

Hashmi-Alikhan v. Staples: Is an Order Granting a New Trial Appropriate When Based upon the Trial Court's Own Evaluation of Expert Witness Credibility?

Facts: In a medical malpractice trial, the expert hematologists for both parties testified and differed on their opinions regarding the appropriateness of platelet transfusion for a patient who presented to the emergency room with a platelet count of 1000. The Plaintiff's expert opined the standard of care required platelet transfusion, while the Defendant's expert hematologist opined the standard of care did not require platelet transfusion unless the patient experienced a life-threatening bleed, which both experts agreed did not occur. The jury entered a verdict in favor of the Defendant. In response, the Plaintiff motioned the trial court to issue an order for a new trial, arguing that the jury's verdict was against the manifest weight of the evidence. The trial court granted the Plaintiff's motion, finding that the "Plaintiff's expert witnesses were clearly more credible than the Defendant's expert witnesses." The trial court further found that the Plaintiff's experts "concisely 'zeroed-in' on the relevant facts of the case and applied those facts to the applicable standard of care," while the Defendant's experts gave more general opinions, and were not as knowledgeable to the hematological intricacies of the case." Some of the findings were based on the Plaintiff's cross-examination on medical matters of questionable relevance to the issues in the case, and the defense expert's inability to answer detailed factual questions from memory. The Defendant appealed the trial court's order for new trial, asserting that the trial court abused its discretion in rendering its findings and order.

Appeal: On appeal, Florida's Fifth District Court of Appeals reversed the trial court's order granting a new trial with instructions to reinstate the jury verdict. *Hashmi-Alikhan v. Staples*, __ So. 3d __ (Fla. 5th DCA March 29, 2018), 2018 WL 1525847. The Court held that the trial court abused its discretion because its reasons for ordering a new trial were not supported by the record. The Court emphasized that the trial court may not act as a "seventh juror" by substituting its verdict for that of the jury, and "should only intervene when the manifest weight of the evidence dictates such action." *Citing, Smith v. Brown*, 525 So. 2d 868, 870 (Fla. 1988). One lesson from this case: litigators should be wary of a party engaging in "straw man" cross-examination by quizzing the opponent's expert on inconsequential matters about which the expert may not prepare, to illicit surprise or confusion from the expert. The expert's foundering during such questioning would not support a trial court's reversal of a verdict that was supported by the expert testimony.