



FILED
LORAIN COUNTY

2025 JAN -3 P 2:52

COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

To the Clerk: THIS IS A FINAL
APPEALABLE ORDER.
Please serve upon all parties not
in default for failure to appear;
Notice of the Judgment and its
date or entry upon the Journal

Date Jan. 3, 2025

Case No. 20CV201448

ESTATE OF KESTER SAMPLES

Plaintiff

William B. Eadie

Plaintiff's Attorney

VS

LaGRANGE NURSING & REHAB, et al.

Defendants

Elisabeth Arko

Defendants' Attorney

This matter is before the Court on remand from the Ninth District Court of Appeals with instructions to this Court to reconsider Defendants' motion JNOV applying the standard enunciated by the Ninth District in the remand decision. Both parties filed supplemental briefs on October 4, 2024. Oral hearing had October 31, 2024. With leave of Court, the parties also filed Second Supplemental Briefs on December 2, 2024. The Court rules as follows:

Upon reconsideration, Defendants' Motion for Judgment Notwithstanding the Verdict, filed December 29, 2022, is - DENIED.

Accordingly, judgment is hereby entered in favor of Plaintiff and against Defendants, jointly and severally, as follows: Compensatory Damages - \$250,000.00;¹ Punitive Damages - \$250,000.00; Attorney's Fees - \$319,570.00; and, Costs - \$1,319.24, for a total award of \$820,889.24, together with statutory interest at the rate of 3% per annum from August 11, 2022.

IT IS SO ORDERED. See Judgment Entry. No Record.



JUDGE D. CHRIS COOK

cc: Eadie, Esq.
Arko, Esq.

¹ Statutorily reduced from \$500,000.00.



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LORAIN COUNTY COURT OF COMMON PLEAS
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Hon. D. Chris Cook, Judge

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ESTATE OF KESTER SAMPLES
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I. INTRODUCTION

This matter is before the Court on remand from the Ninth District Court of Appeals² with instructions to this Court to reconsider Defendants' motion JNOV applying the standard enunciated by the Ninth District in the remand decision.

II) PROCEDURAL HISTORY

On July 10, 2020, Plaintiff, The Estate of Kester Samples ("The Estate"), filed its complaint alleging nursing home malpractice and wrongful death against Defendant, LaGrange Nursing & Rehabilitation Center ("LaGrange"), and three other Defendants, hereinafter collectively referred to as LaGrange Nursing.

On July 25, 2022, pursuant to Civ. R. 53(C)(1)(c), the parties consented to the Court's Civil Magistrate, David Muhek ("Magistrate Muhek"), to preside over the jury trial. On the same day, The Estate moved to apply the higher damages caps contained in R.C. 2323.43.³ The motion was denied, thus, The Estate's damages for non-economic loss are limited to \$250,000.00. R.C. 2323.43(A)(2).

On August 11, 2022, after a seven-day jury trial, Magistrate Muhek filed an entry noting jury verdicts in the amount of \$500,000.00⁴ in favor of The Estate and against LaGrange on the survivorship claim, plus \$250,000.00 in punitive damages.

² See: *Estate of Kester Samples v. LaGrange Nursing*, 2024-Ohio-4441 (9th Dist.).

³ LaGrange Nursing filed a cross-motion to enforce the lower caps.

⁴ Reduced to \$250,000.00.



Thereafter, subsequent to a series of evidentiary hearings, Magistrate Muhek awarded The Estate the sum of \$319,570.00 in attorneys fees and \$1,319.24 in litigation expenses. Magistrate Muhek filed an entry noting these awards on December 1, 2022.

Defendants filed their motion JNOV on December 29, 2022, and on January 3, 2023, both parties filed direct appeals with the Ninth District Court of Appeals.⁵

On April 5, 2023, the Ninth District dismissed the appeals as this Court had not issued a final order or judgment. The case was remanded to this Court to enter judgment, pursuant to Civ. R. 53(C)(2), consistent with the Magistrate's journalized entries,⁶ and to rule on the pending motion JNOV.

