

86 So.3d 1268, 37 Fla. L. Weekly D1131  
(Cite as: **86 So.3d 1268**)

District Court of Appeal of Florida,  
Fourth District.  
Steven RAMOS and Julie Andersen, on behalf of Gia Ramos, a minor, Appellants,  
v.  
Melanie COOMBS, M.D.; South Florida Pediatric Partners, L.L.C., a Florida Limited Liability Corporation; Nicole Mark, M.D., and Alan Furia, M.D., Appellees.

No. 4D09–3123.  
May 9, 2012.

**Background:** Parents of patient brought medical malpractice action against physicians and medical practice arising out of the alleged failure to diagnose a brain stem tumor in the infant patient. After entry of a jury verdict, the Seventeenth Judicial Circuit Court, Broward County, Richard D. Eade, J., granted a new trial as to causation and damages. Parents appealed, and the District Court of Appeal, 54 So.3d 1038, remanded for trial court to provide more specific grounds for granting the new trial as to damages. The Circuit Court entered a new order, and the District Court of Appeal resumed jurisdiction.

**Holdings:** The District Court of Appeal held that:

(1) trial court did not abuse its discretion by granting a new trial as to causation, and  
(2) trial court did not abuse its discretion by granting a new trial as to damages.

Affirmed.

West Headnotes

**[1] Appeal and Error 30 ☞977(3)**

30 Appeal and Error  
30XVI Review

30XVI(H) Discretion of Lower Court  
30k976 New Trial or Rehearing  
30k977 In General  
30k977(3) k. Grant of new trial in general. Most Cited Cases

When reviewing the order granting a new trial, an appellate court must recognize the broad discretionary authority of the trial judge and apply the reasonableness test to determine whether the trial judge committed an abuse of discretion.

**[2] New Trial 275 ☞68.2**

275 New Trial  
275II Grounds  
275II(F) Verdict or Findings Contrary to Law or Evidence  
275k67 Verdict Contrary to Evidence  
275k68.2 k. Discretion. Most Cited Cases

The mere existence of competent, substantial evidence to support the jury verdict does not necessarily demonstrate that the trial judge abused his or her discretion by granting a new trial.

**[3] New Trial 275 ☞65**

275 New Trial  
275II Grounds  
275II(F) Verdict or Findings Contrary to Law or Evidence  
275k65 k. Power and duty of court in general. Most Cited Cases

The trial judge's discretion permits the grant of a new trial even if it is not clear, obvious and indisputable that the jury was wrong.

**[4] New Trial 275 ☞68.4(5)**

275 New Trial

275II Grounds

275II(F) Verdict or Findings Con-  
trary to Law or Evidence275k67 Verdict Contrary to Evid-  
ence275k68.4 Particular Actions or  
Issues

275k68.4(3) Torts

275k68.4(5) k. Negli-  
gence. Most Cited Cases

Trial court did not abuse its discretion in medical malpractice action arising out of the alleged failure to diagnose a brain stem tumor in an infant by granting a new trial as to causation, where trial court found that the only expert offered by infant patient's parents on causation was not qualified to speak to that element, and that even if expert was qualified her limited credentials were substantially outweighed by the expertise and experience of the experts offered by defendant physicians and medical practice.

**[5] New Trial 275 ☞9**

275 New Trial

275I Nature and Scope of Remedy

275k9 k. New trial as to part of is-  
sues. Most Cited Cases

Trial court did not abuse its discretion in medical malpractice action arising out of the alleged failure to diagnose a brain stem tumor in an infant by granting a new trial as to damages; trial court also granted a new trial as to causation, and trial court demonstrated how element of damages was intertwined with causation such that any infirmity as to causation would render the damages verdict against the manifest weight of the evidence.

**\*1269** Lauri Waldman Ross and Theresa L. Girten of Ross & Girten, Miami, and Gary Alan Friedman of Friedman & Friedman, P.A., Coral Gables, for appellant Julie Andersen, on behalf of Gia Ramos.

Jeffrey S. Badgley of the Badgley Law Group, Orlando, for appellees Melanie Coombs, M.D., and South Florida Pediatric Partners, L.L.C.

**PER CURIAM.**

Previously we remanded this matter to the trial court with instructions to provide more specific grounds for granting a new trial as to the element of damages in a medical malpractice case involving the possible failure to diagnose a brain-stem tumor in an infant. *Ramos v. Coombs*, 54 So.3d 1038 (Fla. 4th DCA 2011). The trial court has since issued a lengthy new trial order, the parties have provided us with additional briefing as to this new order, and we now resume our jurisdiction over this appeal. Based upon our review of both the original and the most recent orders, we find that the trial court did not abuse its discretion in ordering a new trial as to the elements of causation and damages.

[1][2][3] “When reviewing the order granting a new trial, an appellate court must recognize the broad discretionary authority of the trial judge and apply the reasonableness test to determine whether the trial judge committed an abuse of discretion.” *Brown v. Estate of Stuckey*, 749 So.2d 490, 497–98 (Fla.1999). The mere existence of competent, substantial evidence to support the jury verdict “does not necessarily demonstrate that the trial judge abused his or her discretion.” *Id.* at 498. “The trial judge's discretion permits the grant of a new trial even if it is not clear, obvious and indisputable that the jury was

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wrong.” *Kuebler v. Ferris*, 65 So.3d 1154, 1157 (Fla. 4th DCA 2011).

[4] In its original order granting a new trial, the trial court found that the only expert that Appellants offered on causation was not qualified to speak to that element. FN1 Continuing, the trial court found that even if that expert were qualified to testify about causation, her “limited credentials” were substantially outweighed by Appellees’ experts’ “unquestionable expertise and experience” in the “hyper-technical area of medicine” at issue. We find no abuse of discretion in the trial court’s ordering a new trial as to causation.

FN1. During the trial, the trial court had deferred ruling on the expert’s qualification as to causation.

[5] As for the trial court’s new order which explains its reasoning for ordering a new trial as to damages, we again find no abuse of discretion. The trial court demonstrated\*1270 how the element of damages was intertwined with causation such that any infirmity as to causation would render the damages verdict against the manifest weight of the evidence as well. It is clear to us that the trial court did not act as a seventh juror in ordering a new trial as to the elements of causation and damages. *See, e.g., Moore v. Perry*, 944 So.2d 1115, 1118 (Fla. 5th DCA 2006) (“It has often been said that a trial judge should not sit as a seventh juror with veto power over the jury’s verdict.”).

We find the Florida Supreme Court’s words in *Brown* apropos: “This case involves complex issues and circumstances, and the trial judge was better positioned than any other person to comprehend the processes by which the ultimate decision of the jury was reached.” *Brown*, 749 So.2d at

499.

Having reviewed Appellants’ other arguments on appeal, we conclude that they are without merit and do not discuss them further.

*Affirmed.*

POLEN, CIKLIN and LEVINE, JJ., concur.

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Ramos v. Coombs

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