

No. 72819-9

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION 1

LISA DUNAKIN and MICHAEL DUNAKIN, individually and on behalf
of their marital community,

Appellants,

v.

MAHER M. ANOUS, M.D., F.A.C.S., d/b/a LA PROVENCE ESTHETIC
SURGERY CLINIQUE & MEDICAL SPA,

Respondents.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2015 MAR 13 PM 3:17

BRIEF OF APPELLANTS

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ASSIGNMENTS OF ERROR

1. The trial court erred by failing to enter judgment for the plaintiffs and order a new trial limited to the issue of damages where the jury inconsistently determined that Dr. Anous failed to obtain Lisa Dunakin's informed consent prior to surgery while also determining that said failure was not a proximate cause of Lisa Dunakin's damages.

2. The trial court erred by failing to enter judgment for the plaintiffs and order a new trial limited to the issue of damages where there was no evidence or reasonable inference from the evidence to justify the jury's verdict finding that Dr. Anous failed to obtain Lisa Dunakin's informed consent prior to surgery while also determining that said failure was not a proximate cause of Lisa Dunakin's damages.

ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Should the court find as a matter of law that Dr. Anous' failure to obtain Lisa Dunakin's informed consent to surgery was a proximate cause of her damages?
2. Should the court find as a matter of law that there was no evidence or reasonable inference from the evidence to support the jury's verdict?
3. Is the plaintiffs' right to challenge the inconsistent verdict waived on appeal where plaintiffs' counsel did not recognize the inconsistency in the jury's answers until after the jury was polled?

STATEMENT OF THE CASE

A. The underlying facts.

On November 10, 2009, Lisa Dunakin underwent a mammoplasty, liposuction of the flanks, and a “Mercator Abdominoplasty,” using the Mercator technique invented by Dr. Maher Anous, at his offices in Kirkland, Washington. CP2. In the post-operative period following Dr. Anous’ surgery, Lisa Dunakin was unable to straighten upright, had reoccurring infection, separation of the tissue, and experienced extreme pain. CP2. Dr. Anous prescribed Lisa Dunakin antibiotics but refused to treat her pain, claiming he is against pain medication. CP3. Following repeated concerns voiced to Dr. Anous at postoperative visits, Lisa Dunakin consulted with her family physician, Dr. Holland. CP3. Dr. Holland discovered a staph infection at the incision site, thereby sparking the instant medical-negligence lawsuit. CP3.

Trial of this matter commenced on October 6, 2014 in the King County Superior Court before the Hon. Laura Gene Middaugh. CP90.

B. The relevant agreed-to jury instructions regarding informed consent.

Jury Instructions Nos. 9 and 10, which were originally submitted by the plaintiffs, related to informed consent. CP47-48. Instruction No. 9,

which is essentially a restatement of the language of RCW 7.70.050, read as follows:

A physician has a duty to inform a patient of all material facts, including risks and alternatives, that a reasonably prudent patient would need in order to make an informed decision on whether to consent to or reject a proposed course of treatment.

A material fact is one to which a reasonably prudent person in the position of the patient would attach significance in deciding whether or not to submit to the proposed course of treatment.

CP255, 399.

Instruction No. 10, which is also a restatement of the language of RCW 7.70.050, read as follows:

In connection with the plaintiff's claim of injury as a result of the failure to obtain the patient's informed consent to the treatment undertaken, the plaintiff has the burden of proving each of the following propositions:

First, that the defendant failed to inform the patient of a material fact or facts relating to the treatment;

Second, that the patient consented to the treatment without being aware of or fully informed of such material fact or facts;

Third, that a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of such material fact or facts; and

Fourth, that the treatment in question was a proximate cause of injury to the patient.

If you find from your consideration of all of the evidence **that each of these propositions has been proved, your verdict should be for the plaintiff.** On the other hand, if any of these propositions has not been proved, your verdict should be for the defendant.

CP256, 400 (emphasis added).

C. The jury inquires as to Instruction No. 10.

During deliberations, the jury submitted the following inquiry to the court: “In regards to Instruction No. 10, if one of the four propositions is found as cannot be proved, does that require or dictate an answer of ‘no’ for question one (1) of the verdict sheet?” CP265.

The court’s response was as follows: “Please re-read Instruction No 10. The answer to your question is contained in that instruction.” CP266.

