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Recent Developments: Falcinelli v. Cardascia: Procedural Error Caused Court to Uphold Jury Judgment Which Exceeded Amount of Damages Requested in the Complaint

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In *Falcinelli v. Cardascia*, 339 Md. 414, 663 A.2d 1256 (1995), the Court of Appeals of Maryland upheld a jury verdict which exceeded the amount of damages claimed in the *ad damnum* clause of the complaint. In doing so, the court considered factors such as when final judgment was entered, the scope of review, and the power of the circuit courts to enter judgment in an amount exceeding the *ad damnum* clause.

In *Falcinelli*, the plaintiff initiated a negligence action against defendant alleging personal injuries suffered during an automobile accident. The plaintiff, April Cardascia, filed a single count complaint claiming damages of \$100,000. The jury, through special interrogatories, returned a verdict awarding her \$205,187.08.

After commencing the action in the Circuit Court for Montgomery County, the jury returned the excessive verdict on February 24, 1994. On the same day the jury rendered its decision, the court clerk noted the verdict on the docket entry. At trial, no objection to the verdict was made prior to the release of the jury. The defendant, Thomas Richard Falcinelli, within ten days of February 24, then filed three alternative motions. He moved for a judgment notwithstanding the verdict, for a new trial, or for a remittitur of at least \$105,187.08. Cardascia filed a motion for leave to increase the *ad damnum* clause in her com-

plaint to \$205,187.08. On April 29, 1994, the court denied defendant's motions and granted the plaintiff's motion to amend her complaint. Thereafter, the defendant moved for reconsideration of his denied motions, which the court denied. Consequently, the defendant appealed to the Court of Special Appeals of Maryland. The Court of Appeals of Maryland subsequently bypassed the intermediate appellate court and *sua sponte* issued a writ of certiorari.

The court of appeals began its analysis by evaluating the defendant's three main arguments. The defendant first argued that, historically, Maryland common law has required plaintiffs to release the amount of jury verdicts in excess of the *ad damnum* clause. *Falcinelli*, 339 Md. at 419, 663 A.2d at 1258. Second, the defendant asserted that Maryland Rule 2-341 is silent as to a time limit for amending complaints in the circuit courts. *Id.* at 420, 663 A.2d at 1258. That silence, arguably, should not be interpreted as allowing post-verdict amendments even when the court grants permission to do so. *Id.* In support of this assertion, the defendant referred to Md. Rule 8-604(c)(2) which he argued required a plaintiff to release any excess award. *Id.* at 420, 663 A.2d at 1259. Third, the defendant contended that appellate review in this matter was not limited to whether the trial judge abused his discretion in denying the motion for

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reconsideration. Instead, review should have been broad enough to include the error of the lower court when it authorized the post-verdict amendment to the *ad damnum* clause. *Id.* at 421, 663 A.2d at 1259.

In response, the plaintiff countered with two opposing perspectives. First, the plaintiff argued that Md. Rule 2-341 purposefully omitted a time limit governing when amendments could be made at the circuit court level. Therefore, her post-verdict amendment, which was granted with leave of court, was binding on the defendant. *Id.* at 420, 663 A.2d at 1258. Second, the plaintiff argued that the order for appeal in this matter should be limited to the narrow issue of whether the trial court abused its discretion in denying the defendant's motion for reconsideration. *Id.* at 421, 663 A.2d at 1259.

After examining the arguments of both parties, the court turned its attention to resolving the issue of when final judgment was entered. *Id.* at 422, 663 A.2d at 1259. In making its determination, the court looked to Md. Rule 2-601(b), which states that "[t]he clerk shall enter a judgment by making a record of it . . . on a docket . . . and shall record the actual date of the entry." *Id.* at 422, 663 A.2d at 1260. According to the court, the language of the rule dictates that the date on the face of the docket determines when final judgment was entered. *Id.* In the instant case,

final judgment was entered by the court clerk on February 24, 1994, in the amount of \$205,187.08. *Id.* at 422, 663 A.2d at 1259. The court further noted that the judgment of April 29, 1994, denying defendant's three motions, became "a final, appealable judgment in the full amount of the verdict." *Id.* at 430, 663 A.2d at 1263.

Next, the court focused its attention on whether or not the *ad damnum* clause should be treated as a limitation on recovery. *Id.* at 423, 663 A.2d at 1260. The court of appeals recognized that Maryland case law has historically treated the *ad damnum* clause as a direct limitation on recovery. *Id.* See, e.g., *Scher v. Altomare*, 278 Md. 440, 365 A.2d 41 (1976) (plaintiff's recovery cannot exceed amount claimed in *ad damnum*); *Finch v. Mishler*, 100 Md. 458, 59 A. 1009 (1905) (plaintiff released \$32 in order to bring the judgment in accordance with *ad damnum*); *Harris v. Jaffray*, 3 H. & J. 543 (1815) (as a matter of law defendant is entitled to a remittitur down to the *ad damnum* amount): In its analysis of the case law, however, the court was quick to note that although "a remittitur has been considered appropriate as to the excess of a verdict over the *ad damnum* [, it] does not demonstrate any substantive invalidity in a judgment that includes that excess." *Falcinelli*, 339 Md. at 426, 663 A.2d at 1261. Therefore, the court held that a jury's power to render its verdict and the circuit court's pow-

er to enter the verdict as a judgment is not inherently limited by the *ad damnum* amount. *Id.* at 427, 663 A.2d at 1262.

In affirming the lower court's decision to permit the plaintiff to increase the *ad damnum* amount, the Court of Appeals of Maryland did not deny that the trial court may have committed an error of law. *Id.* at 429, 663 A.2d at 1263. Rather, the court simply recognized that the defendant did not file a timely appeal on the judgment of April 29, 1994. *Id.* When the trial court rejected the defendant's contention that a verdict in an amount exceeding the *ad damnum* could not be upheld, the defendant should have appealed directly to the court of special appeals. Instead, he simply submitted the motion for reconsideration to the same court. *Id.* at 430, 663 A.2d at 1264.

The court of appeals is not required to recognize an error underlying a verdict which exceeds the *ad damnum*, thus, the only issue on appeal was whether the trial court abused its discretion in denying the defendant's motion for reconsideration. *Id.* at 429, 663 A.2d at 1263. The court was unable to find that there had been an abuse of discretion because the defendant had not offered any evidence relating to the extent of damages or prejudice caused by the excessive verdict. *Id.* at 430, 663 A.2d at 1264. Furthermore, the court noted that by reviewing the defendant's legal contention that a verdict cannot

exceed the *ad damnum*, it would, in effect, provide the defendant with an opportunity for a second appeal. *Id.* at 431, 663 A.2d at 1264. Therefore, in the interest of judicial economy, the court refused to follow that course of action. *Id.*

The facts in *Falcinelli v. Cardascia* did not require a review of the substantive law,

therefore, the Court of Appeals of Maryland did not decide whether the law permitted a verdict in excess of the *ad damnum* clause. Rather, the decision turned on a procedural question. In rendering its decision, the court effectively sets the stage for future discussions involving excessive jury verdicts of this nature. Moreover,

this decision also alerts counsel to the underlying requirement that post-trial procedure needs to be strategically planned.

-*Pinelopi Makrodimitris*

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