SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4881-14T3

KAREN C. LUSTIG and RONI GILADI,

Plaintiffs-Appellants,

v.

AGUIDA REYES, R.N.,
ZAIDA MELENDEZ, O.R.T.,
ANDREA SARRIS, R.N.,
JERSEY CITY MEDICAL CENTER,
LIBERTY HEALTHCARE SYSTEMS, INC., and
THERESIA OEY, M.D.,

Defendants-Respondents,

and

GEORGE WOROCH, M.D., and
SWIATOSLAW WOROCH, M.D.,

Defendants.

Argued January 24, 2017 – Decided January 26, 2018

Before Judges Fisher, Leone, and Vernoia.

On appeal from Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-6217-11.

Scott B. Piekarsky argued the cause for appellants (Piekarsky & Associates, LLC,

attorneys; Scott B. Piekarsky and Mark J. Heftler, on the briefs).

Sam Rosenberg argued the cause for respondents Jersey City Medical Center, Zaida Melendez, O.R.T., Andrea Sarris, R.N., and Theresia Oey, M.D. (Rosenberg Jacobs & Heller, PC, attorneys; Sam Rosenberg and Fred J. Hughes, on the brief).

Michael R. Ricciardulli argued the cause for respondent Aguida Reyes, R.N. (Ruprecht Hart Weeks & Ricciardulli, LLP, attorneys; Michael R. Ricciardulli, of counsel and on the brief; Daniel B. Devinney, of counsel).

The opinion of the court was delivered by

LEONE, J.A.D.

Plaintiffs Karen C. Lustig and Roni Giladi appeal the trial court's February 20, 2015 final judgment and order in favor of defendants, Aguida Reyes, R.N.; Zaida Melendez, O.R.T.; Andrea Sarris, R.N.; Liberty Healthcare Systems, Inc. d/b/a Jersey City Medical Center; and Theresia Oey, M.D. (collectively "defendants"). Plaintiffs also appeal the trial court's June 12, 2015 order denying their motion for a new trial. We affirm both orders.

I.

Lustig testified at trial as follows. Lustig is a board certified anesthesiologist who practiced anesthesiology at Jersey City Medical Center, primarily. Lustig worked in the department of obstetrics.

On December 17, 2009, during a Caesarian section procedure, Lustig was in the operating room supervising Alisa Uysal, a certified registered nurse anesthesiologist. In addition to Uysal, the following medical professionals were present in the operating room with Lustig: George Woroch, M.D., and Swiatoslaw Woroch, M.D., Reyes, Melendez, and Sarris. Dr. Oey had been in the room earlier. After the baby was successfully delivered and placed in a baby warmer, Lustig took several photos for the baby's parents. Lustig turned around towards the mother and felt something catch her ankle, which caused her to trip and fall face-down onto the floor. While on the floor, Lustig saw a stool near her feet which she decided she had tripped over. She had not seen the stool before.

Lustig felt an intense pain in her left shoulder. Jersey City Medical Center's rapid response team tried to help Lustig up off the floor, but she declined their assistance. However, she was unable to get up, and was helped up.

Reyes, Melendez, and Oey testified that they did not see a stool near where Lustig tripped, and that if it had been there they would have seen it and moved it before the surgery began. Charge nurse Andrea DiRubba, who entered the room when the rapid response team was summoned, testified she did not see a stool where Lustig fell. Uysal, who had a social relationship with

Lustig, testified that she did not know where the stool was before Lustig tripped, that she saw the stool after Lustig fell, and that she did not report it to her supervisor as required.

In the second amended complaint, Lustig claimed defendants were negligent in allowing a stool as a tripping hazard, as a result of which she was "permanently injured, suffered severe shock to her nervous system," and was undergoing great pain. Plaintiff's husband, Giladi, claimed loss of consortium. At the conclusion of discovery, the trial court granted the unopposed motions for summary judgment by George and Swiatoslaw Woroch.

At the conclusion of trial against the remaining defendants, the jury unanimously answered "No" to the following question:

> Has Plaintiff Dr. Karen Lustig proven by a preponderance of the credible evidence and, without allocating any responsibility to any defendants, that there was a foot stool in the operating room on December 17, 2009 in an unsafe location before Plaintiff Karen Lustig fell?

