COURT OF APPEALS
DECISION
DATED AND FILED

July 21, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP1358 **Cir. Ct. No. 2012CV443**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

L.D.-M., A MINOR, BY DAVID P. LOWE, HIS GUARDIAN AD LITEM, K.D.-M. AND CARLOS CABRERA,

PLAINTIFFS-APPELLANTS,

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES,

INVOLUNTARY-PLAINTIFF,

V.

INJURED PATIENTS AND FAMILIES COMPENSATION FUND, PREFERRED PROFESSIONAL INSURANCE COMPANY, WHEATON FRANCISCAN HEALTHCARE-ST. JOSEPH, INC., WHEATON FRANCISCAN MEDICAL GROUP, INC. AND DENNIS WORTHINGTON, M.D.,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Milwaukee County: DANIEL A. NOONAN, Judge. *Affirmed*.

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 KESSLER, J. This is a medical malpractice action in which L.D.-M., K.D.-M. and Carlos Cabrera (collectively, the plaintiffs) allege that defendants Dr. Dennis Worthington, Mary Mazul and Debra Pukansky,[1] failed to perform a timely cesarean section on K.D.-M., resulting in neurological injuries to her son, L.D.-M.[2] The plaintiffs appeal from a judgment, following a jury trial, which determined that Worthington, Mazul and Pukansky were not negligent in their management of K.D.-M.'s labor. L.D.-M. was born with severe neurological disorders due a lack of oxygen to his brain. The plaintiffs allege that the trial court erroneously denied their motion for a new trial in the interest of justice because a series of evidentiary and instructional errors rendered the verdict unjust. The plaintiffs allege that the trial court erroneously: (1) limited their cross-examination of Worthington; (2) permitted a defense expert, Dr. Theonea Boyd, to testify about the condition of K.D.-M.'s placenta without causally connecting the condition to L.D.-M.'s disorders; (3) permitted a defense expert, Dr. Jay Goldsmith, to offer a new opinion regarding placental pathology; (4) prohibited certain testimony from the plaintiffs' expert, Dr. Stephen Glass; (5) instructed the jury about alternative treatment methods and provided an improper special verdict; and (6) refused to provide the jury with evidence requested during deliberations. In the alternative, the plaintiffs allege that there is insufficient evidence to support the jury's verdict. The plaintiffs also argue that a new trial is warranted in the interest of justice. We reject the plaintiffs' claims of error and conclude that sufficient evidence supports the jury's verdict. We affirm.

[1] Mazul and Pukansky were not sued individually, but rather as employees of St. Joseph's Hospital.

[2] Because K.D.-M. was a minor at the time she gave birth, we use her initials.

BACKGROUND

¶2 On May 25, 2010, K.D.-M. went to St. Joseph's Hospital, Milwaukee, to deliver her son, L.D.-M. Shortly after midnight, K.D.-M. was admitted to the labor and delivery ward. During the labor, K.D.-M. was connected to a fetal heart rate monitor.

¶3 At 4:00 a.m., K.D.-M. was administered Pitocin, a medicine used to augment labor. By 7:00 a.m., however, there was little progress with K.D.-M.'s labor. At that time, K.D.-M. came under the care of Pukansky, a nurse, and Mazul, a midwife. No obstetric residents were on the premises at that time because of an offsite conference. However, Mazul was qualified to manage vaginal deliveries. If a cesarean section was required, Mazul would call the on-call obstetrician. At 8:40 a.m., Pukansky turned the Pitocin off because of concerns that K.D.-M.'s contractions were too close. Pursuant to nursing protocol, Pukansky left the Pitocin off for twenty-five minutes and then re-administered the medication at a lower rate. At 9:30 a.m., K.D.-M. began to vomit. The electronic fetal monitor showed a fetal heart deceleration during the vomiting, prompting Pukansky to turn the Pitocin off. K.D.-M. was administered oxygen and turned to her side to minimize the chance of further decelerations.

