

Micalizzi v. Stewart (AC 38683)

**Brief Summary:** Plaintiff was injured in a car accident. The jury returned a verdict in favor of the plaintiff, awarding her economic damages but not noneconomic damages. The court held that: (1) the award of zero economic damages did not conflict with the jury's answers to the interrogatories; (2) the award was not inadequate as a matter of law; and (3) the trial court did not abuse its discretion in refusing to set aside the verdict due to procedural irregularities. Thus, affirming the judgment of the trial court.

The plaintiff, Robin Micalizzi, was operating her vehicle at an intersection when it was struck by a vehicle operated by the defendant, Kenneth Stewart. The plaintiff claimed that the collision caused a strain/sprain of her cervical spine, permanent damage to her left hand and recurring, severe headaches. After receiving medical treatment her medical expenses totaled \$7,325. The plaintiff brought an action against the defendant, alleging that his negligence, statutory recklessness, and common-law recklessness caused her injuries. The jury returned a verdict in favor of the plaintiff, finding the defendant 65 percent responsible for the plaintiff's injuries and awarding her that portion of her total claimed economic damages. The jury did not award the plaintiff noneconomic damages. The plaintiff filed a motion to set aside the verdict and, in the alternative, for an additur. The court denied the motion.

The issues on appeal were: whether (1) the award of zero economic damages conflicted with the jury's answers to the interrogatories; (2) the award was inadequate as a matter of law; and (3) the trial court abused its discretion in refusing to set aside the verdict due to alleged procedural irregularities identified by the plaintiff.

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In reviewing the trial court denying the motions for additur and to set aside the verdict, the primary concern for the appellate court is to determine whether the court abused its discretion. To decide this, the court looks at whether, on the evidence presented, the jury could fairly reach the verdict it did. Regarding the damages, the court must look at whether the verdict shocks the sense of justice as to compel the conclusion that the jury was influenced by partiality, mistake, or corruption.

Economic damages are those awarded as a direct result of actual financial loss, such as medical expenses. Noneconomic damages include awards for pain, suffering, emotional anguish, worsening of prior injuries etc.

Interrogatories provide a breakdown of the components of the jury's award and of the factors underlying the jury's view of the evidence. When a claim is made that a jury's answers to interrogatories in returning a verdict are inconsistent, the court has a duty to attempt to harmonize the answers. If the court cannot harmonize the verdict and interrogatories, it may refuse to accept the verdict.

In its answers to the interrogatories, the jury found that (1) the defendant violated both General Statutes §§ 14-218a and 14-222 (2) the defendant violated both statutes "with reckless disregard" and (3) the defendant's violation of such statutes with reckless disregard proximately caused the plaintiff's injuries, but that (4) the plaintiff was not entitled to double or treble

damages. The plaintiff argued that the “injuries sustained by the plaintiff” portion of the third answer implies a subordinate finding that there were noneconomic damages. Furthermore, the plaintiff argued that if the court break downs the meaning of the terms used by the jury in its findings, it would have to conclude that medical care would not be rendered for injuries if there was no physical pain and suffering. The court rejected these arguments, stating that it is clear from the court’s instructions that the third interrogatory concerned only the defendant’s liability, not the existence or extent of the plaintiff’s injuries. The jury was instructed that it ought to decide damages last, that the plaintiff had the burden of proving her damages and that “the mere fact that the plaintiff suffered an injury or loss does not automatically entitle her to damages.” Thus, the plaintiff’s interpretation of the interrogatories would require the jury to proceed contrary to the court’s instructions and consider causation and damages simultaneously. Accordingly, the court concluded that it was entirely plausible for the jury to have found that the defendant violated the statutes, caused the injuries but that the plaintiff did not prove her noneconomic damages. Thus, concluding that the answers to the interrogatories were not inconsistent with the verdict. Next, the court addressed whether the award of zero noneconomic damages is inadequate as a matter of law.

