

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

BRENDA STANLEY,

Plaintiff,

v.

SUTHIPAN CHEVY, M.D.,

Defendant.

CIVIL ACTION NO. 00-C-365
Judge Eric O'Briant

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ORDER DENYING PLAINTIFF'S POST-TRIAL MOTIONS

On Tuesday, June 27, 2006, the Plaintiff, Brenda Stanley, appeared before this Court in person and through her counsel, Norman W. White. Also appearing on behalf of the Defendant, Dr. Chevy, was his counsel, Mark A. Robinson. The purpose of the hearing was argument on Plaintiff's Motion for a New Trial, which sought to have this Court set aside the November 3, 2005, jury verdict rendered in favor of the Defendant, Dr. Chevy and to enter judgment as a matter of law on the issue of negligence in favor of plaintiff Brenda Stanley and order a new trial on the issue of causation. For reasons appearing more fully below, this Court respectfully denies Plaintiff's Motion.

After reading the respective briefs of the parties on the issues, as well as hearing oral argument from both counsel, this Court hereby determines that, after a jury has made a finding in favor of one of the parties, the trial court must give every reasonable inference to the party for whom the jury has found. It is well established in this State that a new trial can be awarded under Rule 59 of the *West Virginia Rules of Civil Procedure* if the Court finds that there is a miscarriage of justice (see, e.g., *Sias v. W-P Coal Company*, 185 West Virginia 569, 408 S.E.2d 321 (1991)). This Court, in reviewing the facts of

this case as well as the prior verdict returned in favor of the Defendant, believes that, taking into consideration the facts of the case, the testimony of the parties, and the evidence adduced at trial by the respective expert witnesses, sufficient evidence existed to support the jury's verdict in favor of the Defendant. This Court is not in a position to speculate on any questions the jury may have had prior to returning their verdict.

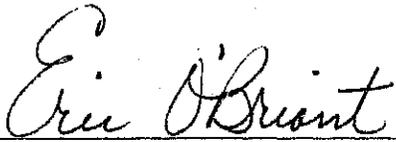
Further, the Court notes that Dr. Chevy candidly admitted in his testimony at the trial of this matter that he did not recall discussing matters regarding informed consent, but that it was his normal, customary practice to discuss all points contained in the informed consent document which was introduced in evidence at the trial of this matter. Plaintiff's counsel argues that Dr. Chevy did not testify about his normal, customary practice regarding informed consent and that he did not offer reasonable alternatives to the surgery he performed, including hormone replacement therapy, because he thought the surgery was necessary. The Plaintiff had distinct and differing recollections from that which was contained in the informed consent document. The jury heard all this testimony, and had an opportunity to review the document and other extant medical records. Thus, the jury heard conflicting evidence; this Court finds there was sufficient evidence for them to find as they did.

As to the Plaintiff's contention that a new trial should be ordered on the issue of proximate cause, this Court hereby finds that the jury had no reason to address proximate cause in their deliberations. Because the jury did not find in favor of the Plaintiff on the standard of care issue regarding informed consent, it had no reason to address proximate cause on the verdict form. Thus, any issue regarding proximate cause is mooted by the standard of care answer the jury returned in favor of the Defendant and the ruling of this

Court upholding the jury verdict. An error by the Court on this issue, if any, was harmless error.

Therefore, based on the foregoing, this Court hereby **ORDERS** that the verdict in favor of the Defendant by this jury hereby stands. The Plaintiff's Post-trial Motions are respectfully denied by the Court and Plaintiff's objections are duly noted. The Court hereby notes that the Plaintiff has the proscribed time period in which her Petition for Appeal to the West Virginia Supreme Court of Appeals may be filed.

Entered this 1st day of ^{Dec}~~October~~, 2006.



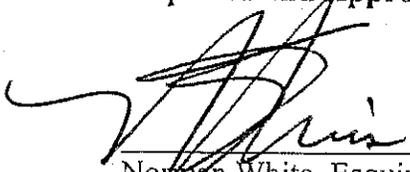
Judge Eric O'Briant

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Court upholding the jury verdict. An error by the Court on this issue, if any, was harmless error.

Therefore, based on the foregoing, this Court hereby **ORDERS** that the verdict in favor of the Defendant by this jury hereby stands. The Plaintiff's Post-trial Motions are respectfully denied by the Court and Plaintiff's objections are duly noted. The Court hereby notes that the Plaintiff has the proscribed time period in which her Petition for Appeal to the West Virginia Supreme Court of Appeals may be filed.

Entered this _____ day of October, 2006.

Judge Eric O'Briant

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