¶4 At 9:54 a.m., another deceleration occurred, which lasted for a few minutes. Mazul evaluated the fetal monitor strip, reexamined K.D.-M., and placed a fetal scalp electrode on K.D.-M. to more accurately record the baby's heart rate. Another deceleration occurred at 10:15 a.m., lasting two minutes. Mazul then told Pukansky to pull the paper strip from the monitor, so that Mazul could show the strip to a physician for advice about whether a vaginal delivery was still feasible.

Mazul also told Pukansky to draw K.D.-M.'s blood for testing to determine whether a cesarean section was necessary.

¶5 Mazul took the paper strip with the fetal heart rate readings to Worthington, an obstetrician specializing in high risk pregnancies. Worthington was in his office down the hall from the delivery unit. The strip contained notations that: oxygen was administered to K.D.-M., K.D.-M. was repositioned, a vaginal exam was conducted, and K.D.-M. was dilated eight or nine centimeters. Worthington told Mazul that it was safe to continue monitoring K.D.-M. for a vaginal delivery despite the decelerations because the fetal strip also showed good heart rate variability between the decelerations, as well as heart rate accelerations. Worthington advised Mazul that it would be better for K.D.-M., age fourteen at the time, to avoid a cesarean section if possible.

¶6 Shortly thereafter, K.D.-M. began to vomit again and multiple decelerations, some prolonged, began to take place. At 10:56 a.m., when the fetal heart rate did not return to baseline, Mazul and Pukansky prepared K.D.-M. for a cesarean section. Worthington delivered L.D.-M., who suffered from neurological injuries as a result of oxygen depletion to his brain.

¶7 The plaintiffs brought suit against multiple defendants, including Worthington and St. Joseph's Hospital, alleging that the defendants were negligent for failing to recognize a "non-reassuring" fetal heart rate and for failing to perform a cesarean section at or before 10:56 a.m., when the fetus stopped recovering from decelerations. After a three-week long jury trial, during which the plaintiffs and defendants presented multiple witnesses, the jury found that Worthington, Mazul and Pukansky were not negligent in their management of K.D.-M.'s labor and delivery. The plaintiffs moved for a new trial in the interest

of justice, citing several evidentiary and instructional errors. Alternatively, the plaintiffs argued that the evidence did not support the jury's verdict. The trial court denied the motion. This appeal follows. Additional facts are included as relevant to the discussion.

DISCUSSION

Standard of Review.

¶8 "Our review of a jury's verdict is narrow." ***Morden v. Continental AG***, 2000 WI 51, ¶38, 235 Wis. 2d 325, 611 N.W.2d 659. We "will sustain a jury verdict if there is any credible evidence to support it." *See* ***id.*** It is the jury's role to evaluate the credibility of witnesses and weigh the evidence. ***Id.***, ¶39. Therefore, when the evidence supports more than one reasonable inference, "we accept the particular inference reached by the jury." *See* ***id.*** We accord special deference to a jury's verdict in cases where, as here, the trial court approved the verdict. *See* ***id.***, ¶40. In such situations, we will overturn a verdict only in cases where "'there is such a complete failure of proof that the verdict must be based on speculation.'" *See* ***id.*** (citation omitted).

I. Alleged Trial Court Errors.

¶9 The plaintiffs argue that they are entitled to a new trial, pursuant to WIS. STAT. § 805.15(1) (2013-14).[3] Section 805.15(1) allows a court to grant a new trial "because of errors in the trial, or because the verdict is contrary to law or to the weight of evidence, or … in the interest of justice." The plaintiffs contend that the trial court: (1) improperly limited their cross-examination of

[3] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Worthington; (2) permitted a defense expert, Dr. Theonea Boyd, to testify about the condition of K.D.-M.'s placenta without causally connecting the condition to L.D.-M.'s disorder; (3) permitted a defense expert, Dr. Jay Goldsmith, to offer a new opinion regarding placental pathology; (4) prohibited certain testimony from the plaintiffs' expert, Dr. Stephen Glass; (5) instructed the jury about alternative treatment methods and provided an improper special verdict; and (6) refused to provide the jury with evidence requested during deliberations. We address each alleged error.