On June 12, 2015, the same judge who presided over the trial denied plaintiffs' motion for a new trial.

Plaintiffs appeal, arguing the trial court erred in: (1) failing to excuse a juror due to questions about her ability to be objective; (2) putting undue pressure on the jury to render a verdict; and (3) denying a new trial because: (a) Giladi did not consent to a bifurcated trial, (b) the judge permitted testimony

about the operating room's measurements, and (c) a defense witness attempted to console the distraught plaintiff after the jury verdict and then told her "I was told to say that."

II.

Plaintiffs argue the last-seated juror should have been removed from the jury for cause. "Trial court decisions as to whether to excuse prospective jurors for cause are given substantial deference." Arenas v. Gari, 309 N.J. Super. 1, 18 (App. Div. 1998); see State v. Martini, 131 N.J. 176, 219 (1993). "These decisions are generally discretionary as they implicate the trial judge's superior ability to evaluate the whole person in the courtroom." Arenas, 209 N.J. Super. at 18. Thus, "trial courts possess broad discretion in determining whether a potential juror should be removed, and their determination will be disturbed only if that discretion is abused." State v. Simon, 161 N.J. 416, 475 (1999). We must hew to that deferential standard of review.

Like the other prospective jurors, the juror filled out a questionnaire to check for anything which might compromise a juror's ability to be fair and impartial. The court then engaged in a colloquy with the juror about her positive answers to the questionnaire. During the juror's colloquy, she stated she was an attorney, was currently in-house counsel for a medical education company, and had represented her company in employment actions and

workers compensation cases. When the court asked if there was "anything about those duties that would prevent [her] from being fair and impartial in hearing this case?" she responded, "[n]o."[1]

When the trial court asked the juror if she thought society was too litigious, she replied that she was "a fan of tort reform. I do think that people tend to be a little bit too litigious over minor issues." However, she confirmed to the court that was "just a general view," and she could "put that aside and evaluate this case fairly and impartially [with an] open mind to both the plaintiff and the defendant." She added, "it's a case by case analysis."[2]

The juror said her sister was a registered nurse who had worked in a hospital in New Jersey, but answered "[n]o" when the court asked if there was "[a]nything about the relationship with your sister or anything she told you over the years that prevents you from being fair and impartial in this case?"

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[1] She also discussed particular cases, and repeatedly answered "no" when the court asked if there was "anything about that experience that affects [her] ability to be fair and impartial in hearing this case?"

[2] When asked the number of lawsuits in which friends and family had raised claims, the juror stated: "It seems like (Indiscernible) society." Plaintiffs claim the indiscernible phrase was "a litigious." In any event, the court asked if particular lawsuits and injuries of family members would prevent the juror from being fair and impartial in this case, and she answered, "[n]o."

When asked by the trial court "[d]o you think you would be a good juror?" she responded, "I think so," because "I'm a lawyer" and she had "to evaluate the facts based against the evidence." When asked if she could "have an open mind, both sides in the case and evaluate?" she replied, "I believe so." The court asked if she was "[c]onfident in that" and she replied, "[y]es."

Plaintiffs' counsel moved to strike the juror for cause because of her comments regarding litigiousness and tort reform, and because her sister had a connection to the medical field. The trial court denied the challenge, crediting the juror's responses that she would be impartial and consider the case on its merits.

Plaintiff's counsel cited the juror's prior employment as a compliance officer for three insurance-affiliated broker-dealers on Wall Street. Plaintiff's counsel argued the juror "as a professional has been evaluating claims," and that "there could be a disposition toward" insurance companies. The trial court found no basis to believe the juror would be partial to insurance companies. Nonetheless, the court inquired further. The juror explained her duties as a compliance officer involved auditing the broker-dealers' financial service representatives, resolving customer complaints, and responding to regulators. The court asked if "anything about those duties that [she] had as a compliance officer make[s] it difficult for [her] to be fair and

impartial to serve as a juror in this case?" The juror responded: "I don't think so." The court observed: "Ok. I'm satisfied."