D. The jury returns inconsistent answers to the questions on the Special Jury Verdict Form.

The first question posed to the jury on the verdict form asked, “Did Maher M. Anous, M.D. fail to secure Lisa Dunakin’s informed consent related to the November 10, 2009 surgery?” CP262. The jury answered, “Yes.” CP262. By answering yes, the jury indicated that it had determined that each of the four propositions of Instruction No. 10, i.e., RCW

7.70.050, were satisfied. CP256. Most relevantly, the third and fourth elements relating to proximate cause, respectively stating: “that a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of such material fact or facts” and “that the treatment in question was a proximate cause of injury to the patient.” CP256.

The second question posed to the jury asked, “Was such failure to obtain informed consent a proximate cause of injury or damage to Lisa Dunakin?” CP263. The second question was, in hindsight, a redundant rewording of Instruction No. 10’s fourth element, which the jury previously answered affirmatively in question 1. Yet the jury’s answer to question 2 was “No.” CP263.

Plaintiffs’ counsel was not present at the time the jury verdict was read or while the jury was polled. CP105. Instead, a partner from plaintiff’s counsel’s offices appeared telephonically and made no objections. CP105.

E. Plaintiffs move to vacate the inconsistent verdict.

In moving to vacate the verdict under CR 59(a)(7) and (9), the plaintiffs contended that “Dr. Anous’ failure to obtain Lisa Dunakin’s informed consent to surgery on November 10, 2009 was a proximate cause of her damages” such that the court should “order a new trial to determine

the damages which resulted from Lisa Dunakin undergoing the surgery.” CP269.

The crux of the plaintiffs’ argument was that the jury’s answers to Questions Nos. 1 and 2 on the verdict form were inconsistent “and[,] in retrospect, Question No. 2 should not have been asked of the jury[] because Question No. 1 already contained the proximate cause requirement.” CP271. That is to say, by answering ‘yes’ to Question No. 1, i.e., that Dr. Anous failed to secure Lisa Dunakin’s informed consent, the jury also necessarily found—as expressly stated in Instruction No. 10’s third and fourth elements—that Dr. Anous’ treatment was a proximate cause of Lisa Dunakin’s injuries. CP271. Or put another way, the jury necessarily found that each of the elements of RCW 7.70.050 had been proved, thereby rendering Question No. 2 redundant. CP330-331. “[T]he jury’s verdict was contrary to [both] the law and Jury Instruction No. 10, and inconsistent with the Special Jury Verdict Form regarding Question No. 2.” CP330.

In opposition, the defendant relied heavily on *Gjerde v. Ulrich Fritzsche, M.D.*, 55 Wn.App. 387, 777 P.2d 1072 (1989) and principally argued that the plaintiffs’ motion to vacate should be denied because the plaintiffs waived the right to challenge the verdict “by failing to bring the alleged inconsistency in the answers to the interrogatories to the attention

of the court at the time the jury was polled.” CP415. The defendant supported its position by pointing out, among other things, that the plaintiffs did not move for a directed verdict upon the close of evidence, Instructions Nos. 9 and 10 were proposed by the plaintiffs, the parties agreed to the instructions, the court took plaintiffs’ counsel’s recommendation in response to the jury’s inquiry as to Instruction No. 10, and that the Special Verdict Form mirrored a form contained in a Washington civil jury instruction handbook. CP416-420.

The plaintiffs’ reply arguments contended that *Gjerde* was distinguishable and that CR 49(b) allowed the court to order a new trial regardless of waiver. CP##¹. Plaintiffs did not contend that Instructions Nos. 9 and 10 were given in error or were otherwise inaccurate statements of the law. VBR11.

Upon oral argument, the court denied the plaintiffs’ motion to vacate. CP351-352. The court found that the jury’s verdict was not inconsistent. VBR23. Specifically, that it was not inconsistent to “tell the jury, [the plaintiffs must] . . . prove four things,” i.e., the four elements of RCW 7.70.050 comprising a lack of informed consent, but then to also ask

¹ Plaintiffs’ reply in support of their motion to vacate was erroneously omitted from the original designation of clerk’s papers. A supplemental designation for the reply was submitted and received by the Court of Appeals on February 10, 2015 but, as of March 13, 2015, counsel has not received an amended index and was unsure as to which page numbers to cite.

the jury for a specific answer regarding only the proximate cause element, i.e., whether the lack of informed consent proximately caused Lisa Dunakin's damages. VBR24. Tellingly, the court appeared to acknowledge the inherent problem of a jury finding that A, B, C, and D, were true, while also finding that D was not true. In this regard, the court stated that "maybe in the future . . . [p]eople will just ask a question about each and every element, or ask one question about informed consent to make it clear. . .make it clearer. . ." VBR24. The court also found that any inconsistency with the verdict was waived by plaintiffs' counsel's failure to object to it at the time the jury was polled. VBR24.

