

[J-21-2018]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

JOHN STAPAS,	:	No. 44 WAP 2017
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered December 23, 2016 at
	:	No. 1287 WDA 2015, vacating the
v.	:	Judgment of the Court of Common
	:	Pleas of Allegheny County entered
	:	July 24, 2015 at No. GD09-012965
	:	and remanding.
GIANT EAGLE, INC., A PENNSYLVANIA	:	
ENTITY; GIANT EAGLE, INC., T/D/B/A	:	
GETGO FROM GIANT EAGLE, A	:	ARGUED: April 10, 2018
PENNSYLVANIA ENTITY; GIANT EAGLE	:	
INC., T/D/B/A SOUTHSIDE GETGO, A	:	
PENNSYLVANIA ENTITY; NADEEN	:	
MCSHANE, AN INDIVIDUAL; GETGO	:	
PARTNERS SOUTH, A PENNSYLVANIA	:	
ENTITY; GETGO PARTNERS SOUTH-	:	
MARYLAND, LLC, A PENNSYLVANIA	:	
ENTITY; AND GETGO HOLDINGS, LLP,	:	
A PENNSYLVANIA ENTITY,	:	
	:	
Appellees	:	

OPINION

JUSTICE MUNDY

DECIDED: NOVEMBER 21, 2018

In this appeal by allowance, we consider whether Giant Eagle was required to object to the jury's verdict awarding future lost wages to preserve its challenge to the verdict, which Giant Eagle labeled as a weight of the evidence challenge in its post-trial motion. We conclude that an objection to a jury's verdict that is premised on trial errors, correctable before the jury is discharged, must be raised before the jury is discharged.

Accordingly, we reverse the Superior Court's order awarding Giant Eagle a new trial on damages.

In this premises liability case, John Stapas sued Giant Eagle and related entities (collectively Giant Eagle) for injuries he sustained at a GetGo convenience store. At the time of the incident, Stapas was 17 years old and worked full-time as a busboy and dishwasher at a restaurant, earning \$8.25 per hour plus \$14.00-\$20.00 per shift in tips. On July 18, 2007, Stapas went to GetGo after his restaurant shift. At GetGo, he was talking to his friend, Crystal Stogden, who worked the night shift there. Minutes after Stapas arrived, a customer exiting the store held the door open for Brandon McCallister to enter. McCallister had been banned from patronizing that GetGo location.

McCallister, who appeared intoxicated, started arguing with Stogden about his ban. Stapas was not initially involved in the argument. After about one minute, Stapas intervened to attempt to diffuse the argument and protect Stogden and another female employee, LaToya Stevens.

Eventually, Stapas, McCallister, Stogden, and Stevens exited the store into the parking lot area. Outside the store, McCallister's friend was waiting for him. Stapas told Stogden to get back inside the store, and Stevens remained outside. McCallister continued screaming at the employees as Stapas followed him to his vehicle, insisting that he leave. As they approached McCallister's car, McCallister initiated a physical fight with Stapas. During the fight, McCallister pulled out a gun, which he had concealed on his person, and shot Stapas four times. Stapas missed six weeks of work while recovering from the injuries, and he continues to have daily stomach pain from the shooting.

On July 16, 2009, Stapas filed a writ of summons, and on November 10, 2009, Stapas filed a complaint asserting negligence claims against Giant Eagle. This case

proceeded to a five-day jury trial, from November 10 to November 17, 2014. Pertinent to this appeal, Stapas did not present evidence on, or make any claim for, future wage loss.

In his closing argument, Stapas's counsel mentioned Stapas's potential future lost wages if he could not continue to work with his injuries, but stated that Stapas was "not sitting here asking you for, you know [\$]6-700,000 in wages for the rest of his life, because he's going to fight through this. . . . [T]hat's a decision we made. And the Judge will give you the numbers of past and present wage loss. It's small. It's six weeks of eight or nine dollars an hour, and it's not much." N.T., 11/17/14, at 836. Similarly, Giant Eagle's counsel estimated Stapas's wage loss at \$2,000 to \$3,000. *Id.* at 804.