On appeal, plaintiffs also cite the juror's statement that her father had surgeries after a car accident, and that doctors had claimed his earlier doctors had done the surgeries incorrectly. When the trial court asked if anything about that experience affected her ability to be fair and impartial in this case, she replied, "I don't think so." The court asked if she was "confident of that," and she answered, "I believe I am."

The trial court credited the juror's responses that she could be a fair and impartial juror despite being an attorney, a former Wall Street compliance officer, the sister of a nurse, and the daughter of a possible victim of malpractice. On appeal, plaintiffs do not argue each experience necessarily barred her from serving as a juror. Plaintiffs also do not claim the juror's answer to the standard "tort reform" question itself disqualified her; again, the court credited that she could put her views aside and evaluate this case fairly and impartially. Instead, plaintiffs stress the number of these potential sources of bias.

Our Supreme Court has rejected "'the imputation of bias to [a juror] as a matter of law,'" holding a recent victim of an armed robbery is not barred from being a juror in an armed robbery trial. State v. Singletary, 80 N.J. 55, 59-63 (1979) (citations

omitted). The less visceral experiences of the juror here, even considered cumulatively, did not disqualify her where "the trial court questioned [her] extensively and concluded from [her] responses that [s]he could, in fact, be impartial." See id. at 64. Even if "it might well have been the wiser course to have excused [the juror] for cause, the failure to do so was not so clearly an abuse of discretion." Ibid.

Plaintiffs attempt to analogize this case to Catando v. Sheraton Poste Inn, 249 N.J. Super. 253 (App. Div. 1991). There, the judge asked if any juror "has anything against plaintiffs?" and a juror responded that "a lot of times people sue me for no apparent reason." Id. at 259. Asked if he "would hold that against these parties," he replied: "Recently I've lost some cases where I've had no reason to lose." Id. at 260. When the judge again asked if he would "hold your experiences against them in deciding this case?" the juror answered, "I don't think so." Id. at 260. We reversed, ruling:

> It is one thing to accept a juror with a potential disqualification who repeatedly insists that he or she can sit fairly and impartially. It is quite another to accept a juror who repeatedly expresses doubts about his own ability to sit. . . . The final "I don't think so" did not solve the problem.
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> [Id. at 261 (citation omitted).]

Catando does not resemble this case. Here, the juror repeatedly insisted she could sit fairly and impartially, generally giving unequivocal answers as set forth above.[3] She thrice said "I don't think so," but twice the trial court's diligent inquiry clarified she was confident in her answer. The third time, the court stated it was "satisfied" with her answer.

When a judge concludes from questions and responses that a venireperson will be impartial, "such professions of impartiality should be accorded a great deal of weight." Amaru v. Stratton, 209 N.J. Super. 1, 18 (App. Div. 1985) (citing Singletary, 80 N.J. at 64).

> Decisions concerning the potential bias of prospective jurors are primarily subjective in nature. They require at bottom a judgment concerning the juror's credibility as he responds to questions designed to detect whether he is able to sit as a fair and impartial trier of fact. Consequently, such evaluations are necessarily dependent upon an observation of the juror's demeanor during the course of voir dire — observations which an appellate court is precluded from making.
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> [State v. Papasavvas, 163 N.J. 565, 595 (2000) (quoting Singletary, 80 N.J. at 63).]

Plaintiffs cite our statements in Catando that "[a] juror must not only be impartial, unprejudiced and free from improper

[3] In addition, the juror answered "[n]o" when asked if "[a]nything not covered in the questionnaire affects your ability to be fair and impartial."

influences, [the juror] must also appear to be so," and that "'[t]here are simply too many unbiased and otherwise qualified individuals eligible to sit on any given jury to quibble over persons who have voluntarily articulated a grave potential for bias.'" 249 N.J. Super. at 261-62 (citations omitted). Here, however, the juror repeated and unequivocally stated she would be a fair and impartial juror. She never once indicated that she could not be fair and impartial. Cf. Arenas, 309 N.J. Super. at 17-18, 20-21 (reversing where a juror questioned her own fairness and impartiality, repeatedly stated she was "not really sure" she could be impartial, and then said, "I think I could be pretty fair"). Accordingly, we cannot say the trial court abused its discretion in denying plaintiff's challenge for cause.