A. Cross-Examination of Dr. Worthington.

¶10 The plaintiffs allege that the trial court improperly denied them an opportunity to cross-examine Worthington about whether the fetal monitor tracings were "non-reassuring." The trial court sustained the defense's objection to that line of questioning because "non-reassuring" was not the standard by which physicians monitored fetal heart rates at the time of this action.

¶11 A trial court's evidentiary rulings are discretionary, and will not be upset on appeal if they have a reasonable basis and are consistent with the facts of record. ***State v. Johnson***, 181 Wis. 2d 470, 484, 510 N.W.2d 811 (Ct. App. 1993). Generally, "[w]e will not reverse a discretionary determination by the trial court if the record shows that discretion was in fact exercised and we can perceive a reasonable basis for the court's decision." *See* ***Prahl v. Brosamle***, 142 Wis. 2d 658, 667, 420 N.W.2d 372 (Ct. App. 1987).

¶12 It is undisputed that prior to 2009, fetal heart rate patterns were described as "reassuring" or "non-reassuring." Normal heart rates with moderate variability were described as "reassuring." Heart rates that did not meet that criteria were described as "non-reassuring." However, in 2009, the American

College of Obstetricians and Gynecologists (ACOG) changed the classification to a three-category system. Category I patterns reflect normal heart rates, moderate heart rate variability, and indicate that the fetus has a normal acid-base status. Category II patterns require continuous surveillance, but are not necessarily indicative of fetal distress. Category III patterns generally reflect absent variability with recurrent late decelerations, recurrent variable decelerations, or bradycardia (slow heart rate). A Category III pattern generally indicates that there has been an abnormal acid increase in the fetus's blood.

¶13 Worthington testified twice—adversely, at the beginning of the trial, and as a defense witness at the end of the trial. When he testified for the defense, Worthington said that the fetal monitoring strips here were Category II, requiring continued surveillance and assessment of the entire clinical circumstance. On cross-examination, plaintiffs' counsel asked Worthington whether the strips reflected a non-reassuring pattern. The defense objected and the objection was sustained. The plaintiffs argue that because two other witnesses were permitted to describe the fetal monitoring strips using the terms "reassuring" and "non-reassuring," they should have been able to question Worthington using the same terminology. We disagree.

¶14 It is undisputed that in 2010, at the time of K.D.-M.'s labor, the ACOG required fetal monitor tracings to be interpreted in accordance with the three-category system. Multiple witnesses, including Dr. Roger Freeman, one of the physicians who helped develop the three-category system, testified that at the time of K.D.-M.'s labor, fetal monitoring strips were no longer assessed as "reassuring" or "non-reassuring." Plainly stated, the terminology was outdated. Freeman and Worthington, along with the plaintiffs' expert, Dr. Mark Landon, all interpreted the tracings at issue under the three-tier system. The trial court did not

erroneously exercise its discretion when, on the last day of a three-week jury trial, it sustained an objection to restrict the cross-examination based on outdated medical terminology.

B. Defense Expert Dr. Theonia Boyd.

¶15 Boyd, a pediatric pathologist, testified as the defense's placental pathology expert. Boyd examined tissue from K.D.-M.'s placenta and opined that the placenta had multiple abnormalities. Specifically, Boyd opined that about ten percent of K.D.-M.'s placenta was not functioning normally at the time of L.D.-M.'s birth. Boyd determined that there was compression of the umbilical cord, blood clots in the vessels of the cord, and an amniotic fluid infection, among other abnormalities. Boyd opined that "blood flow was compromised through the cord that was a week or weeks prior to delivery." All of these abnormalities taken together, Boyd stated, can reduce the amount of oxygen and nutrient-rich blood available to a fetus. Boyd also stated that the abnormalities at issue were "sub-clinical," meaning they could not have been known during K.D.-M.'s labor because they required microscopic analysis of the placental tissue. Boyd's testimony was consistent with her medical report and her deposition testimony.