On September 29, 2023, this Court granted Defendants' motion JNOV.

On October 27, 2023, Plaintiff filed a (second) appeal in the Ninth District Court of Appeals. Defendants cross-appealed.

On September 9, 2024, the Ninth District Court of Appeals remanded the case to this Court to reconsider the motion JNOV and in the same decision, upheld the Magistrate's ruling to apply the lower damages cap. As Magistrate Muhek retired on December 31, 2022, this Court will proceed to rule on and reconsider the pending motion JNOV in accordance with the mandate of the Ninth District.

III) LAW AND ANALYSIS

DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

STANDARD OF REVIEW - JNOV

Decades ago, the Ohio Supreme Court enunciated the standard of review for evaluation of a Civ. R. 50(B) motion JNOV. That standard is still good law today.

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

⁵ See: Consolidated Case Nos. 23CA011934 & 23CA011935.

⁶ That Order was journalized on September 11, 2023.



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. *McNees v. Cincinnati Street Ry. Co.* (1949), 152 Ohio St. 269; *Ayers v. Woodard* (1957), 166 Ohio St. 138, 140 N.E.2d 401; Civ.R. 50(A) and (B).

Posin v. A.B.C. Motor Court Hotel, 45 Ohio St.2d 271, 275, (1976).

In a recent decision, following that precedent, Judge Sutton of the Ninth District Court of Appeals instructs,

The standard for granting a motion for judgment notwithstanding the verdict pursuant to Civ.R. 50(B) is the same as that for granting a motion for a directed verdict pursuant to Civ.R. 50(A). *Wagner v. Roche Laboratories*, 77 Ohio St.3d 116, 121 (1996), fn. 2, citing *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 318-319 (1996); and *Posin v. A.B.C. Motor Court Hotel, Inc.*, 45 Ohio St.2d 271, 275 (1976). Civ.R. 50(A)(4) states:

When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.

Indeed, because both motions for directed verdict and judgment notwithstanding the verdict test the legal sufficiency of the evidence, this Court reviews them de novo, with no deference to the trial court's decision. *See Oster v. Lorain*, 28 Ohio St.3d 345, 347 (1986); *see also Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.*, 2002-Ohio-2842, (9th Dist.), ¶ 4.

Given v. Whirlaway Corp., 2022-Ohio-2251, at ¶ 17.

STANDARD OF REVIEW – PUNITIVE DAMAGES

On remand, the Ninth District has clarified for this Court and the parties the proper standard of review to apply when deciding the propriety of a punitive damages claim. This Court will attempt (once again) to distill the nuances and framework germane to this issue. Addressing the multiple layers of complex definitions and a seemingly moving target, Judge Hensal of the Ninth District instructs as follows,



Punitive damages may only be awarded when "[t]he actions or omissions of [the] defendant **demonstrate malice**" . . . The plaintiff must demonstrate that punitive damages are appropriate "by clear and convincing evidence[.]"

Estate of Kester Samples v. LaGrange Nursing, 2024-Ohio-4441 (9th Dist.), ¶ 12, emphasis added.

Pertinent herein, the Ninth District defines "actual malice" thus,

"Actual malice," for purposes of punitive damages, consists of . . . **"a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm."** * * * This definition describes "a positive element of conscious wrongdoing . . . This element has been termed conscious, deliberate or intentional. It requires the party to possess knowledge of the harm that might be caused by his behavior[.]" and "mere negligence" is not sufficient.

Id. at ¶ 13, emphasis added.

Citing precedent from the Ohio Supreme Court, the Ninth District notes that recklessness is insufficient to establish that punitive damages are proper.

The Supreme Court of Ohio has also clarified that **a demonstration of recklessness will not establish** that punitive damages are warranted.

Id., emphasis added.