The notice of appeal was timely filed on December 11, 2014.
CP356.

LEGAL ARGUMENT

A. Standard of Review

Where an order denying a motion for a new trial is based on a jury's answers to interrogatory questions, and not whether the trial court applied the correct legal standard, it is reviewable for abuse of discretion by the trial court. *See Mears v. Bethel School Dist. No. 403*, 182 Wn. App. 919, 926, 332 P.3d 1077 (2014).

B. The trial court erred in failing to order a new trial when the jury returned an inconsistent verdict.

Under **CR 49(b)**, “[w]hen the [jury’s] answers [to interrogatories] are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.”

In evaluating a claim of inconsistent findings on a verdict form, the court must reconcile the jury’s interrogatory answers without substituting its judgment for that of the jury’s. *See Estate of Stalkup v. Vancouver Clinic, Inc., PS*, 145 Wn. App. 572, 586, 187 P.3d 291 (2008). If the answers on the verdict form reveal a clear contradiction, however, such that it cannot be determined how the jury resolved an ultimate issue, the court should remand for a new trial. *Id.* at 586; *see CR 49(b)*. In making

this determination, the court must read the verdict as a whole, *including jury instructions*, and may not substitute its judgment for that of the jury. See *Guijosa v. Wal-Mart Stores, Inc.*, 101 Wn. App. 777, 797, 6 P.3d 583 (2000), *aff'd* 144 Wn.2d 907, 32 P.3d 250 (2001) (emphasis added); *Estate of Stalkup*, 145 Wn. App. at 586.

A jury verdict finding a defendant negligent, but also finding that the negligence did not proximately cause the plaintiff's injuries, "is not . . . inconsistent if there is evidence in the record to support a finding of negligence but also evidence to support a finding that the resulting injury would have occurred regardless of the defendant's actions." *Estate of Stalkup*, 145 Wn. App. at 587 citing *Brashear v. Puget Sound Power & Light Co.*, 100 Wn.2d 204, 209, 667 P.2d 78 (1983).

- i. Under Washington's objective standard regarding causation, a jury determination of lack of informed consent under RCW 7.70.050 necessarily constitutes a finding of proximate cause as to damages.**

To prevail on a claim for failure to secure informed consent, **RCW 7.70.050** requires:

- (1) The following shall be necessary elements of proof that injury resulted from health care in a civil negligence case or arbitration involving the issue of the alleged breach of the duty to secure an informed consent by a patient or his or her representatives against a health care provider:

- a. That the health care provider failed to inform the patient of a material fact or facts relating to the treatment;
- b. That the patient consented to the treatment without being aware of or fully informed of such material fact or facts;
- c. That a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of such material fact or facts;
- d. That the treatment in question proximately caused injury to the patient.

RCW 7.70.050 is consistent with Instruction No. 10 in that there cannot be a finding of lack of informed consent unless each element is proved. Moreover, **RCW 7.70.050** encompasses Washington's objective standard regarding causation, such that a jury finding that a reasonably prudent patient would not have gone forward with the proposed treatment constitutes both cause in fact and legal causation.

In *Canterbury v. Spence*, the federal district court articulated the objective standard regarding causation followed by Washington courts:

Better it is, we believe, to resolve the causality issue on an objective basis: in terms of what a prudent person in the patient's position would have decided if suitably informed of all perils bearing significance. If adequate disclosure could reasonably be expected to have caused that person to decline the treatment because of the revelation of the kind of risk or danger that

resulted in harm, causation is shown, but otherwise not.