III.

Plaintiffs claim on appeal that the trial court placed undue pressure on the jury to reach a verdict in fifteen minutes. Because plaintiffs did not raise this claim at trial, they must prove plain error. Plaintiffs must show an error that was "clearly capable of producing an unjust result." R. 2:10-2.

After the trial court gave its final instructions and designated the foreperson, it remarked to the jury:

> We only have approximately 15 minutes or so before we have to break and come back tomorrow. So the first question I want you

> to ask is — I mean, it's possible, but if you think you can fairly assess the evidence in the case and within the next 15 minutes reach a verdict, you can say want to continue.
>
> But if you think and honestly feel that it's going to take more than 15 minutes, then you might [as] well write me a note to that effect and we'll come back tomorrow . . . at 1:30 . . . and then the deliberations can continue.
>
> So the first question is if you can answer this is whether you want to deliberate for the next 15 minutes or not and come back tomorrow at 1:30. Okay? So have that discussion in — in the jury room. Write a note to me to that effect as soon as you can.

After the jurors deliberated for a couple minutes, they informed the trial court they wished to continue their deliberations for the next fifteen minutes. The jury deliberated for about fifteen minutes and returned a unanimous verdict.

We have no doubt the trial court asked this question solely for "trial management reason[s]" and out of "courtesy" to the jury. State v. Barasch, 372 N.J. Super. 355, 362 (App. Div. 2004). However, the court did not order the jury to return a verdict in fifteen minutes. Rather, it recognized administrative realities and offered the jury the choice of commencing deliberations immediately but recessing after fifteen minutes, or postponing their deliberations until the next day. However, "'[t]rial courts must understand . . . that nothing is more important than that they set the atmosphere of calm, unhurried, and studied

deliberation that is the hallmark of a fair trial.'" Id. at 363 (quoting State v. Roberts, 163 N.J. 59, 60 (2000)). Nonetheless, the court's comments were not plain error.

This case resembles Barasch. There, at approximately 4:30 p.m. on Friday, after three hours of deliberations, the court brought the jurors into the courtroom and told them "we usually end the Court day around this time. Usually a little bit before." Id. at 360. The judge suggested that they end deliberations "and come back on Monday unless you think you're close to a verdict then we could stay a little longer. But I don't anticipate staying any much longer than 5:00," when the air conditioning would shut off. Id. at 360-61. The court emphasized it was "not trying to pressure [the jury] into any verdict or anything." Id. at 360. After the court asked the jurors to let it know what they wanted to do, the jury returned a verdict at 4:47 p.m. Id. at 361. We ruled that "the judge's interruption in this case was not prejudicial to defendant because what was said cannot be objectively interpreted as coercing any individual member of the jury to forego his or her independent judgment of the case." Id. at 362.

Under similar circumstances, we found no plain error in State v. Tarlowe, 370 N.J. Super. 224, 238 (App. Div. 2004). There, on Thursday, "the judge brought [the jurors] into the courtroom at

approximately 5:00 p.m. and inquired if they wished to recess for the night. At their request, he allowed them to continue to deliberate rather than return on the following Wednesday," and they returned a verdict that evening. Ibid. We ruled: "Defendant did not object to this procedure; it is therefore apparent that defendant's counsel approved of the court's accommodation of the jurors at that time. We do not find that the court's accommodation of the jury was inappropriate, nor was it 'clearly capable of producing an unjust result.'" Ibid. (quoting R. 2:10-2).

Plaintiffs argue those cases are distinguishable because here the trial court's question preceded deliberations, whereas the judges' comments came after three hours of deliberations in Barasch, 372 N.J. Super. at 360, and after two hours of deliberations in Tarlowe, 370 N.J. Super. at 238. However, in Roberts, even before trial began the judge "informed the jury that it was forecasting that only a brief period of time would be necessary for the jury to deliberate on defendant's guilt." Roberts, 163 N.J. at 60. Nonetheless, our Supreme Court has held the judge's "preliminary remarks were not plain error." Ibid.