Citing another Ninth District decision that this Court is intimately familiar with, *Gibbons v. Shalodi*, 2021-Ohio-1910 (9th Dist.), Judge Callahan explained the difference between the "actual malice" standard and recklessness, on the one hand, and intentional conduct, on the other. In *Gibbons*, the Ninth District noting that the appellant erred by arguing that a standard of recklessness was applicable and this Court erred by focusing on the "lack of evidence of intentional conduct." *Gibbons*, at ¶ 61, 62. The Ninth District then went on to note that the defendant's negligence demonstrated that she acted with a conscious disregard for the rights and safety of a minor when Shalodi left drugs on a table that the minor ingested causing her death. The Ninth District further noted that,

. . . "[a]ctual malice may be inferred from the [defendant's] conduct and surrounding circumstances."

Id. at ¶ 95.



In concluding that this Court erred herein by again focusing on "the lack of evidence of intentional conduct," the Ninth District determined that this Court, while referencing the standard enunciated by the Ohio Supreme Court in *Preston* and *Motorists*,⁷ "... required an additional element" by requiring malice as having a component of 'deliberate or intentional' conduct. *Estate of Kester Samples*, at ¶ 15.

Acknowledging competing definitions of actual malice articulated by the Ohio Supreme Court in *Preston* and its progeny, the Ninth District observed,

... the Supreme Court articulated a standard that incorporated both, holding that actual malice is "that state of mind under which a person's conduct is characterized by hatred, ill will or a spirit of revenge" or "**a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm.**"

Estate of Kester Samples, at ¶ 16, emphasis added.

Clarifying the issue further, the Ninth District continued,

... "actual malice requires consciousness of the near certainty (or otherwise stated 'great probability') that substantial harm will be caused by the tortious behavior. Any less callous mental state is insufficient to incur that level of societal outrage necessary to justify an award of punitive damages." * * * "Actual malice" for purposes of punitive damages, therefore, differs from recklessness with respect to the actor's awareness of the risk and the degree of harm that is likely to result. * * * On the other hand, "actual malice" is a different issue than whether proof of a "direct intent to injure" is required.

Id. at ¶ 17.

The Ninth District concluded its analysis by again restating the correct standard that this Court should have applied,

That standard is whether a defendant had "a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm." * * * Stated differently, "actual malice requires consciousness of the near certainty (or otherwise stated 'great probability') that substantial harm will be caused by the tortious behavior."

Id. at ¶ 18.

⁷ Internal citations omitted.



So, with all of these separate and distinct mental states, or levels of culpability floating about, how do we distinguish them? We can start with the Ohio Revised Code that defines culpable mental states in four categories:

PURPOSEFUL⁸

A person acts purposely when it is the person's specific intention to cause a certain result . . . the specific intention to engage in conduct of that nature.

KNOWINGLY⁹

A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

RECKLESSNESS¹⁰

A person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature.

NEGLIGENCE¹¹

A person acts negligently when, because of a substantial lapse from due care, the person fails to perceive or avoid a risk that the person's conduct may cause a certain result or may be of a certain nature.

Note the similarity in the definition of malice, "a conscious disregard for the rights and safety of other persons . . ." with "consciousness" further described as "**a matter of near certainty, 'great probability'** . . ." and the definition of knowingly, "when a person is aware that the person's conduct **will probably cause a certain result** . . ."

So what is the real difference? If there is an actual difference between these concepts, it is clearly a difference without much of a distinction. And the difference, if any, appears to be that the "malice" standard is even higher than the "knowing" standard.

⁸ R.C. 2901.22(A). This may also be referred to as "purposeful" or "intentional" conduct.

⁹ R.C. 2901.22(B).

¹⁰ R.C. 2901.22(C).

¹¹ R.C. 2901.22(D).



After all, the knowing standard requires that the actor be aware that the conduct will *probably* cause a certain result or *probably* be of a certain nature, where the malice standard requires conduct that will result in substantial harm *as a matter of near certainty* or a *great probability*.

