



Alerts

Post-Trial Motion Required to Preserve Trial De Novo on Issues Decided by Jury

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Health Care Alert

This alert was featured in Hinshaw's Annual Guide to Illinois Medical Malpractice Decisions: 2020 Edition

Issue

Is a post-trial motion necessary to preserve the right to appeal any issue determined by the jury?

Collin Crim v. Gina Dietrich, 2020 IL 124318

Case Summary

Plaintiff, a minor, sustained a shoulder dystocia injury due in part to an alleged failure to obtain informed consent to perform a natural birth despite possible risks associated with the size of the baby. Plaintiff also alleged professional negligence during delivery that resulted in injury. The trial court granted a partial directed verdict in favor of defendant on the informed consent claim, for failure to present expert testimony that a reasonable patient would have pursued a different form of treatment. After a jury trial resulting in a verdict in favor of defendant, plaintiff filed a timely notice of appeal, but did not file any post-trial motions. On appeal, plaintiff challenged entry of the partial directed verdict, but not the jury's verdict. Plaintiff contended that expert testimony is not necessary and that the testimony of mother is sufficient to prove the lack of informed consent claim. In *Crim I*, the appellate court reversed and remanded to the trial court, but the parties could not agree on whether evidence of the negligent delivery could be presented to the jury on retrial.

The parties certified the following question for immediate appeal to the Illinois Supreme Court: whether the *Crim I* ruling reversing the judgment and remanding the case for a new trial requires a trial *de novo* on all claims, both informed consent and negligence.

The Supreme Court determined that the appellate court in *Crim I* could not require a new trial *de novo* because Plaintiffs had failed to challenge the jury's verdict pursuant to 735 ILCS 5/2-1202. The Supreme Court analyzed both an exception to this rule and judicial decisions interpreting when post-trial motions are unnecessary in the context of directed verdicts, and reaffirmed the principle that unless the Court disposes of the entire case on directed verdict—i.e., when a portion of the case proceeds to a jury's verdict—a post-trial motion is necessary where the issue being challenged before the reviewing court is one decided by a jury.

Takeaway

Litigants should consider filing post-trial motions following trial in cases where a directed verdict decided issues on which appellate relief is sought to preserve right to *de novo* trial.

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