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**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

**FILED**

2016 MAY -5 P 2: 44

ALEXEI G. ESTRADA, M.D.  
Plaintiff.

Case No: CV-14-834630

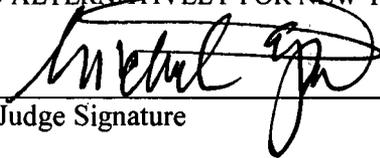
CLERK OF COURTS  
CUYAHOGA COUNTY

Judge: MICHAEL E JACKSON

ERICA J. GLANCY, M.D.  
Defendant

**JOURNAL ENTRY**

DEFENDANT DR. ERICA J. GLANCY'S MOTION FOR JNOV AND ALTERNATIVELY FOR NEW TRIAL ON DAMAGES,  
FILED 03/09/2016, IS DENIED. O.S.J.

 5/5/16  
\_\_\_\_\_  
Judge Signature Date

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

ALEXEI GONZALEZ-ESTRADA, M.D., ) Case No. CV 14-834630  
)  
)  
PLAINTIFF, ) JUDGE MICHAEL E. JACKSON  
)  
v. )  
) **JOURNAL ENTRY AND OPINION: ERICA**  
) **J. GLANCY M.D.'S MOTION FOR JNOV**  
ERICA J. GLANCY, M.D., ) **AND ALTERNATIVELY FOR A NEW**  
) **TRIAL ON DAMAGES.**  
DEFENDANT. )

Defendant Dr. Erica J. Glancy M.D.'s (Glancy) Motion for Judgment Notwithstanding the Verdict (JNOV) for \$80,000.00, or in the alternative to grant a new trial, filed March 9, 2016, is denied for the reasons stated in this Journal Entry and Opinion.

**Brief Summary of the Disposition of the Case**

After an 11-day jury trial concerning the claims of Plaintiff Dr. Alexei Gonzalez-Estrada M.D. (Estrada) and the counter-claims of Glancy, the jury found unanimously in favor of Glancy and against Estrada on all of his claims; Defamation, Tortious Interference with Employment Relations, Malicious Criminal Prosecution, and did not award any punitive damages.

The jury found for Glancy on two of her four counterclaims against Estrada. By a concurrence of seven jurors, the jury found in her favor regarding Civil Assault and awarded damages of \$3,899.21, and the jury found unanimously for her on Civil Battery, but awarded \$0.00 in damages.<sup>1</sup> The amount of \$3,899.21 was the exact amount of Glancy's unpaid medical

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<sup>1</sup> The Court noted that Interrogatory number 9 stated that the jury found unanimously that Glancy suffered from a pre-existing condition that was aggravated, or damaged due to assault, battery, and/or intentional infliction of emotional distress by Gonzales. The jury identified two pre-existing conditions.

expenses that she was obligated to pay as of the time of trial<sup>2</sup>. As to all of these counts, the Court instructed the jury not to duplicate damages, by stating, "Your decision with regard to damages should be based on each of the claims asserted by the parties. Do not count the damages for one claim to be part of the damages for another claim."

Finally, the jury found unanimously in favor of Estrada on Glancy's counter-claims for Defamation, and Intentional Infliction of Emotional Distress Counterclaim, and did not award any Punitive Damages.

During the course of the trial, the Court made two significant rulings that relate to Glancy's JNOV motion. The Court excluded a jury instruction on future damages, because Glancy's expert did not make specific findings of future damages in her expert report beyond mere speculation. *Day v. Gulley*, 175 Ohio St. 83, 191 N.E.2d 732 (1963) (in the absence of medical opinion on point, evidence of permanency is subjective and a jury's consideration of permanent pain and suffering is conjectural; therefore, an instruction from the Court is erroneous and unduly prejudicial.) As a result, her medical expert and treating nurse, a Certified Clinical Nurse Specialist and licensed Advanced Practice Nurse, could not testify at trial about future damages. Furthermore, Glancy's medical expert did not testify that her diagnosis of posttraumatic stress syndrome (PTSD) was a permanent condition, a requirement for consideration of future damages, even though Glancy's counsel repeatedly questioned her on point.

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<sup>2</sup>The Supreme Court of Ohio has held that both the original medical bill rendered and the amount accepted as full payment for medical services are admissible to determine the reasonable costs of medical expenses. *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, 857 N.E.2d 1195, ¶ 6. The Court concluded that the jury may decide the reasonable value of medical care. *Id.* at ¶ 18. In this case, the Court admitted into evidence Glancy's Exhibit Q, a three-page document, separately titled: "Summary of Medical Expenses," "Summary of Prescription Expenses," and "Summary of Miscellaneous Expenses." See pages 6 and 7 for a discussion of these charges.