¶16 The plaintiffs contend that Boyd's testimony should have been excluded because she did not opine to a reasonable degree of medical certainty that the placental abnormalities caused L.D.-M.'s injuries. They argue that her testimony was irrelevant and only served to confuse the jury. We disagree.

¶17 The decision of whether to admit or exclude proffered expert testimony is a matter of trial court discretion. ***State v. Friedrich***, 135 Wis. 2d 1, 15, 398 N.W.2d 763 (1987). We review the trial court's decision to determine an erroneous exercise of discretion. *See* ***State v. Pittman***, 174 Wis. 2d 255, 268, 496

N.W.2d 74 (1993). We will not disturb the court's discretionary decision if the court examined the relevant facts, applied the proper legal standard, and used a rational process to reach a reasonable conclusion. *See* ***id.***

¶18 The defendants were not required to show by a reasonable degree of medical certainty that the placental abnormalities caused L.D.-M.'s injuries. The plaintiff has the burden of proof in a medical malpractice claim. *See* WIS JI—CIVIL 1023. Accordingly, the trial court properly exercised its discretion in admitting Boyd's testimony. While Boyd did not affirmatively state that the placental abnormalities caused L.D.-M.'s injuries, Boyd explained that this type of pathology is frequently associated with the sudden decompensation of fetuses and reduces the fetal threshold for tolerating stress factors during labor. Boyd stated that the abnormalities were "sub-clinical" and could not have been known during the labor without microscopic examination. Boyd's testimony related directly to the question of whether Worthington, Pukansky and Mazul were negligent in their management of K.D.-M.'s labor. Boyd's testimony allowed the jury to infer that placental abnormalities, as opposed to negligent labor management, could have caused L.D.-M.'s injuries. If K.D.-M.'s placental condition could not have been known during the labor, then none of the professionals managing the labor could have known the extent of the fetus's reduced oxygen levels, stress and decompensation. The trial court properly exercised its discretion.

C. Defense Expert Dr. Jay Goldsmith.

¶19 The plaintiffs contend that the trial court also erred in allowing Dr. Jay Goldsmith, a neonatologist, to offer a new causation opinion in violation of an *in limine* motion. They argue that Goldsmith should have been prohibited from testifying that L.D.-M.'s injuries were caused by a depletion of fetal reserves.

When asked to explain fetal reserves, Goldsmith explained the concept and then added: "In this particular case, Boyd's analysis was that this placenta was not healthy and had numerous problems which would decrease the reserves. Which means the time to injury is much more rapid." The plaintiffs' counsel objected on the grounds that Goldsmith's comment was not responsive. The trial court overruled the objection.

¶20 The plaintiffs contend that Goldsmith's testimony, based on Boyd's report, constituted a new opinion. Specifically, they argue that Goldsmith drew the specific conclusion that Boyd did not—that the depletion of fetal reserves caused L.D.-M.'s injuries. They argue that without Boyd's testimony, Goldsmith would not have been able to render his "new, previously undisclosed opinion."

¶21 We have already concluded that Boyd's testimony was admissible. We also disagree that Goldsmith's opinion was new and previously undisclosed. The plaintiffs were aware that Goldsmith had reviewed Boyd's report, had an opinion about the report, and testified about the report during his deposition. Indeed, Goldsmith referenced Boyd's report during his deposition and explained the baby's sudden decomposition; however, the plaintiffs' counsel did not further question Goldsmith about his opinion. Defense counsel even asked the plaintiffs' counsel at the deposition if he wished to question Goldsmith further about Boyd's pathology report. The plaintiffs' counsel did not do so. To now claim that Goldsmith's opinion was "a new opinion causally linking the placental conditions to the outcome" is disingenuous.