As a result of the foregoing, this Court believes that the culpable mental standards should instead, look like this

PURPOSE¹²

MALICIOUS

KNOWING

RECKLESS

NEGLIGENT

Importantly, these mental gymnastics are significant because measuring an actor's conduct against differing levels of culpability, or responsibility, will result in some, or no, liability for the acts, depending upon which standard is applicable.

Such is the case here.

The Ninth District reiterated that it was error for this Court to conclude that because the evidence did not establish "a positive element of conscious wrongdoing" that was "deliberate or intentional," punitive damages were inapposite, as, in doing so, this Court imposed "an additional element" not "required to establish actual malice." *Id.*

Regardless, while the Ninth District is undoubtedly correct, this Court maintains that the difference between conduct that with "near certainty" or "a great probability" will cause substantial harm and "deliberate or intentional" conduct is separated by a very, very thin line. A line, incidentally, subject to differing, subjective interpretation.

DISCUSSION

In this Court's decision of September 29, 2023, granting Defendants JNOV, the Court devoted a substantial amount of discussion to the facts surrounding the care and treatment of Mr. Samples. Most of these facts are not in dispute, though, obviously, their application to the issues at hand, are.

¹² Again, also "deliberate" or "intentional."



This Court will not reiterate those facts herein, but will re-evaluate them in light of the standard of review articulated by the Ninth District above.

**DID THE CARE AND TREATMENT OF KESTER SAMPLES BY
DEFENDANTS DEMONSTRATE A CONSCIOUS DISREGARD FOR HIS
RIGHTS AND SAFETY**

Put another way, did the clearly negligent care of Mr. Samples demonstrate a consciousness of near certainty or great probability that he would suffer substantial harm?

This matter is before the Court because the Defendants seek JNOV on the issue of punitive damages. Despite some initial misgivings, the Magistrate who presided over the trial allowed the punitive damages claim to go to the jury over the objection of the Defendants. The jury awarded punitive damages, which facilitated an award of attorney's fees.

Initially, this Court agreed with the Defendants that the punitive damages claim was inapposite, should not have gone to the jury, and that Defendant's motion for directed verdict on the punitive damages claim should have been granted.

As noted in its original decision granting JNOV, this Court observed the many faceted layers of legal analysis required to answer the question. For example, in considering a motion for a directed verdict, like that for a JNOV, the Court must construe the evidence most strongly against the moving party (the Defendants) and test the sufficiency, not weight or credibility, of the evidence.

When it comes to punitive damages, however, the burden is on the Plaintiff to establish that it is entitled to recover by "clear and convincing" evidence.

With these differing standards in mind, the Court must determine whether or not the evidence established that the Defendants acts or omissions in caring for Mr. Samples demonstrated actual malice proven by clear and convincing evidence.

In this case, the actual malice prong applicable is whether or not the Defendants consciously disregarded the rights and safety of Kester Samples that had a great probability of causing him substantial harm. *Estate of Kester Samples*, at ¶ 13.

This prong of the test is further defined by requiring "a positive element of conscious wrongdoing" termed "conscious, deliberate or intentional," and further requires the party to "possess knowledge of the harm that might be caused by his behavior." *Id.* Actual



malice "may be inferred from the [defendant's] conduct and surrounding circumstances." *Id.* at ¶ 14.

Mere negligence or even recklessness, and this Court would also include "knowing" conduct, will not suffice to establish that punitive damages are warranted, because malicious conduct is more socially offensive and civilly culpable than even knowing conduct. Evidence of purposeful, deliberate, or intentional conduct, however, is not an element required to establish actual malice. *Id.* ¶ 18.

And herein lies a conundrum.

As observed above, when discussing a positive element of conscious wrongdoing, the Ninth District states the following,

This element has been termed **conscious, deliberate or intentional**.