464 F.2d 772, 790 (1972) cert. denied 409 U.S. 1064 (1972).

In *Backlund v. Univ. of Wash.*, the Washington Supreme Court reiterated that Washington has adopted the objective standard regarding causation in informed consent cases. That is to say, “[t]o recover under the doctrine of informed consent, as in all negligence cases, there must be a causal connection between the breach of duty by the defendant and the injuries suffered by the plaintiff. . . Under this [objective] test the question becomes whether or not a reasonably prudent patient, fully advised of the material known risks, would have consented to the suggested treatment.” 137 Wn.2d 651, 655, 975 P.2d 950 (1999).

- ii. **When the jury determined that Dr. Anous failed to obtain Lisa Dunakin’s informed consent prior to surgery, it necessarily determined that said failure was the proximate cause of Lisa Dunakin’s damages.**

Under **CR 59(a)(9)**, “a verdict may be vacated and a new trial granted” where “substantial justice has not been done.” *See, e.g., Espinoza v. American Commerce, Ins. Co.*, 336 P.3d 115, 125-26 (2014) (though “[n]one of the grounds listed in CR 59(a) explicitly mentions an inconsistent verdict. . . a court must grant a new trial when verdict

interrogatories render the jury's resolution of the ultimate issue impossible to determine.").

The jury's verdict here was manifestly inconsistent and substantial justice will not be done by allowing it to stand. **RCW 7.70.050** requires that a plaintiff establish each of its four elements *before* a health-care provider can be found to have failed to secure informed consent. Elements (c) and (d) relate to proximate cause. Element (c) requires that the plaintiff prove "that a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of such material fact or facts." Element (d) requires that the plaintiff prove "[t]hat the treatment in question proximately caused injury to the patient." Thus when the jury found that all of the elements of **RCW 7.70.050** were established, such that it found that Dr. Anous failed to obtain Lisa Dunakin's informed consent prior to her surgery, it was thereafter inconsistent for the jury to find a lack of proximate cause merely because the question was redundantly asked separately on the verdict form. This confusing result was even acknowledged by the trial court when it stated that "maybe in the future . . . [p]eople will just ask a question about each and every element, or ask one question about informed consent to make it clear. . .make it clearer. . ." VBR24.

The lack of clarity here was an oversight. The trial court's failure to correct it was an abuse of discretion.

iii. Other jurisdictions have properly ordered new trials in cases involving inconsistent verdicts with facts analogous to those here.

Though there do not appear to be any on-point Washington cases where the situation here was faced, in the following two cases with analogous fact patterns, i.e., a jury finding a failure to obtain informed consent while also finding no proximate cause, the New York courts reconciled the inconsistent verdicts by entering judgment for the plaintiffs and ordering new trials on damages proximately caused by the failure to obtain informed consent.

In *Trabal v. Queens Surgi-Center*, a patient sued his physician and others “alleging that he was not adequately informed of the risks, benefits, and complications of [the surgery] . . . and that had he been so advised, he would not have consented to th[e] surgery.” 8 A.D.3d 555, 556, 779 N.Y.S.2d 504 (N.Y. App. Div. 2004).

At trial, the jury found, in response to questions presented to it by the court, that [the physician] failed to provide [the plaintiff] with appropriate information before obtaining his consent to the initial surgery and that a reasonably prudent person would not have consented to that surgery if he had been given such information, but, [just as in the Dunakin trial,] answered ‘no’ to another

question as to whether that surgery was a substantial factor in causing [the plaintiff's] injury.

Id.

The Supreme Court² denied the plaintiff's motion to set aside the verdict.

On appeal, the plaintiff argued "that the jury verdict, finding that the initial surgery was not a substantial factor in causing his injuries, was against the weight of the evidence." *Id.* The Appellate Division agreed and reversed, holding as follows:

In view of the jury's findings that [the physician] failed to provide the plaintiff with the appropriate information and that a reasonably prudent person in the plaintiff's position would not have consented to the surgery had he been so advised, the jury's finding that the surgery was not a substantial factor in causing the plaintiff's injury, and its consequent verdict, could not have been reached upon any fair interpretation of the evidence. Upon our review of the record, we find that the jury failed to give adequate weight to the proof showing that 'but for' the initial surgery, the plaintiff would not have undergone the subsequent surgeries nor would he have sustained the infection and other injuries. . .

Id. at 557.