D. Plaintiffs' Expert Dr. Stephen Glass.

¶22 Dr. Stephen Glass, a pediatric neurologist, testified that up until 10:56 a.m. on the morning of L.D.-M.'s birth, there was no evidence of placental

abnormalities. Glass stated that at 10:56 a.m., the umbilical cord became compressed and began to cut off oxygen to L.D.-M. Glass said that from 10:56 a.m. until L.D.-M.'s delivery twenty-five minutes later, there was a dramatic drop in L.D.-M.'s blood gasses. Plaintiffs' counsel asked Glass how the rate of the drop of blood gasses during this time period related to the functioning of the placenta. Defense counsel objected and an off-the-record discussion was held. The trial court sustained the objection.

¶23 Assuming, without deciding, that the trial court should have overruled the objection, we conclude that the error was harmless. "The standard for harmless error is whether there is a 'reasonable possibility' that the error contributed to the outcome of the action." ***Martindale v. Ripp***, 2001 WI 113, ¶71, 246 Wis. 2d 67, 629 N.W.2d 698 (citation omitted). We are not convinced that the excluded testimony would have made a difference in the outcome of the case. There is no offer of proof from the plaintiffs in the record as to what Glass would have said about the connection between the blood gas levels and the placental condition. Thus, we cannot conclude that the jury's findings would have been altered by Glass's testimony. *See* WIS. STAT. § 901.03 (error may not be predicated upon a ruling that excludes evidence unless the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked). We cannot conclude that the jury's verdict would have been different had Glass testified further.

E. Jury Instructions and the Special Verdict Form.

¶24 The plaintiffs argue that the trial court erroneously instructed the jury by including the optional "alternative methods" paragraph of WIS JI—CIVIL 1023. They also contend that the trial court erroneously changed the special

verdict form to name Mazul and Pukansky personally, rather than St. Joseph's Hospital.

¶25 Instruction 1023 explains the concept of medical negligence, including the standard of care, and includes the following:

> [Use this paragraph only if there is evidence of two or more alternative methods of treatment or diagnosis recognized as reasonable: If you find from the evidence that more than one method of (treatment for) (diagnosing) (p1aintiff)'s (injuries) (condition) was recognized as reasonable given the state of medical knowledge at that time, then (doctor) was at liberty to select any of the recognized methods. (Doctor) was not negligent because (he)(she) chose to use one of these recognized (treatment) (diagnostic) methods rather than another recognized method if (he)(she) used reasonable care, skill, and judgment in administering the method.]

(Some underlining and bolding omitted.)

¶26 It is proper to instruct a jury using the alternative method instruction when "evidence allows the jury to find that more than one method of diagnosis or treatment of the patient is recognized" as legitimate. ***Finley v. Culligan***, 201 Wis. 2d 611, 622, 548 N.W.2d 854 (Ct. App. 1996). A trial court has broad discretion when instructing the jury. ***Fischer v. Ganju***, 168 Wis. 2d 834, 849, 485 N.W.2d 10 (1992).

¶27 Here, the plaintiffs contend that the instruction was inappropriate because the only treatment option for K.D.-M. was a timely cesarean section. They argue that "the trial court [should] have found that the Defendants' decision to let labor proceed was not a method of diagnoses or treatment."

¶28 There is sufficient evidence in the record that monitoring the progression of K.D.-M.'s labor, rather than performing an immediate cesarean

section, was a viable treatment option under that particular set of circumstances. Multiple witnesses, including Worthington and Freeman, as well as the plaintiffs' expert, Landon, testified that the fetal monitor strip at issue was a Category II strip. Worthington and Freeman testified that Category II strips are generally closely monitored for signs of fetal distress and that vaginal deliveries are still possible with Category II strips. Worthington and Freeman both testified that K.D.-M.'s labor could be appropriately managed with continuous monitoring to see how the labor progressed or if the decelerations reoccurred. Worthington also stated that turning off the Pitocin, administering oxygen to K.D.-M. and turning her to her side were all appropriate treatment methods that could have still potentially led to a vaginal delivery. Accordingly, the evidence allowed the jury to determine that closely monitoring K.D.-M., turning off the labor-stimulating medication, administering oxygen and repositioning K.D.-M. were all recognized treatment methods under that set of circumstances. The instruction was appropriately given.