This Court's other significant ruling excluded evidence offered by Estrada regarding Glancy's offer to settle her Title IX claim with the Cleveland Clinic Foundation<sup>3</sup>. Glancy contends that Estrada's attempt to introduce this evidence prejudiced her because it smeared her as being litigious and greedy, even though the Court instructed the jury to disregard this information.

### Law & Analysis

"The test to be applied by a trial court in ruling on a motion for judgment notwithstanding the verdict is the same test to be applied on a motion for a directed verdict. The evidence adduced at trial and the facts established by admissions in the pleadings and in the record must be construed most strongly in favor of the party against whom the motion is made, and, where there is substantial evidence to support his side of the case, upon which reasonable minds may reach different conclusions, the motion must be denied. Neither the weight of the evidence nor the credibility of the witnesses is for the court's determination in ruling upon either of the above motions." *Posin v. A. B. C. Motor Court Hotel, Inc.*, 45 Ohio St.2d 271, 275, 344 N.E.2d 334 (1976) (internal citations omitted).

A motion for judgment notwithstanding the verdict must be made within 28 days after the entry of judgment. Civ.R. 50(B). "If the judgment is reopened, the Court shall either order a new trial, or direct the entry of judgment, but no judgment shall be rendered by the court on the ground that the verdict is against the weight of evidence. *Id.*

"[A] new trial may be granted to all or any of the parties and on all or part of the issues upon any of the following grounds:

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<sup>3</sup> Glancy and Estrada were co-fellows at the Cleveland Clinic Foundation at the time of the events giving rise to this action.

- (1) Irregularity in the proceedings of the court, jury, magistrate, or prevailing party, or any order of the court, abuse of discretion, by which an aggrieved party was prevented from having a fair trial...
- (4) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice...
- (6) The judgment is not sustained by the weight of the evidence; however, only one new trial may be granted on the weight of the evidence in the same case...
- (7) Judgment is contrary to law...
- (9) Error of law occurring at the trial and brought to the attention of the trial court by the party making the application...in the sound discretion of the trial court for good cause shown." Civ.R. 59(A) (1) (4) (6) (7) (9).

The motion for a new trial shall be served within 28 days of the entry of final judgment.

Civ.R. 59(B).

Glancy raises three issues in her argument why the Court should grant JNOV or alternatively for a new trial on damages. First, Plaintiff's lead counsel disobeyed the Court's order not to discuss the \$450,000.00 settlement communication from Glancy to the Cleveland Clinic Foundation. Second, the Court erred by failing to give the jury an instruction on future pain and suffering, and other errors. Third, as a matter of law, the jury could not award "\$0.00" in damages for Glancy's Civil Battery claim.

The Court fully considered and decided the first two arguments raised by Glancy before and during trial. Glancy has not persuaded this Court to change these rulings base on her JNOV motion. In this regard, the Court considered these two arguments, the rulings and explanations of these rulings given by the Court during trial, and the evidence presented at trial. Construing the evidence most strongly in favor of Estrada, the non-moving party, the Court determines there is substantial evidence in support of his side of the case upon which reasonable minds could reach

different conclusions. Therefore, Glancy's JNOV motion is denied as to the first and second arguments. The Court further determines that Glancy has not demonstrated grounds for awarding a new trial on damages.

Glancy's third argument is new and arises out of the events that occurred during jury deliberations and announced by the Court when they returned their verdict with the completed verdict forms and answers to interrogatories. This issue is whether the jury was required to award nominal damages for the battery claim, instead of \$0.00. Glancy's successful Civil Assault claim and her award of \$3,899.21 on this issue are closely aligned with and must be considered in conjunction with her successful Civil Battery claim.

Throughout this trial, neither party made any real distinction between the Civil Assault and Civil Battery claims when their witnesses testified or during opening statements and closing arguments to the jury. Rather, both parties focused on the conduct of Estrada and Glancy, and whether their evening of dancing and significant consumption of alcohol led to their consensual or non-consensual sex. Further, and without objection by either party, the Court instructed the jury not to duplicate damages - "Your decision with regard to damages should be based on each of the claims asserted by the parties. Do not count the damages for one claim to be part of the damages for another claim."