In *Dries v. Gregor*, the plaintiff was informed that a breast biopsy would be performed in which a small amount of tissue would be

² New York's trial-level court of general jurisdiction.

removed for examination to rule out cancer at the site of a lesion found by mammography. 72 A.D.2d 231, 233, 424 N.Y.S. 2d 561 (N.Y. App. Div. 1980). During the surgery while the plaintiff was under anesthesia, the defendant-surgeon—apparently believing that the lesion was malignant—performed a partial mastectomy and removed a large portion of breast tissue, which was later found to be benign. *Id.* at 233-34. The plaintiff alleged medical malpractice based on lack of informed consent, i.e., “she was neither advised of nor had she consented to” the partial mastectomy procedure. *Id.* at 234. At trial, the jury answered a series of interrogatories and “found a lack of informed consent to the surgery performed.” *Id.* at 237. “On the basis of the trial court’s charge on informed consent, this constituted a finding by the jury that a reasonably prudent person would not have consented to the surgical procedure performed on [the plaintiff]. In other words, causality was established by the jury’s affirmative response to [the question regarding informed consent].” *Id.* And just as the case is here, the *Dries* jury answered ‘no’ to the following question asking whether “the negligence or act of malpractice of [the surgeon] was a proximate cause of the ‘damage.’” *Id.*

In reversing and remanding for “a new trial against [the surgeon] restricted to the issue of damages alone,” the Appellate Division observed:

Having established by her proof that the doctor failed to inform her of the material risks—a point practically conceded—and jury’s response to Question 6 having determined that a reasonably prudent person would not have consented to this kind of surgical procedure had she been so advised, the plaintiff should have been entitled to an award for her damages.

Id. at 237.

In reaching its decision, the Appellate Division, citing *Canterbury v. Spence*, utilized the same objective standard as applied by Washington courts:

It is not enough for plaintiff to prove merely that the defendant doctor has failed properly and fully to inform her and that she did not, therefore, know of the risk. Plaintiff must also prove that a reasonably prudent person having been so informed would not have consented to the surgical procedure performed upon her. To state it in other terms, the causal connection between a doctor’s failure to perform his duty to inform and a patient’s right to recover exists only when it can be shown objectively that a reasonably prudent person would have decided against the procedures actually performed. Once that causal connection has been established, the cause of action in negligent malpractice for failure to inform has been made out and a jury may properly proceed to consider plaintiff’s damages.

Id. at 236-237; 464 F.2d 772, 790 (1972), cert. denied 409 U.S. 1064 (1972) (internal citations omitted).

The circumstances here require similar treatment.

C. The trial court erred in failing to order a new trial where the jury’s verdict was contrary to the evidence.

Under **CR 59(a)(7)**, the trial court abuses its discretion in denying a motion for a new trial where the verdict is contrary to the evidence. *See Palmer v. Jensen*, 132 Wn.2d 193, 198, 937 P.2d 597 (1997) citing *Krivanek v. Fibreboard Corp.*, 72 Wn. App. 632, 637, 865 P.2d 527 (1993). Moreover, “[a] motion for a new trial may be granted under CR 59(a)(9) if substantial justice has not been done.” *Ramey v. Knorr*, 130 Wn. App. 672, 687, 124 P.3d 314 (2005).

The grant of a motion for a new trial is appropriate if, viewing the evidence in the light most favorable to the nonmoving party, the court can say, as a matter of law, that there is no substantial evidence or reasonable inferences to sustain the verdict for the nonmoving party. The requirement of substantial evidence necessitates that the evidence be such that it would convince an unprejudiced, thinking mind of the truth of a declare premise.

Kohfeld v. United Pacific Ins. Co., 85 Wn. App. 34, 41, 931 P.2d 911 (1997).

During trial, plaintiffs’ expert, Joseph Rosen, M.D., a board certified plastic surgeon and professor at the Dartmouth Hitchcock

Medical Center, testified that (1) Dr. Anous failed to obtain Lisa Dunakin's informed consent for her surgery, (2) that such failure was a proximate cause of her injuries; (3) that Dr. Anous was negligent in his care and treatment of Lisa Dunakin; and (4) that Dr. Anous' negligent care and treatment was a proximate cause of Lisa Dunakin's injuries. CP328-329. Naturally, Lisa Dunakin testified that she had suffered damages as a direct result of Dr. Anous' surgery. CP329. There was no controverted evidence proffered at trial that the damages suffered by Lisa Dunakin were caused by anything other than her surgery by Dr. Anous. CP331. No alternative theory of proximate cause was proffered at trial for the damages she sustained. CP331.