Following the parties' closing arguments, the trial court charged the jury that if it found Giant Eagle liable, its damages award should "fairly and adequately compensate [Stapas] for all the physical and financial injuries he has sustained as a result of the incident. The amount . . . must compensate [Stapas] completely for damages sustained in the past, as well as damage [Stapas] will sustain in the future." *Id.* at 848. The trial court did not specifically instruct the jury on past and future wage loss. *Id.* at 848-50. Additionally, the trial court instructed the jury to return its verdict in "a single lump sum." *Id.* Giant Eagle did not object to the trial court's instructions on damages or request an instruction on past or future wage loss.

The trial court gave the jury a verdict slip with six interrogatories. The first five interrogatories related to the various elements of negligence. The sixth interrogatory, related to damages, called for the jury to:

State the amount of damages, if any, sustained by the Plaintiff as a result of the accident (occurrence), without regard to and without reduction by the percentage of causal negligence, if any, that you have attributed to the Plaintiff, including the items listed below. In the event that you find in favor of Plaintiff, you will add the sums of damage together and return your verdict in a single, lump sum.

Verdict Slip, 11/17/14, Question 6 (R. 1063a).

Below the sixth interrogatory, there was a list of five categories of damages, followed by a line beginning with “total.” Giant Eagle did not object to the verdict form. The jury found Giant Eagle liable and filled out the damages interrogatory by handwriting an amount next to each category (indicated below with bold and underlining), even though they were not specifically directed to, and then writing the sum on the “total” line, as follows:

- a. Scarring **liposuction \$3000**
- b. Wage loss **past \$3000, future \$1,300,000**
- c. Past and future medical expenses **past \$30,000 future 0**
- d. Past, present and future pain and suffering **\$500,000**
- e. Loss of life’s pleasures **\$250,000**

Total: **\$2,086,000**

Id. (R. 1064a).

When the jury returned the verdict slip, the trial court’s tipstaff read the itemized damages, including the amount for wage loss, and the total amount. Giant Eagle did not object. Immediately after the verdict, the trial court polled the jury, confirmed that counsel had no further questions or objections, and dismissed the jury. The trial court entered a molded verdict in favor of Stapas and against Giant Eagle for \$1,552,780.00, which reflected the jury’s finding that Giant Eagle was 73% negligent and Stapas was 27% negligent. Additionally, on February 25, 2015, the trial court added delay damages of \$279,795.17, for a total award of \$1,802,575.17.

On November 26, 2014, Giant Eagle filed a motion for post-trial relief, requesting a new trial, JNOV, or remittitur.¹ The trial court continued oral argument on the motion pending the preparation of the complete trial transcript. The transcript was not filed until July 20, 2015, which was approximately eight months after Giant Eagle filed its motion. On July 24, 2015, Stapas filed a praecipe to enter judgment because more than 120 days had passed since Giant Eagle filed its post-trial motion, which rendered the post-trial motion denied by operation of law. See Pa.R.C.P. 227.4(1)(b). On August 21, 2015, Giant Eagle filed a notice of appeal in the Superior Court.

Although the trial court did not have an opportunity to rule on Giant Eagle's post-trial motions, it filed an opinion expressing its view that Giant Eagle had waived its objections to the jury's calculation of the \$2,086,00.00 general verdict. Trial Ct. Op. at 5 (citing *Picca v. Kriner*, 645 A.2d 868, 871 (Pa. Super. 1994) (holding the request for a new trial is waived if objections to a jury's inconsistent verdict are not raised before the jury is dismissed)). The trial court explained that the parties jointly drafted and agreed to the jury verdict slip containing the six interrogatories, the trial court gave the verdict form to the jury without objection, and Giant Eagle did not object to the jury's verdict before the trial court dismissed the jury. The trial court noted if Giant Eagle had objected before the jury was dismissed, the trial court could have required the jury to clarify its verdict. Accordingly, the trial court concluded Giant Eagle had waived its right to a new trial by failing to object to the jury's damages award before the trial court dismissed the jury.

¹ While the post-trial motion set forth a claim for remittitur, Giant Eagle did not pursue this claim either in the Superior Court or in this appeal. In particular, Giant Eagle has not sought a reduction of the lump sum award of damages (\$2,086,000) on the grounds that it was excessive and not supported by the evidence of record. Instead, Giant Eagle has focused its efforts exclusively on attempts to obtain a new trial based upon the weight of the evidence for the award for future lost wages noted on the verdict slip.

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