Glancy acknowledged that the jury awarded \$3,899.21 for her Civil Assault claim was the amount of her unpaid medical expenses arising out of Estrada's conduct, most of which related to her psychological treatment for PTSD, which she was obligated to pay as of the time of trial. Had the jury awarded her medical expenses of \$3,899.21 for her Civil Battery claim, the jury would have awarded the same damages for a different claim, and in so doing, they would have violated the Court's instruction not to duplicate damages. Finally, it is clear the jury did not

award Glancy any separate amount for pain and suffering concerning her Civil Assault claim, just like her Civil Battery claim.

When an assault and battery is physically harmless, such as a physician who does not obtain consent, but performs a harmless or beneficial procedure, the plaintiff may recover damages. *Lacey v. Laird*, 166 Ohio St. 12, paragraph one of the syllabus, with emphasis added, 139 N.Ed.2d 25 (1956). The Supreme Court of Ohio further held that “nominal damages” are those recoverable where a legal right is to be vindicated against an invasion thereof which has produced no actual loss of any kind, or where, from the nature of the case, some injury has been done, the extent of which the evidence fails to show. ‘Nominal damages’ are an amount to some small or nominal amount in terms of money.” *Id.* at paragraph 2 of the syllabus. A verdict for \$100 or \$200 or more, does not come within the definition of nominal damages.” *Id.* at 21.

In Glancy’s case, the jury instructions for Civil Battery stated it “is intentional, unconsented contact with another.” The jury found that Estrada did have intentional unconsented contact with Glancy, but there is no indication by the related interrogatory or otherwise whether that contact was physically harmless, or harmful. The only evidence of physical injury to Glancy was her testimony about a lineal bruise on her thigh. She did not immediately seek medical attention after the events, although she did eventually go to her Gynecologist (GYN). In support of her testimony, Glancy offered pictures of the bruise. However, none of her medical bills concerned this alleged injury, and instead the bills documented her psychological treatment. The Court admitted into evidence Glancy’s Exhibit Q, a three-page document, separately titled: "Summary of Medical Expenses," "Summary of Prescription Expenses," and "Summary of Miscellaneous Expenses." The "Summary of Medical Expenses" showed a total amount of \$14,989, with insurance payments totaling \$13,198, and a co-pay amount of \$3,185, Glancy’s out-of-pocket

expenses. The "Summary of Prescription Expenses" totaled \$714.21, and the "Summary of Miscellaneous Expenses" totaled \$3,912.83.

The jury awarded only Glancy's co-pay amounts, her out-of-pocket medical expenses of \$3,899.21, as a reasonable value to compensate her for her damages, and not the amount originally billed. Moreover, the nature of the charges for these co-pay amounts were listed on the "Summary of Medical Expenses" as "Psychologist," "Psychiatrist," "Psychiatry," and "Psychiatry/GYN." There is no indication that Glancy received any medical treatment for any physical injury concerning the Civil Battery claim against Estrada. Finally, the jury did not award any amount for prescription expenses or miscellaneous expenses.

In support of her argument, Glancy cites an 1871 Supreme Court of Ohio case, decided eighty-four years before *Lacey*. That case involved a land matter, and the Supreme Court of Ohio held that a nuisance action could be maintained without showing any actual damages, and for which nominal damages, at least, may be recovered. (Emphasis Added) *Tootle v. Clifton*, 22 Ohio St. 247 at paragraph one of the syllabus (1871). The Supreme Court of Ohio has twice used "may" recover damages, including nominal damages, thereby sending a clear ruling that makes such awards permissive, but not mandatory, as Glancy nevertheless argues in her JNOV motion. *Lacey* at paragraph one of the syllabus; *Tootle* at paragraph one of the syllabus.

This Court first notes that neither Glancy nor Estrada requested a jury instruction on nominal damages for Civil Battery. Further, Glancy did not seek or request a specific damages amount in her closing argument, making it clear that that she would rely upon the jury to reach a just and fair verdict for compensatory damages. The jury heard all the evidence of Glancy's evaluation of her economic and non-economic damages. The Court then read the jury instructions and provided copies of these instructions to the jury for their deliberations. The

Court presumes that the jury followed the Court's instructions and did not duplicate damages. After deliberations, the jury stated their award in the verdict forms. There is no error in this case.