¶29 The plaintiffs also argue that the trial court erroneously changed the special verdict form to require the jury to determine whether Mazul and Pukansky were individually negligent. They contend that the change "improperly implied that Mazul and Pukansky (neither of whom was a defendant) would be individually liable for a significant damage award."

¶30 The original verdict form agreed upon by the parties asked whether St. Joseph's Hospital, by one or more of its employees, was negligent in its management of K.D.-M.'s labor. The original form did not name Mazul or Pukansky individually. Prior to closing arguments, the trial court told the parties that it changed the special verdict form to read: "[w]as Mary Mazul, or Debra

Pukansky, or both negligent with regard to their care for [K.D.-M.]?" The plaintiffs did not object and have waived this issue.[4]

F. The Jury's Requests for Exhibits During Deliberations.

¶31 The plaintiffs contend that the trial court erroneously "reject[ed] the jury's request for critical evidence" when it denied the jury's request to view the fetal monitor strips during deliberations. At the post-verdict hearing, the court explained:

> To suggest that this jury didn't understand the fundamental premise of Plaintiffs' case, is simply not true. The jury knew all about this case and did not need these monitoring strips to reinterpret what the experts had told the jury and testified to. To do otherwise, in this Court's view, would allow them to start interpreting medical data and medical information that the law requires experts to do.

¶32 The trial court has broad discretion in determining whether to send exhibits to the jury room. ***Schnepf v. Rosenthal***, 53 Wis. 2d 268, 272, 193 N.W.2d 32 (1972). Factors the trial court should consider in determining whether an exhibit should be sent into the jury room include whether: (1) it will help the jury to properly consider the case, (2) a party will be unduly prejudiced by submission of the exhibit, and (3) the exhibit could be subjected to improper use by the jury. ***State v. Anderson***, 2006 WI 77, ¶27, 291 Wis. 2d 673, 717 N.W.2d 74, *overruled on other grounds by* ***State v. Alexander***, 2013 WI 70, 349 Wis. 2d 327, 833 N.W.2d 126.

¶33 The trial court determined that the fetal monitor strips were "highly technical information" that would invite the jurors to reinterpret specific medical

[4] When a party fails to object to a jury instruction or special verdict form, any error is waived. *See* WIS. STAT. § 805.13(3).

data. Thus, the strips could not have helped the jury determine facts or could have been used improperly by the jury if it attempted to interpret medical data. Multiple experts testified about the significance of the strips and the jury was allowed to take notes during the testimony. Possession of the physical strips, which generally can only be properly evaluated by trained medical professionals, was not necessary or helpful for the jury's consideration of this case. The court considered the proper factors and explained its reasoning. The court properly exercised its discretion.

II. Sufficiency of the Evidence.

¶34 The plaintiffs alternatively argue that there was insufficient evidence to sustain the jury's findings that Worthington, Mazul and Pukansky were not negligent in their management of K.D.-M.'s labor. The plaintiffs ignore the multitude of evidence in the record that supports the jury's verdict.

