UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBIN SHADE, as next friend of minor plaintiffs ORLANDO VELEZ-SHADE, JR., and DANNY VELEZ-SHADE, Plaintiffs	:	3:94-CV-00774 (EBB)
v.	:	
HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, JOHN YOST and JOHN DIDUCA, Defendants	:	

RULING ON PLAINTIFFS' MOTION FOR A NEW TRIAL

INTRODUCTION

On June 30, 1998, the jury in this case found for the Plaintiffs, Danny Velez-Shade and Orlando Velez-Shade Jr., and against the Defendants, Housing Authority of the City of New Haven (hereinafter "Authority"), John Yost and John Diduca. Judgment was entered for the Plaintiffs on July 8, 1998. The Defendants filed a timely Motion for New Trial, asserting that the jury verdict form was clearly erroneous. The Court agreed and ordered a new trial limited to damages only. That trial commenced on January 26, 2000. Upon completion of the trial, the jury awarded no damages to Plaintiffs herein. This timely Motion was filed.

STATEMENT OF FACTS

The Court sets forth only those facts deemed to be necessary

to an understanding of the issues raised in, and decision rendered on, this Motion.

On May 11, 1994, the Plaintiff Robin Shade, on behalf of her grandchildren, filed an eighteen-count complaint that was amended on July 27, 1995, to a twenty-seven count complaint. At the time of trial only twelve counts remained. The Plaintiff brought claims under 42 U.S.C. § 1983, alleging that the New Haven Housing Authority ("NHHA") violated the Lead Based Paint Poisoning Prevention Act (“LPPPA”), 42 U.S.C. §§ 4821-4846, by failing to notify the Plaintiff of the dangerous conditions that existed at 282 Davenport Avenue and 693 Dixwell Avenue, and failing to inspect for and correct the lead paint existing at these two properties during their tenancy. The Plaintiff also brought claims against John Yost, as the owner of 282 Davenport Avenue, and John Diduca as the owner of 693 Dixwell Avenue, alleging negligence and a violation of the Connecticut Unfair Trade Practices Act, Connecticut General Statutes § 42-110a et seq.

The jury returned a verdict finding against the NHHA under the § 1983 claims for Orlando as to both properties and for Danny as to 693 Dixwell Avenue only. The jury also found Yost liable under a theory of negligence per se as to Orlando, and Diduca liable under a theory of negligence per se as to Orlando and Danny. The jury awarded the following damages: For Orlando, as

to 282 Davenport Avenue, $100,000.00 against the NHHA and $50,000.00 against Yost. As to 693 Dixwell Avenue, $150,000.00 against the NHHA and $50,000.00 against Diduca. For Danny, as to 693 Dixwell Avenue, $150,000.00 against the NHHA and $50,000.00 against Diduca.

Prior to the submission of the case to the jury, the Defendants moved for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(a). After hearing oral argument on the motion, the Court reserved judgment and permitted the case to go to the jury. After the verdict was returned, the Defendants properly renewed their motions.

Within a timely period, Defendants moved for a new trial, in which they argued there was clear error in the jury verdict form because it did not provide for joint and several liability, as it should have under Connecticut law. The Court agreed and ordered a new trial as to damages only.

In the present case, that as to damages, Plaintiffs timely moved for judgment as a matter of law, which was taken under advisement. The jury was given a new verdict form, which accounted for joint and several liability. There were concomitant jury instructions regarding same and no objection was interposed either to the form or the instructions.

The jury came back with a finding that Plaintiffs had not proved by a preponderance of the evidence that their exposure to

lead-based paint was the cause of the cognitive deficits suffered by both boys at this time. Accordingly, they awarded the Plaintiffs no damages.

The present Motion was timely filed. In essence, Plaintiffs' argument is reduced to one claim -- that the jury erred in crediting the testimony of Defendants' expert, rather than theirs.

LEGAL ANALYSIS

A. The Standard of Review

Federal Rule of Civil Procedure 59(a)

Rule 59(a) of the Federal Rules of Civil Procedure provides that a court may order a new trial following a jury verdict "for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States." Fed.R.Civ.P. 59(a)(1). The court need not view the evidence in favor of the verdict but may grant a new trial "even if there is substantial evidence to support the jury's verdict." Song v. Ives Lab, Inc., 957 F.2d 1041, 1047 (2d Cir. 1982). While a new trial may be granted if there was substantial error in the admission or exclusion of evidence or the court committed error in its jury instructions, *see* Montgomery Ward & Co. v. Duncan, 311 U.S. 243, 251, 61 S.Ct. 189, 194, 85 L.Ed.2d 147 (1940), the court may not grant a new trial unless it is convinced that "the jury has reached a seriously erroneous result or that the verdict

is a miscarriage of justice." Smith v. Lightening Bolt Productions, Inc., 861 F.2d 363, 370 (2d Cir. 1988) *cited in* Sargeant v. Serrani, 866 F. Supp. 657, 662 (D.Conn. 1994). The burden on the Plaintiff is therefore substantial. *See* Mallis v. Bankers Trust Co., 717 F.2d 683, 691 (2d Cir. 1983)(alternative motion for new trial brings into play other considerations, chief of which is court's duty to prevent miscarriage of justice). *Accord* Bevevino v. Saydjar, 574 F.2d 676, 684 (2d Cir. 1978); Compton v. Luckenbach Overseas Corp., 425 F.2d 1130, 1133 (2d Cir.), *cert. den'd*, 400 U.S. 916 (1970).

II. The Standard As Applied

Plaintiffs' only reason set forth in their memorandum in support of their Motion for a New Trial is that the jury committed a clear error of law when it gave credibility to Defendants' expert rather than their expert. Such a decision, however, is the *sina qua non* for the very existence of a jury. Weighing the evidence is the jury's province and simply because they found the issue of credibility against Plaintiffs does not meet the stringent standards required for this Motion.

Further, Plaintiffs overlook the massive amount of other nonmedical evidence that the jury could have credited, including that of the children's unstructured, often chaotic family life. The children's mother testified herself that she often would not accept the psychological and educational assistance offered by

the professionals who interviewed both boys simply because "she disagreed" with these professionals in what they wanted to do for Danny and Orlando. The Court is aware that Dr. Schoenfeld gave absolutely no credence to this testimony as indicative of any of the cognitive deficits suffered by the boys. His testimony could be questioned by the jury, especially since, when Orlando was allowed to attend special education, his teacher reported at the end of his school year that "the only thing that is the same about Orlando is his name." It was the jury's province to resolve the "battle of the experts", taking into consideration all of the evidence adduced in this case.

CONCLUSION

Because this Court does not believe that there was a miscarriage of justice in this case, or that the jury reached a seriously erroneous result, the Motion for New Trial [Doc. No. 253] is DENIED. The Clerk is directed to close this case and enter final judgment for the Plaintiffs with no damages.

SO ORDERED

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ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ___ day of April, 200.