Upon review of the facts, evidence, and arguments for this motion, the Court discovered one oversight on the jury interrogatories. The jurors did not sign or state a monetary amount in Interrogatory #6, subsection C that asked them to assign an amount of damages after they unanimously determined that Estrada committed Civil Battery in Interrogatory #6 subsection A, and which was a proximate cause of the harm, as stated in Interrogatory #6 subsection B. Nevertheless, the jury did complete the verdict form for Civil Battery, which references Interrogatory #6. This verdict form, signed by all eight jurors, states an award of \$0.00 in damages. After reading the verdict in open court, the Court polled each juror on the record to determine if the signatures on the verdicts accurately reflected their individual decisions, and each juror said "yes." Because the jurors confirmed their answers in open Court, the jury verdict of \$0.00 damages was consistent with their answers. *Rentequip, Inc. v. Jacobs Vanaman Agency, Inc.* 2013-Ohio-346 ¶ 35, 2013 Ohio App. Lexis 290 (5th Dist.) (Appellant court determined there was no error by the trial court when it awarded \$0.00 in damages on a promissory estoppel claim consistent with the jury's verdict that an award of \$0.00 damages was appropriate, answer to an interrogatory to award zero damages, and discussion with the Court of the verdicts before the jury was excused.) This Court presumes that the jurors followed all the juror instructions, and is satisfied that the jurors intended to award the damages that they awarded.

Further, Glancy did not object to inconsistencies between the verdict and answers to the interrogatories, or the amount awarded for Civil Battery damages before the jury was dismissed pursuant to Civ.R. 49(B). A party waives an objection to an inconsistent answer by a jury to an interrogatory, unless the party raises the objection prior to the jury's discharge. *Avondet v.*

*Blankstein*, 118 Ohio App.3d 357, 368, 692 N.E.2d 1063 (8th Dist.1997) (citations omitted). There are two reasons for this rule; first “to promote the efficiency of trials by permitting the reconciliation of inconsistencies without the need for a new presentation of evidence to a different trier of fact,” and second, “to prevent jury shopping by litigants who might wait to object to an inconsistency until after the original jury is discharged.” *Avondet* at 368; *Link v. FirstEnergy Corp.*, 2014-Ohio-5432, ¶¶ 32-36, 25 N.E.3d 1095 (8th Dist.). “Under Civ.R. 49(B), a trial court has three options if the jury's answers to the interrogatories are internally inconsistent or inconsistent with the verdict: (1) it may enter judgment consistent with the answers, notwithstanding the verdict; (2) it may return the matter to the jury for further consideration, or (3) it may order a new trial. *Link* at ¶ 33. When a party fails to cite an inconsistency while the jury is empaneled, but later files a motion for a new trial, the party has limited the court’s discretion by eliminating the best option for resolving any inconsistencies, returning the matter to the jury for further consideration. *Link* at ¶ 34; citing *Shaffer v. Maier*, 68 Ohio St.3d 416, 421, 1994 Ohio 134, 627 N.E.2d 986 (1994).

Ohio courts routinely order further jury deliberations when a party timely raises an objection. *Job v. Cleveland Dance Ctr.*, 62 Ohio App.3d 678, 577 N.E.2d 396 (8th Dist.1989) (Trial court ordered further deliberations after the jury’s verdict and answer to interrogatory was inconsistent); *Martin v. Am. Nat’l Prop. & Cas. Co.*, 12th Dist. Butler No. CA2009-11-282, 2010-Ohio-3370, ¶ 5. (Appellants requested that the court re-submit the zero loss of consortium award, which was denied by the trial court.”); *Elwer v. Carroll's Corp.*, 3d Dist. Allen No. 1-06-33, 2006-Ohio-6085, ¶ 5 (“the jury initially returned with a verdict in favor of Karen Elwer in the amount of \$13,385.76, an amount equal to the agreed amount of medical damages in this case. However, upon further instruction from the trial court, the jury was instructed to deliberate

further on an amount of damages beyond just the medical bills. Thereafter the jury returned with a verdict of \$13,400.00 in favor Karen Elwer and a verdict of \$0.00 in favor of Kenneth Elwer.”). Glancy’s failure to object to a perceived inconsistency between the jury’s interrogatories finding that Estrada committed Civil Battery against Glancy, and a verdict award of \$0.00 damages for the Civil Battery before the Court discharged the jury constitutes a waiver. *Avondet* at 368.

For all of these reasons, the Court determines that none of Glancy’s arguments warrants disturbing the jury’s finding on this issue. In conclusion, the Court denies Glancy’s JNOV motion and her motion for a new trial.

**IT IS SO ORDERED.**

DATED: 5/5/16

  
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JUDGE MICHAEL E. JACKSON

**THE CLERK OF COURT SHALL SERVE A COPY OF THE FOREGOING JOURNAL ENTRY AND OPINION ON ALL COUNSEL OF RECORD AT THE ADDRESS LISTED ON THE COURT DOCKET.**