Id. ¶ 13, emphasis added.

Deliberate, intentional, and/or purposeful conduct is the highest culpable mental state in the law. It requires that the actor actually *intended* for a certain result to occur. But also included in the definition is the term "conscious," which is clearly a lesser standard, as it requires the actor to have consciousness of near certainty or great probability that a result will occur.

Again, at the risk of meandering too far into the weeds, if having not done so already, this matters. It matters because it is simply incongruent to define malice with two terms that require deliberate or intentional conduct *and* a lesser standard of consciousness. In other words, why not just define malice using the term "conscious" and its attendant definitions? Why include the higher standards of deliberate or intentional? After all, any conduct that is purposeful, intentional, or deliberate, by definition, must involve an element of consciousness.

Put another way, analogous to lesser included offenses in criminal cases, malicious conduct is "lesser included" conduct present in deliberate or intentional conduct. Accordingly, the definition of malicious conduct should be limited to "conscious wrongdoing" defined further as "a matter of near certainty, great probability," without the inclusion of the unnecessary, surplusage "deliberate or intentional."

Obviously, this Court is bound by precedent from both the Ninth District and Ohio Supreme Court, and the Ninth District is bound by Supreme Court precedent. As such, the definitions provided by those courts are controlling. Nevertheless, it seems to this



Court that somewhere down the line, these difficult concepts could realistically be simplified.

One final note on this point - almost four decades ago, the Ohio Supreme Court observed the confusion in this area and at the time, how little guidance the court, and others, had given trial courts when ruling on the propriety of punitive damages,

Although the numerous definitions have caused confusion as to what is required to prove actual malice, it is apparent from the case law that . . . [t]hese two concepts overlap in certain circumstances. * * * In this case, it is clear that plaintiffs based their claim for punitive damages on the second concept of extremely reckless behavior. Furthermore, a review of the case law reveals that this is the type of malice which has remained frustratingly vague.

*** * * These definitions give less than adequate guidance to a trial court. * * ***
This element has been termed conscious, deliberate or intentional. It requires the party to possess knowledge of the harm that might be caused by his behavior.

Preston v. Murty, 32 Ohio St. 3d 335, (1987), emphasis added.

I submit that not much has changed since *Preston*, but I digress.

DEFENDANTS' POSITION

Defendants, understandably, argue that this Court "got it right the first time," and that even under the clarifying standard enunciated by the Ninth District, punitive damages "are unwarranted."

After an extensive discussion of the standard of review for malice as expressed by the Ninth District in the remand decision, Defendants urge that no consciousness of "near certainty" or "callous mental state" was shown here because the "undisputed" evidence demonstrated that Defendants made every effort to act in Samples' best interests.

For example, they 1) prepared care plans to address falls; 2) prepared care plans to address skin care; and 3) prepared care plans to address nutrition. They took 4) great effort to provide food and nourishment that Samples would like to eat; they 5) had frequent care meetings with Samples' family to discuss his care and cognitive decline. They 6) treated pressure wounds when they were identified, and 7) hospitalized Samples when necessary.

Defendants further posit that as a result of these efforts on Samples' behalf, 8) a prior wound was timely identified and successfully treated. They deny that Samples was



treated callously or that his caregivers consciously knew, nearly for certain, that their conduct would result in substantial harm to Samples.

Defendants point-out that caring for a person in Samples' condition was "challenging" and that The Estate's expert conceded that pressure wounds can develop even with appropriate interventions.

Defendants argue as a matter of law that punitive damages require a "positive element of conscious wrongdoing" defined as "conscious, deliberate or intentional" and that the party at fault must "possess knowledge of the harm that might be caused by his behavior."

Defendants also urge that The Estate did not present clear and convincing evidence that its employees acted with consciousness of the near certainty or great probability that the untimely identification of Samples' second pressure wound would result in substantial harm to him.