Moreover, the issue before the jury here was far simpler than in those cases, where the juries had to consider multiple criminal

counts each with multiple elements.[4] By contrast, in this first half of the bifurcated trial, the jury had to decide only one element: whether "there was a foot stool . . . in an unsafe location."

Further, the jury's verdict was supported by the evidence. No witness, including Lustig and her witness Uysal, saw a stool in the operating room walkways before Lustig tripped. Three witnesses testified it had not been there before she tripped, and four witnesses including a non-party testified it was not there after she tripped.

In any event, "[n]o matter how complicated the case, brevity in jury deliberations is not, in itself, a basis for scuttling a verdict." Veranda Beach Club Ltd. P'ship v. W. Sur. Co., 936 F.2d 1364, 1383 (1st Cir. 1991) (denying relief where deliberations lasted fifteen minutes); accord United States v. Cunningham, 108 F.3d 120, 123 (7th Cir. 1997) (denying relief where deliberations lasted ten minutes); Paoletto v. Beech Aircraft Corp., 464 F.2d

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[4] See Roberts, 163 N.J. at 60 ("After three and [a] half hours of deliberation, the jury found defendant guilty of first-degree robbery" and two weapons offenses); Barasch, 372 N.J. Super. at 360 ("the jury acquitted him of the theft charge, but convicted him of second-degree failure to remit sales taxes collected or withheld in an amount of $75,000 or more"); Talowe, 370 N.J. Super. at 228 ("a jury found defendant . . . guilty of second-degree health care claims fraud . . . and third-degree theft by deception").

976, 983 (3d Cir. 1972). "Brief deliberation, by itself, does not show that the jury failed to give full, conscientious or impartial consideration to the evidence." Wilburn v. Eastman Kodak Co., 180 F.3d 475, 476 (2d Cir. 1999) (denying relief where deliberations lasted twenty minutes); see Sackman v. N.J. Mfrs. Ins. Co., 445 N.J. Super. 278, 292 (App. Div. 2016) (same).

Because plaintiffs fail to show that the trial court's question was "clearly capable of producing an unjust result," it was not plain error. See R. 2:10-2.

IV.

Plaintiffs claim other errors cumulatively necessitate a new trial. "An appellate court may reverse a trial court's judgment if 'the cumulative effect of small errors [is] so great as to work prejudice'" and "deprive[] a party of a fair trial." Torres v. Pabon, 225 N.J. 167, 190-91 (2016) (quoting Pellicer, 200 N.J. at 53-57).

A.

Plaintiffs argue, for the first time, the trial court had a colloquy about consenting to bifurcating the trial only with Lustig and did not seek express consent from Giladi. We note consent is not necessarily a prerequisite for bifurcation, as "the court may on a party's or its own motion, direct that the issues of liability and damages be separately tried." R. 4:38-2(b) (emphasis added).

Moreover, Giladi's only claim was for loss of consortium as Lustig's husband, and thus was derivative of Lustig's liability claim.

In any event, the counsel jointly representing Lustig and Giladi assured the trial court that he spoke to his "clients" and "they agree to the bifurcation." Furthermore, Giladi proceeded with the bifurcated trial and raised no objection until appeal. Thus, plaintiffs have not shown plain error. R. 2:10-2.

B.

Plaintiffs next argue the trial court erred when it permitted defendants to introduce measurements of the operating room where Lustig fell. "'[C]onsiderable latitude is afforded a trial court in determining whether to admit evidence, and that determination will be reversed only if it constitutes an abuse of discretion.'" State v. Kuropchak, 221 N.J. 368, 385 (2015) (citation omitted). "Under that standard, an appellate court should not substitute its own judgment for that of the trial court, unless 'the trial court's ruling "was so wide of the mark that a manifest denial of justice resulted."'" Ibid. (citations omitted); accord N.J. Div. of Child Prot. & Permanency v. N.T., 445 N.J. Super. 478, 492 (App. Div. 2016).

