IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JENNIFER L. McCALEB, Plaintiff,	)	
v.	)	C.A. 01C-10-238 PLA
WALTER J. KLEIN, Defendant.	)	

Submitted: February 10, 2005
Decided: February 11, 2005

UPON PLAINTIFF'S
MOTION FOR REARGUMENT
DENIED

ORDER

Somers S. Price, Jr., Esquire, Potter Anderson & Corroon LLP, Wilmington Delaware, Attorney for Plaintiff

Authur D. Kuhl, Esquire, Michael A. Pedicone, P.A., Wilmington, Delaware, Attorney for Defendant.

ABLEMAN, JUDGE

Upon consideration, Plaintiff's Motion For Reargument is **DENIED**. It appears to the Court that:

1. Plaintiff and Defendant had a low-impact auto accident. After a three-day trial, the jury returned a zero verdict. Due to some inconsistency in the verdict, this Court, in a February 3, 2005 Opinion, granted the plaintiff additur in the amount of $6,000. Because the additur granted was less than the defendant's previous offer of judgment, the Court awarded costs of $3,266.65[1], meaning that the plaintiff walked away with a net award of $2,733.65.

2. Plaintiff takes issue with the way the Court calculated this award. Plaintiff believes that the Court valued her injury at $7,500, and then adjusted downward to reimburse defense counsel for his time and costs. This is a misreading of my prior opinion. I did not value the plaintiff's injury at $7,500, and then invent a hitherto unknown legal procedure to reduce her award in order to compensate the defendant. Instead, I took the $7,500 offer of judgment as the starting point for my analysis, and then factored out the sum that the defendant could reasonably have expected to save if the plaintiff had been wise enough to accept the offer, i.e. costs and fees. The result was $2,733.65, an amount I believe to fairly approximate the defendant's pre-trial valuation of Plaintiff's injury.

[1] The instant motion argues that these costs are unreasonable. I have already expressly found the opposite, and will not revisit the issue here, except to say that if the plaintiff wanted to avoid costs pursuant to Rule 68, she should have settled. Rescuing the plaintiff from her choice to

3. I took this approach for a simple reason. It is absolutely clear, given the verdict, that the jury believed that the plaintiff was faking and deserved no award. She was therefore only entitled to compensation for injury that the defense conceded or failed to rebut.[2] The offer of judgment, minus trial costs and fees, is the best indication of the value of the injury that the defense conceded. As such, $2,733.65 is the absolute maximum to which the plaintiff is entitled.

4. My prior opinion should have made it clear that my assessment of the plaintiff's damages is the same as the jury's, i.e. that any injury she did suffer is not worthy of compensation. Despite this, the Court took considerable pains to specifically and accurately value the maximum award to which the plaintiff was entitled, and to grant additur accordingly. It was therefore not a little surprising to find my additur opinion distorted by a party who still does not understand that she was lucky to receive any award at all. To the extent my February 3, 2005 Opinion was in any way confusing, I trust that this Order has clarified it.

5. For these reasons, Plaintiff's Motion For Reargument is **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

---

bring a clear loser of a case to trial by reducing the fee award would only encourage other litigants to reject fair settlement offers in favor of pursuing frivolous claims.

[2] *Walker v. Campanelli*, 2004 Del. Lexis 462 at 6-7; *Amalfitano v. Baker*, 794 A.2d 575 (Del. 2001); *Maier v. Santucci*, 697 A.2d 747, 749 (Del. 1997).

Original to Prothonotary
cc: Somers S. Price, Jr., Esquire
Authur D. Kuhl, Esquire