¶35 A jury verdict will be sustained if there is any credible evidence to support the verdict, sufficient to remove the question from the realm of conjecture. *See* ***Nieuwendorp v. American Family Ins. Co.***, 191 Wis. 2d 462, 472, 529 N.W.2d 594 (1995). This is even more true where, as here, the verdict has the trial court's approval. *See* ***Radford v. J.J.B. Enters., Ltd.***, 163 Wis. 2d 534, 543, 472 N.W.2d 790 (Ct. App. 1991). Before a reviewing court will reverse, there must be "'such a complete failure of proof that the verdict must have been based on speculation.'" *See* ***Nieuwendorp***, 191 Wis. 2d at 472 (citation omitted). Our consideration of the evidence must be done in the light most favorable to the verdict, and when more than one inference may be drawn from the evidence, we are bound to accept the inference drawn by the jury. *See* ***id.***

¶36 Freeman, a specialist in maternal fetal medicine, testified that Worthington met the standard of care and that a cesarean section was not required before it was ordered. Freeman, one of the physicians who helped develop the three-tier classification system, testified that the fetal monitor strip at issue was a Category II strip, which generally does not require an intervention by cesarean section if there is an absence of acidosis and hypoxia.[5] Freeman testified that the fetus recovered after the prolonged decelerations and was well-oxygenated. He said the type of change undergone by the fetus could not have been predicted.

¶37 Worthington testified at length about the care and treatment rendered to K.D.-M., the significance of the fetal monitoring strips, and the standard of care. Worthington testified that he reviewed the fetal monitoring strips, which had written information on them documenting vaginal exams, the administration of oxygen, and a repositioning of the patient. The written information also indicated that K.D.-M. was dilated eight to nine centimeters. Worthington said, based on this information, he anticipated a vaginal delivery within a short amount of time, making his decision to continue labor reasonable.

¶38 Worthington also testified that the fetal monitoring strip was a Category II strip, which requires evaluation, continued surveillance, reevaluation and consideration of the entire set of clinical circumstances.

¶39 Georgeanne Croft, a certified nurse midwife with 30 years of clinical experience, testified that both Pukansky and Mazul met the requisite standard of

[5] Acidosis is an accumulation of too much acid in the body. *See* http://www.medicinenet.com/script/main/art.asp?articlekey=6846 (last visited April 30, 2015). Hypoxia is "a condition or state in which the supply of oxygen is insufficient for normal life functions." *See* http://www.medicinenet.com/hypoxia_and_hypoxemia/article.htm (last visited April 30, 2015).

care in their management of K.D.-M.'s labor. Croft testified that all of the actions taken by Mazul and Pukansky, including turning off the Pitocin, conducting a vaginal exam, repositioning K.D.-M., watching the fetal monitor strips, and consulting with Worthington, met the requisite standard of care.

¶40 The credibility of the witnesses and the weight to be afforded their individual testimony are left to the jury. ***Radford***, 163 Wis. 2d at 543. This court's duty is to search for credible evidence to sustain the jury's verdict, not to search the record on appeal for evidence to sustain a verdict that the jury could have reached, but did not. *See* ***id.*** The testimony here supports the jury's findings that Worthington, Pukansky and Mazul met the requisite standard of care in their treatment of K.D.-M. Although the severity of L.D.-M.'s injuries are tragic, there was credible evidence that the medical profession regards the administered treatment at issue as standard.

¶41 Based on our review of the record, we conclude that the jury reasonably concluded that Worthington, Mazul and Pukansky were not negligent in their care and treatment of K.D.-M.

III. Interest of Justice.

¶42 Finally, the plaintiffs ask us to use our discretionary reversal power to grant a new trial in the interest of justice because "it is probable that justice has been miscarried." (Capitalization omitted.) The plaintiffs contend that the combination of the errors discussed earlier warrants a discretionary reversal.

¶43 "The trial court's ruling on a motion for a new trial is highly discretionary and will not be reversed on appeal in the absence of a showing of an [erroneous exercise] of discretion." ***Johnson v. American Family Mut. Ins. Co.***,

93 Wis. 2d 633, 649, 287 N.W.2d 729 (1980). We have already discussed the alleged errors and have found either no trial court error, or harmless error. Accordingly, a new trial is not warranted in the interest of justice.

¶44 For the foregoing reasons, we affirm the trial court. To the extent the plaintiffs raise issues not addressed in this opinion, we conclude that our resolution of the issues in this opinion is dispositive.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.