

VS

Harold O. Alexander, M.D., et al

Defendant(s)

JUDGMENT

This matter having been decided by:

☐ A judge;

☒ A jury verdict,

with Judge Pearson presiding, it is
this 4th day of February, 2013.

ORDERED AND ADJUDGED that:

☐ the complaint is dismissed without leave to amend.

☒ Judgment is granted in favor of Plaintiff,
Shannon Hall
(Party/Parties for Whom Judgment Granted)

☒ And against, Integrated Ob/Gyn
in the amount of one million seventy thousand six hundred thirty
six and 27/100 (\$1,070,636.27) Dollars with interest from date and
costs. (Jointly and Severally)
(Party/Parties Against Whom Judgment Granted)

☒ in the sum of \$1,070,636.27

☐ all relief is denied.

☒ Costs are assessed against Defendant.

Marilynn M. Bland
CLERK OF THE COURT

AOC-CC-302
(5/98)

INDEXED ON GENERAL INDEX

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IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

FILED

SHANNON HALL

Plaintiff

FEB 4 2013

v.

CLERK OF THE CIRCUIT COURT
FOR PRINCE GEORGES COUNTY, MD.

CAL11-26731

HAROLD O. ALEXANDER, M.D., et al

Defendants

VERDICT SHEET

1. Do you find that the Defendant, HAROLD O. ALEXANDER, M.D., breached the standard of care in his care and treatment of the Plaintiff, Shannon Hall?

YES



NO

(If your answer to question no. 1 is "YES", please proceed to question no. 2. If your answer to question no. 1 is "NO", please stop. You have completed your deliberations.)

2. Do you find that a breach of the standard of care by the Defendant, HAROLD O. ALEXANDER, M.D., was a cause of the Plaintiff, Shannon Hall's, injuries and damages?

YES



NO

(If your answer to question no. 2 is "YES", please proceed to question no. 3. If your answer to question no. 2 is "NO," please stop. You have completed your deliberations.)

3. Do you find that the Plaintiff, Shannon Hall, was contributorily negligent?

YES

NO



(If your answer to question no. 3 is "YES", please proceed to question no. 4. If your answer to question no. 3 is "NO", please proceed to question no. 5.)

4. Do you find that the Defendant, HAROLD O. ALEXANDER, M.D., had a fresh opportunity to avoid injury to the Plaintiff, Shannon Hall, in spite of her contributory negligence?

YES _____

NO _____

(If your answer to question no. 4 is "YES", please proceed to question no. 5. If your answer to question no. 4 is "NO", please stop. You have completed your deliberations.)

5. What damages, if any, do you award to the Plaintiff, Shannon Hall, for:

Economic Damages – Medical Bills:

\$ 69,936.27


Non-Economic Damages (i.e. Emotional Distress, Pain and Suffering of the Plaintiff, Shannon Hall):

\$ 1,000,000.00

Other Damages:

\$ 700.00

By signing, I agree that the above answers are my verdict and that all the jurors agree.


Jury Foreperson
Date 2/4/13