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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 JUL 20 AM 11:24

No. 63061-0-1

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

JUAN RAMIREZ, et al., Appellants

v.

JAMES EASLEY, et ux., Respondents

REPLY BRIEF OF APPELLANTS

STEPHEN K. MONRO
Attorney for Appellants
WSBA No. 26075
LAW OFFICE OF STEPHEN K. MONRO, PS
9623 32nd St. S.E., Building C-101
Everett, WA 98025
(425) 335-3237
(425) 335-3458 (fax)
stephenm@monrolawfirm.com

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I. ARGUMENT

A. The Trial Court Erred When It Denied The Appellants' Motion For A New Trial.

Mr. Easley's argument as to why the trial court did not err in denying the appellants' motion for a new trial or additur is essentially that the stipulation between the parties regarding Mr. Ramirez's medical expenses bound the parties without regard to what the jury decided in its verdict with respect to damages. (Brief of Respondents, pp. 3-4)

That is not the issue here. The stipulation between the parties with respect to Mr. Ramirez's medical bills does no more than bind the parties as to how much Mr. Easley must pay Mr. Ramirez for his medical expenses without regard to what the jury might award for those damages. The stipulation had nothing to do with the jury's verdict or the amount awarded by the jury for damages.

Mr. Easley goes on to argue that "(w)ith the economic damages determined by stipulation, the jury was left to determine whether the economic damages were proximately caused by James Easley's admitted negligence, and if so, to what extent should the Ramirez family be compensated for

their non-economic damages.” (Brief of Respondents, p. 5)

The problem with Mr. Easley’s argument is that he implies that the jury was advised of the stipulation regarding Mr. Ramirez’s medical expenses. The jury was never informed or instructed about the stipulated medical expenses. Because the jury was never informed of the stipulation it simply is conjecture by Mr. Easley that the \$1,000.00 awarded by the jury to Mr. Ramirez must represent non-economic or general damages. Certainly, Mr. Easley cites to nothing in the record to support this supposition.

The record clearly demonstrates that Mr. Ramirez submitted uncontradicted medical testimony and medical records showing he had medical expenses of \$6,955.00. The jury knew nothing about the stipulated amount of medical expenses. The jury simply could not, as Mr. Easley suggests, taken the stipulation into account when it awarded Mr. Ramirez \$1,000.00.

As set forth in the Brief of Appellants, the courts will assume that a jury has failed to award general damages for pain and suffering where the verdict is equal to or less than the uncontroverted medical specials. *Palmer v. Jensen*, 132

Wn.2d 193, 200, 937 P.2d 597 (1997); *Hills v. King*, 66 Wn.2d 738, 741-742, 404 P.2d 997 (1965); *Krivanek v. Fibreboard Corp.*, 72 Wn.App. 632, 636, 865 P.2d 527 (1993). That is precisely what has occurred in this case. There were no non-economic damages awarded to Mr. Ramirez, and only \$1,000.00 of his uncontroverted medical specials of \$6,955.00. The trial court abused its discretion in denying the motion for a new trial because the damages awarded are contrary to the evidence presented at trial. *Kadmiri v. Claassen*, 103 Wn.App. 146, 150, 10 P.3d 1076 (2000).

The same arguments apply to the jury's failure to award anything to Tito Ramirez and Rosie Ramirez. Again, there was uncontroverted medical testimony as to Tito's injuries, the cause of those injuries, and the medical expenses incurred.¹ There was also uncontroverted testimony as to Ms. Ramirez's loss of consortium.

The Ramirez family is entitled to a new trial on the issue of damages whether it be by virtue of CR 59(a)(5) or (7).

¹ There was no stipulation as to Tito's medical expenses.

B. Mr. Easley Did Not Improve His Position Over The Offer Of Compromise By Mr. Ramirez.

Mr. Easley argues that he “improved” his position over the \$7,500.00 offer of compromise made by Mr. Ramirez because the amount of damages awarded by the trial court were only \$6,715.50. According to Mr. Easley, it is only appropriate to consider “comparables” when determining whether a party has improved its position over an arbitration award. Citing to *Tran v. Yu*, 118 Wn.App. 607, 75 P.3d 970 (2003), Mr. Easley asserts it is inappropriate to compare an arbitration award to a final judgment for the purposes of determining whether the appealing party has improved its position. (Brief of Respondents, pp. 7-8)

Tran is distinguishable. First, *Tran* did not involve an offer of compromise pursuant to RCW 7.06.050(1)(b) which replaced an arbitrator’s award. Second, *Tran* involved a final judgment that included discovery sanctions. There are no discovery sanctions included in the final judgment entered in this case.

In this case, Mr. Ramirez made an all-inclusive offer of compromise of \$7,500.00. (CP 582) That offer of

compromise replaced any award made by the arbitrator. A final judgment of \$7,608.63, including statutory costs and fees was entered.² (CP 16-17) The judgment was more than the offer of compromise. *Cormar Ltd. v. Sauro*, 60 Wn.App. 622, 623, 806 P.2d 253, *review denied*, 117 Wn.2d 1004 (1991), cited to previously by appellants, has never been overruled. *Cormar* clearly holds that a party has not “improved” his position where the judgment entered is more than the arbitration award. The only difference in this case is that an all-inclusive offer of compromise rather than the arbitrator’s award is involved.

Mr. Easley did not improve his position over the offer of compromise, and Mr. Ramirez is entitled to an award of attorney fees pursuant to MAR 7.3.

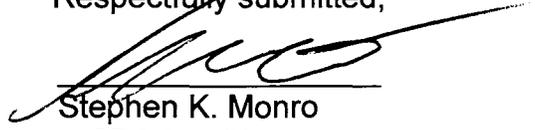
II. Conclusion

For the reasons set forth above, and in the Brief of Appellants, the relief sought by the Ramirez family should be granted.

Dated: July 17, 2009

² An arbitrator does not award statutory costs and fees. MAR 6.4

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'SM', is written over a horizontal line.

Stephen K. Monro
WSBA No. 26075
Attorney for Appellants