For example, Defendants point-out that they did not sit idly by as Samples health steadily declined from end-stage dementia of the Alzheimer's type; while his cognitive abilities declined; when he contracted multiple UTI's; when he would not eat or drink; or when the pressure wound was ultimately identified. But instead they engaged medical staff and social services; engaged nutritional staff; considered a PEG tube; and engaged speech and language therapy to assess swallowing issues.

Defendants concede that it should have identified the pressure wound sooner, but argue their failure to do so constitutes simple negligence, not actual malice.

And finally, Defendants go to great length in their Second Supplemental Brief to dispel any notion of "false charting," arguing multiple points why that allegation lacks merit.

PLAINTIFF'S POSITION

Plaintiff, The Estate, argues that there is sufficient evidence from which a reasonable juror could find the Defendants consciously disregarded Mr. Samples' rights or safety with a great probability of causing substantial harm – on multiple occasions.

In support of this position, The Estate argues that this Court failed to consider "all evidence supporting punitive damages" by focusing its lens on Defendants' untimely identification of Samples second wound and the overall efforts Defendants' employed to treat Mr. Samples.



The "other evidence" identified by The Estate that should be considered by this Court includes the following: 1) Defendants previously failed to perform skin checks leading to the late discovery of the February ("first") wound; 2) Defendants knew the result of such failure (if repeated) would lead to open wounds, infection, and possible sepsis or death; 3) Defendants knew they were supposed to be "particularly vigilant" in checking Samples' skin; and 4) actively ignored and failed to report the wound until it was already open, oozing, smelly, infected, and Samples was already in septic shock.

The Estate further argues 5) that evidence of skin breakdowns exists due to Defendants violating the care orders to turn and reposition with two people using a draw or slip sheet; and 6) that Defendants' staff consciously disregarded a sign on the wall to remind them after repeated failures.

The Estate additionally urges this Court to consider Defendants' "post-negligence conduct" such as 7) the cover up of the negligence by falsely documenting the wound was "unavoidable" despite that being false; 8) covering up their failure to follow wound vac orders by falsely documenting the order as only being entered 2 days after it was actually ordered and falsely charting that they'd completed the order.

In addition to failing to consider all of the evidence in support of the punitive damages award, The Estate posits that this Court compounded its error by construing evidence "when it favored the Defendants" such as taking into account the care plans and treatment modalities put in place by Defendants for Samples' care. The Estate takes this Court to task for "adopting" Defendants' facts "in whole" and drawing favorable inferences therefrom.

The Estate also puts great emphasis on the fact that Samples' first skin wound was not timely treated and thus, Defendants, who should have been "particularly vigilant," allowed a second pressure wound to develop.

The Estate finally argues that this Court, based upon "The JNOV standard," should make inferences most favorable to The Estate and that, ultimately, by failing to take action while the second wound grew, turned black and necrotic, became infected, and started draining foul-smelling discharge, Defendants consciously disregarded Samples' rights and safety.



RENEWED ANALYSIS

After a thorough review anew, applying the correct standard enunciated by the Ninth District, this Court agrees with Plaintiff.

First, this Court is cognizant of its duty to construe the facts established and evidence adduced at trial most strongly in favor of The Estate, the non-moving party. As artfully argued by The Estate in its Second Supplemental Brief, in addition to construing the evidence in its favor, this Court must also give The Estate the benefit of *all reasonable inferences* from that evidence.

Now to be sure, this is no easy task given the obvious tension between this mandate and the requirement that The Estate demonstrate its right to punitive damages by clear and convincing evidence.

Nevertheless, the jury was properly instructed on these matters and concluded that all of the evidence, taken together, demonstrated malice on the part of LaGrange in that it consciously disregarded the rights and safety of Mr. Samples by failing to timely and appropriately treat his wounds.

This Court now recognizes that The Estate need not have proven that LaGrange's lack of proper care for Mr. Samples was intentional, purposeful, or deliberate (it was not) but instead, that the conscious disregard for his care caused a near certainty or great probability that substantial harm would befall him.

