Court of Appeals, State of Michigan

ORDER

Monica Wallace v St John Health System

Docket No. 287799

LC No. 07-710371-NH

Karen M. Fort Hood
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray
Judges

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the August 27, 2008, order of the Wayne County Circuit Court, which granted plaintiff's motion for a determination as to the application of the higher-tiered cap for non-economic damage cap, MCL 600.1483, is REVERSED. Plaintiff's motion relied upon an excerpt from the deposition testimony of defendant Jamokay Taylor, M.D. Plaintiff's counsel continuously used the term "comatose" to describe the decedent's condition prior to death during her questioning, but Dr. Taylor affirmatively stated that he did not know if there was any evidence of a coma, as opposed to the decedent being unresponsive due to the progression of sepsis. Even assuming the decedent was in a comatose state, plaintiff failed to present any medical opinion or evidence establishing the decedent suffered "damage to or diminishment of his mental ability to perceive, memorize, judge, or reason that is expected to last forever" if he had survived. See *Young v Nandi,* 276 Mich App 67, 77-78; 740 NW2d 508 (2007), lv den and rem on other grds ___ Mich ___; ___ NW2d ___ (10/3/08). Therefore, the matter is REMANDED for further proceedings not inconsistent with this order. However, if the trial court entertains another motion or additional evidence and argument, the trial court should specify the particular evidence upon which it relies in rendering its factual finding regarding the applicability of the appropriate cap on noneconomic damages under MCL 600.1483(1)(b).

The motion to file a late answer is GRANTED.

The motion to file a reply to answer is GRANTED.

The Court retains no further jurisdiction.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 13 2009
Date

Sandra Schultz Mengel
Chief Clerk