In Connecticut, a jury’s decision to award economic damages does not trigger, as a matter of law, an automatic award of noneconomic damages. In *Wichers v. Hatch*, 252 Conn. 174, 188, 745 A.2d 789 (2000), the Supreme Court of Connecticut held that trial courts, when confronted with jury verdicts awarding economic damages and zero noneconomic damages, must determine on a case-by-case basis whether a verdict is adequate as a matter of law.

First, the plaintiff argued that *Wichers* and *Schroeder v. Triangulum Associates*, 259 Conn. 325, 789 A.2d 459 (2002), establish that where a jury awards all of the claimed economic

damages, the jury has determined that the claimed medical expenses were reasonable and necessary to treat pain caused by the claimed injury, and, thus, an award of zero noneconomic damages is inadequate. However, the court rejected this argument because the plaintiff presented an inaccurate reading of both cases. In *Wichers*, the court expressly allowed an award of 100 percent economic damages. In *Schroeder*, the court stated, “that a jury in a case with different facts reasonably could award the full amount of a plaintiff’s claimed economic damages but no noneconomic damages.” Thus, contrary to the plaintiff’s argument, there is no per se rule that where a jury awards economic damages it must award noneconomic damages. Furthermore, the court stated that an award of damages for medical treatment, does not necessarily mean that the jury must award damages for the pain itself. Therefore, concluding that the jury was not required to find that the plaintiff experienced pain and suffering because she sought medical treatment.

Next, in accordance with *Wichers*, the court looked at the facts and circumstances of the case to determine whether the jury reasonably could have concluded that the plaintiff’s noneconomic damages were not compensable. First, the court stated that the jury could have reached this conclusion because a significant portion of the plaintiff’s medical expenses were related to diagnostic consultations. Further, the plaintiff testified that she believed her headaches could have been caused by idiosyncrasies of her physiology. She also failed to follow up on her physicians’ recommendation that she receive another MRI. Thus, the court found that the jury could have concluded that the plaintiff’s failure to do so suggested she was not concerned about new symptoms or possible brain damages. Consequently, the jury could have reasonably concluded that the plaintiff failed to prove that the headaches were caused by the accident. The court also found that the jury could have reasonably concluded that the plaintiff failed to prove that the accident caused her neck pain because she testified that despite stopping physical

therapy, the condition in her neck improved. Thus, the court concluded that the award of zero noneconomic damages was not inadequate as a matter of law.

Next, the plaintiff argued that the following four procedural irregularities required the court to set aside the verdict and order a new trial: that the court (1) failed to accept a technically correct verdict in violation of Practice Book § 16-31; (2) neither consulted with counsel before communicating with the jury nor tailored such communications to the scope of the jury's question in violation of Practice Book § 16-28; (3) deprived the plaintiff of the opportunity to ensure that only full exhibits were submitted to the jury; and (4) discharged the jury without affording the parties the opportunity to have the jury polled in violation of Practice Book § 16-32. The court stated that each argument was meritless.

First, it found that the trial court properly complied with Practice Book § 16-31 because it adjourned the matter for the day, to give the jury more time to complete the verdict forms, after the jury informed the court that they were "pretty sure" they had not done everything necessary to render a technically correct verdict. The court rejected the plaintiff's second claim because before it reinstructed the jury regarding filling out the verdict forms, it explained to counsel exactly what it was doing. Third, contrary to the plaintiff's claim, the court gave her counsel the opportunity to review the materials the jury would have during its deliberations. Lastly, the court rejected the plaintiff's fourth claim because the court is only obligated to poll the jury when requested and there was no such request. Thus, the court concluded that the trial court did not abuse its discretion in refusing to set aside the verdict due to procedural irregularities.

The key takeaway from this case is that an award of economic damages does not necessarily entail an award for noneconomic damages. Thus, injured plaintiffs must assure that they present sufficient evidence regarding economic and noneconomic damages if they wish to

recover for both. The fact that they were injured alone is insufficient to mandate an award for noneconomic damages such as pain and suffering.