OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

CHRISTINA BOJORQUEZ,	)	No. ED107858
	)	
Respondent,	)	
	)	Appeal from the Circuit Court
vs.	)	of St. Louis County
	)	16SL-CC01088
THOMAS E. O'KEEFFE, D.D.S.,	)	
A PROFESSIONAL CORPORATION, and	)	Honorable Stanley J. Wallach
THOMAS E. O'KEEFFE, D.D.S.,	)	
	)	
Appellants.	)	Filed: July 7, 2020

Thomas E. O'Keeffe, D.D.S., a professional corporation, and Thomas E. O'Keeffe, D.D.S. (individually "Defendant O'Keeffe") (collectively "Defendants"), appeal the judgment entered upon a jury verdict in favor of Christina Bojorquez ("Plaintiff") on her dental malpractice claim. In accordance with the jury's verdict, the trial court's judgment awarded Plaintiff a total of $2.5 million in noneconomic damages on Plaintiff's claim alleging, *inter alia*, that Plaintiff suffered damages as a result of Defendant O'Keeffe lacerating her tongue with a dental drill during a crown preparation procedure.

On appeal, Defendants raise three points arguing, (1) the trial court erred in denying their motion for judgment notwithstanding the verdict ("JNOV") because Plaintiff failed to present a submissible case of dental malpractice on the issue of causation; (2) the trial court erred in failing to reduce the jury's award of $2.5 million in noneconomic damages pursuant to the limits on noneconomic damages set forth in section 538.210 RSMo 2016;[1] and (3) the trial court erred in failing to remit the jury's verdict awarding Plaintiff a total of $2.5 million in noneconomic damages on the grounds the award was excessive.

AFFIRMED.

Division One holds:

(1) Defendants' arguments that Plaintiff failed to make a submissible case of dental malpractice on the issue of causation have no merit. Therefore, the trial court did not err in denying Defendants' motion for JNOV with respect to the issue of causation.

(2) Pursuant to the Missouri Supreme Court's holding in *Klotz v. St. Anthony's Medical Center*, the application of caps on noneconomic damages set forth in section 538.210

[1] All further statutory references to section 538.210 are to RSMo 2016, which is the version of the statute that was effective from August 28, 2015 to August 27, 2017.

to Plaintiff's cause of action that accrued before the effective date of the law would violate the constitutional prohibition of retrospective laws, because such an application of the statute would take away Plaintiff's substantive right to a benefit that has already accrued. 311 S.W.3d 752, 758-60 (Mo. banc 2010). Therefore, the trial court did not err in failing to apply section 538.210 to reduce the jury's award of noneconomic damages.

(3) We cannot find the jury's award of a total of $2.5 million in noneconomic damages is so grossly excessive that it shocks the conscience of the court and convinces us that both the trial judge and the jury have abused their discretion. Accordingly, the trial court did not abuse its discretion in failing to remit the jury's award of noneconomic damages.

Opinion by: Robert M. Clayton III, P.J.
Robert G. Dowd, Jr., J., and Roy L. Richter, J., concur.

Attorney for Appellant: Bruce E. Baty, Wade P. K. Carr, Betsey L. Lasister

Attorney for Respondent: Jamie L. Boock

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.