Based on the above, the jury determined that the evidence supported a finding that each of the elements of **RCW 7.70.050** were met and it appropriately found that Dr. Anous failed to obtain Lisa Dunakin's informed consent to surgery. That is, the jury determined that the plaintiffs established both cause in fact and legal causation of Lisa Dunakin's damages. Thus it cannot be said that there is any evidence or reasonable inference from the evidence to justify the jury's negative answer to Question No. 2, finding that the lack of informed consent did not proximately cause Lisa Dunakin's damages, because the jury already determined that if Dr. Anous had properly secured Lisa Dunakin's

informed consent, a reasonable person, in addition to Ms. Dunakin, would not have consented to the surgery or suffered any damages.

D. Plaintiffs did not waive their right to challenge the inconsistent jury verdict on appeal.

In *Gjerde v. Fritzsche*, Division One found that the plaintiffs “waived the [inconsistent-jury-verdict] issue below by failing to bring the inconsistency in the answers to the interrogatories to the attention of the court at the time the jury was polled.” 55 Wn. App. 387, 393, 777 P.2d 1072 (1989). Even so, *Gjerde* has been distinguished on its facts because its record showed that plaintiffs’ “counsel recognized the inconsistency in the jury interrogatories and yet remained silent, seeking to ‘try his luck with a second jury.’” *Id.* at 394; see *Malarkey Asphalt Co. v. Wyborney*, 62 Wn. App. 495, 510-11, 814 P.2d 1219 (1991) quoting *Gjerde* at 394 (“After considerable reflection, we . . . conclude that the appellants’ failure to raise the objection before the jury was discharged will not be deemed a waiver. There is no indication in that portion of the record submitted with this appeal that appellants deliberately remained silent in order to ‘try [their] luck with a second jury.’”). Thus it was not the failure to address the inconsistency at the time the jury was polled that waived the issue, but rather it was counsel’s intentional “silence in the face of actual

knowledge of an inconsistency at a time [when] it could be cured.” *Id.* And unlike the facts here, counsel in *Gjerde* admitted during oral argument that he “certainly did recognize that there was an inconsistency in the verdict form.” *Id.* at 393.

Under **F.R.C.P. 49(b)**, which parallels **CR 49(b)**, “federal circuit courts of appeal have observed that, in circumstances where a party failed to object to inconsistencies in the verdicts, where the inconsistency in the special interrogatories is so obvious, it would be proper to hold that the trial judge had an independent responsibility to act despite trial counsel’s silence.” *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 123 Nev. 1102, 1038-39, 197 P.3d 1032 (2008) (internal quotation marks and citations omitted) (emphasis added); *Schaafsma v. Morin Vermont Corp.*, 802 F.2d 629, 634 (1986) (internal quotation marks and citations omitted) (“while a party’s failure to object to such a double inconsistency carries some weight in [the] analysis on appeal, the terms of Rule 49(b) make it the responsibility of a trial judge to resolve the inconsistency even when no objection is made.”).

Plaintiffs here did not waive their right to address the issue of the inconsistent jury verdict on appeal. Though there was no objection to the verdict at the time the jury was polled, the failure to object was by no means intentional nor conducted with contemporaneous knowledge that

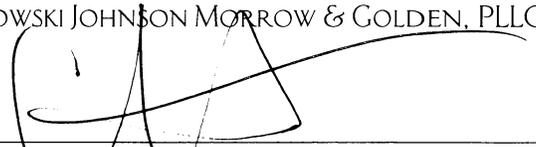
the verdict was inconsistent. In fact, plaintiff's counsel was not present when the verdict was read or while the jury was polled. CP 106. Instead, a partner from plaintiff's counsel's offices appeared telephonically but made no objections. CP105. As such, waiver did not occur in this case under *Gjerde, Malarkey, Lehrer McGovern Bovis, Inc.*, or *Schaafsma*.

CONCLUSION

For the reasons stated, it is respectfully requested that the court reverse the trial court's denial of the plaintiffs' motion to vacate, enter judgment in favor of the plaintiffs finding that Dr. Anous' failure to obtain Lisa Dunakin's informed consent to surgery was a proximate cause of her damages, and enter an order granting a new trial solely on the issue of damages.

RESPECTFULLY SUBMITTED this 13th day of March, 2015

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