In originally granting LaGrange's JNOV, this Court concluded, and still holds today, that LaGrange did not *intend* to harm Mr. Samples or *purposely* injure him. But that is too high a standard to apply. The standard this Court should have applied then, and applies now, is whether LaGrange consciously disregarded Mr. Samples' needs or, put another way, they ignored him to such an extent, when they had a duty to care for him, that there was a near certainty or great probability that substantial harm would result.

IN ORIGINALLY GRANTING LAGRANGE'S JNOV, THIS COURT SUBSTITUTED ITS JUDGMENT FOR THAT OF THE JURY

In originally granting LaGrange JNOV, this Court placed great emphasis on the evidence presented to the jury by LaGrange in support of its efforts to care for Mr. Samples as well as the significant challenges in tending to a person with his many health challenges. In so doing, this Court inadvertently weighed the evidence and misconstrued that evidence in favor of LaGrange and against The Estate.

As this Court and both parties have noted, a JNOV motion requires the trial court to test the *sufficiency* of the evidence, not its *weight*. *Eastly v. Volkman*, 2012-Ohio-2179,



¶ 27. Unlike a motion for a new trial on manifest weight grounds, where the trial court acts as a "thirteenth juror," such is not the case when ruling on a motion JNOV. *White Hat Mgt., v. Ohio Farmers Ins.*, 2006-Ohio-3280, (9th Dist.), ¶ 19-20.

Here, after reviewing the evidence presented to the jury anew, in a light most favorable to The Estate, this Court finds that reasonable minds could reach different conclusions and thus, the motion JNOV must be denied. *McMichael v. Akron Gen. Med. Ctr.*, 2017-Ohio-7594, (9th Dist.), ¶ 10.

**THIS COURT NEED NOT DETERMINE WHETHER LAGRANGE ENGAGED IN
"FALSE CHARTING"**

Initially, this Court put significant emphasis on the issue of whether (or not) LaGrange engaged in false charting in an effort to "cover up" its negligence. Were that the case, this Court was highly inclined to deny LaGrange's JNOV on that issue alone. See: *Hartung v. Agarwal-Antel*, 2020-Ohio-1016, (9th Dist.).

This issue was fiercely debated at the oral argument held October 31, 2024, LaGrange devotes almost all of its Second Supplemental Brief to the issue, and The Estate devotes almost half of its Second Brief to the issue as well.

The problem for this Court is threefold: first, in all candor, even after listening to oral argument and reading the parties briefs, this Court remains . . . confused . . . on this issue. Second, as this Court did not preside over the jury trial, it is not in a good position to understand how this evidence came in, how important (or not) it was to the jury, or how it may have fit in with the other evidence presented. And third, and most importantly, even without the allegation of false charting, there was sufficient evidence presented to the jury to justify sending the punitive damages issue to them and sufficient evidence for the jury to grant them.

IV. CONCLUSION

In retrospect, this Court made two mistakes. First, it applied the wrong standard of review by requiring the additional element of some evidence of deliberate or intentional conduct by LaGrange; and 2) it substituted its own judgment for that of the jury. Both errors led this Court astray as, upon reconsideration and further edification from the Ninth District, the jury verdicts should stand *in toto*.

As such, based upon the foregoing, this Court finds that LaGrange's motion for judgment notwithstanding the verdict is inapposite and should not be granted. While a close call, Magistrate Muhek was correct to overrule LaGrange's motion for a directed verdict on this cause of action and The Estate's punitive damages claim was properly



before the jury. And as a result of the award of punitive damages, the award of attorneys' fees and litigation expenses was similarly proper.

The motion for judgment notwithstanding the verdict is not well-taken and hereby DENIED.

IT IS SO ORDERED.


JUDGE D. CHRIS COOK

THIS IS A FINAL APPEALABLE ORDER