During opening statements, the defense attorneys referenced D-35, a diagram of the operating room. Before Charge Nurse DiRubba

was called as plaintiffs' first witness, defense counsel asked to use D-37, a version of the diagram on which DiRubba had written measurements. Defense counsel proffered the testimony DiRubba would and later did give: that she had years of familiarity with the room and its contents, that they were unchanged since the accident, and that she had recently taken measurements and marked them on the diagram. Defense counsel stated DiRubba's annotated diagram and testimony would "show the jury through demonstrative evidence what this room looked like in terms of its configuration, dimensions, and so on and so forth."

Plaintiffs' counsel objected to the measurements on D-37. He argued that he was being "blind-sided" because the measurements were taken that week, DiRubba was not questioned at her deposition about the dimensions of the operating room, and that the measurements were highly prejudicial because they were not the measurements that existed at the time of the accident.

The trial court overruled the objection, allowed the use of the diagram with the measurements in DiRubba's testimony, and ultimately admitted it into evidence. We find no abuse of discretion.

"There is nothing inherently improper in the use of demonstrative or illustrative evidence." Rodd v. Raritan Radiologic Assocs., P.A., 373 N.J. Super. 154, 164 (App. Div.

2004) (quoting State v. Scherzer, 301 N.J. Super. 363, 434 (App. Div. 1997)). Demonstrative evidence can be a "visual aid - a model, diagram or chart used by a witness to illustrate his or her testimony and facilitate jury understanding." Id. at 165 (quoting Macaluso v. Pleskin, 329 N.J. Super. 346, 350 (App. Div. 2000). "In general, the trial court enjoys wide latitude in admitting or rejecting such replicas, illustrations and demonstrations and in controlling the manner of presentation and whether or not particular items are merely exhibited in court or actually received in evidence." Ibid. However, "such evidence [must] be authenticated, N.J.R.E. 901, and relevant, N.J.R.E. 401, [and] its probative value must not be offset by undue prejudice, unfair surprise, undue consumption of trial time, or possible confusion of issues due to the introduction of collateral matters." Id. at 165-66.

The measurements on the diagram were authenticated by DiRubba, who testified they were the same as in 2009. The measurements and DiRubba's testimony about them were relevant to how the accident occurred, and had significant probative value. Plaintiffs' claims that the layout of the room had changed since the accident and that DiRubba's measurements were inaccurate could be explored by questioning DiRubba and by introducing contrary evidence.

As the trial court ruled, DiRubba could testify about her estimates of the dimensions regardless of whether that was explored at her deposition. Like other witnesses, DiRubba drew her own diagram of the operating room at her deposition, and plaintiffs could have asked her to estimate the dimensions then.

DiRubba's actual measurements of the room are more problematic. Because they were made after discovery ended and were disclosed shortly before trial, they posed a risk of unfair surprise. However, the trial court addressed that risk. The court ordered defendants to provide plaintiffs a copy of D-35, the diagram without the measurements, so Lustig could use it as a demonstrative exhibit to give her own version of the dimensions of the room. The court made clear that plaintiffs could introduce such contrary evidence, and that in examining DiRubba plaintiffs would have "full rights of cross-examination even though [they were] calling the witness." Moreover, plaintiffs could and did use the diagram DiRubba drew at her deposition to question her on direct, and they introduced it into evidence. These measures were adequate to prevent undue prejudice.

In any event, the ultimate issue is whether the measurements' "probative value is substantially outweighed by the risk of" unfair surprise and "undue prejudice." N.J.R.E. 403; see Rodd, 373 N.J. Super. at 165-66. The trial court emphasized the measurements

would be an "aid to the jury" by helping "give a picture to the jury of what the accident scene looked like." The court did not find "any real surprise" or prejudice because the layout of the operating room had been an issue throughout the case including the depositions of numerous witnesses. "[W]eighing the issue," the court felt use of the measurements was "fair and balanced."

Appellate courts "accord trial judges broad discretion in applying the balancing test." State v. DiFrisco, 137 N.J. 434, 496 (1994). "Determinations pursuant to N.J.R.E. 403 should not be overturned on appeal 'unless it can be shown that the trial court palpably abused its discretion[.]'" Green v. N.J. Mfrs. Ins. Co., 160 N.J. 480, 492 (1999) (quoting State v. Carter, 91 N.J. 86, 106 (1982)). Here, "[w]e defer to the trial judge's exercise of discretion in [admitting] the evidence under N.J.R.E. 403." Fitzgerald v. Stanley Roberts, Inc., 186 N.J. 286, 321 (2006).

C.

Plaintiffs next argue the trial court abused its discretion in denying her new trial motion without holding a plenary hearing to determine if Reyes perjured herself during trial.

"A new trial may be granted to all or any of the parties . . . if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and

convincingly appears that there was a miscarriage of justice." R. 4:49-1(a). Plaintiffs must carry a "heavy burden." Pellicer, 200 N.J. at 52. In particular, "the party claiming that an issue was decided on the basis of perjurious testimony must do much more than raise a reasonable question respecting the witness's credibility." State v. Hill, 267 N.J. Super. 223, 226 (App. Div. 1993).

In plaintiffs' motion for a new trial, Lustig's affidavit stated as follows. Shortly after the verdict, plaintiffs were sitting outside the courtroom. Lustig was crying. Reyes was on her way out of the courthouse, saw plaintiff, walked over, stopped, gave Lustig a hug and kiss on the cheek, and said: "Please stop crying, things will get better." Lustig replied: "How could things get better? My entire career was lost over a stepstool; I am injured and can't support my family." Reyes, crying, responded: "I am sorry. I was told to say that." Giladi's affidavit added: "Although I do not have the opportunity to ask Ms. Reyes what she meant when she said that she was 'told to say that,' it was my impression and understanding that she was acknowledging that she did not tell the truth on one or more issues when she testified in this case."

After hearing argument and receiving briefing, the trial judge stated that based on "my observation of Ms. Reyes' testimony

during the course of this trial and the certifications that have been submitted to me, I don't even find there to be a reasonable question respecting Ms. Reyes' credibility raised by these certifications." The court was "convinced" that "whatever words were spoken" by Reyes to Lustig after the verdict "were comforting words and nothing more than that." The court found neither "sufficient issues of material fact" to mandate a plenary hearing, nor any "basis for setting aside the jury verdict."

The trial court's ruling was not an abuse of discretion. Although Reyes submitted a certification disputing that she said "I was told to say that," the court did not base its ruling on her version over plaintiffs' version, but found no basis for relief "whatever words were spoken." Moreover, the natural reading of Lustig's version indicated Reyes's statement, "I was told to say that" referred to what Reyes had just said, namely "Please stop crying, things will get better."

Giladi's mere "impression and understanding" that Reyes was admitting perjuring herself during her testimony a week earlier has no evident basis in Reyes's statement. Moreover, no such impression was averred to by Lustig, who knew Reyes. The court further discounted Giladi's unsupported hypothesis by properly relying on its own recollection of Reyes's testimony. The court specifically recalled that Reyes on the stand "was a bit nervous

but composed," "gave her version of well what occurred as she observed it," and "was fully examined by the plaintiff's attorney."[5]

Thus, the trial court permissibly found Lustig's version of the conversation did not indicate Reyes had perjured herself on the stand. Therefore, the court did not abuse its discretion in not holding a plenary hearing. United States Bank Nat'l Ass'n v. Curcio, 444 N.J. Super. 94, 111 (App. Div. 2016).

New trial "motions are addressed to the sound discretion of the trial court and will not be disturbed unless that discretion has been clearly abused." Quick Chek Food Stores v. Springfield, 83 N.J. 438, 445-46 (1980). "[W]hen evaluating the decision to grant or deny a new trial, 'an appellate court must give "due deference" to the trial court's "feel of the case."'" Hayes v. Delamotte, __ N.J. __, __ (2018) (slip op. at 21) (citation omitted). Here, we must "not substitute our opinion for the trial court's because there was no abuse of discretion." Baumann v. Marinaro, 95 N.J. 380, 389 (1984).

The remainder of plaintiffs' arguments are without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

[5] The court did not rely on Reyes's assurances in her certification that "no one told me what to say at trial" and "I testified truthfully at trial."

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION