In the Missouri Court of Appeals
Eastern District

DIVISION TWO

K.W., ET AL., Respondents, v. SAINT LOUIS CHILDRENS HOSPITAL, ET AL., Appellants.	)))))))))	ED113441 Filed: August 11, 2026

Appeal from the Circuit Court of the City of Saint Louis
The Honorable Michael W. Noble, Judge

Introduction

This appeal arises out of a products liability lawsuit brought by Respondent K.W., a minor, by and through his Next Friend, Elizabeth Whitfield ("Whitfield"), against Appellants Abbott Laboratories, and Abbott Laboratories, Inc. (collectively, "Abbott"), Mead Johnson & Company, LLC, and Mead Johnson Nutrition Company (collectively, "Mead"). K.W.'s action alleged Appellants' preterm infant formulas caused K.W. to develop necrotizing enterocolitis ("NEC"), a gastrointestinal condition. After a four-week trial, the jury found in favor of Appellants. Following the jury's verdict, K.W. filed a

motion for a new trial. The trial court granted the motion on various grounds, including the verdict being against the weight of the evidence.

Appellants now appeal the trial court's grant of the motion for a new trial. Abbott raises eleven points on appeal and Mead raises thirteen points on appeal claiming the trial court erred in ordering a new trial. This Court holds the trial court did not abuse its discretion in granting a new trial on the ground the verdict was against the weight of the evidence. Accordingly, the trial court's judgment is affirmed on that basis and this Court does not reach the remaining points on appeal.[1]

Factual and Procedural Background

K.W. was born prematurely on August 28, 2017. Shortly after K.W. was born, Whitfield, K.W.'s mother, began having trouble producing breast milk. As a result, K.W.'s providers at St. Louis Children's Hospital's ("SLCH") began feeding him Appellants' specialized preterm infant formulas, which are designed to meet the unique nutritional needs of infants born prematurely. On September 13, 2017, K.W. was diagnosed with NEC and underwent surgery. K.W. was discharged from SLCH after months in the neonatal intensive care unit.

On July 6, 2022, K.W., by and through Whitfield, filed a petition against Mead, Abbott, and SLCH. Subsequently, K.W. filed an amended petition on July 10, 2024. The amended petition sought punitive damages and asserted claims of products liability (product defect and failure to warn) and negligence against Abbott and Mead. In relevant

[1] The Chamber of Commerce filed a motion for leave to file an amicus curiae brief. This Court grants the motion.

part, K.W. alleged Appellants' preterm infant formulas are "defective and unreasonably dangerous" because they "significantly increase[] the risk of NEC," and their formulas caused K.W.'s injuries. K.W. further alleged Appellants failed to provide any warnings regarding the risk of NEC. Lastly, the amended petition alleged a medical negligence claim against SLCH.

The matter proceeded to a jury trial. After a four-week trial, the jury found in favor of defendants on all counts. On November 18, 2024, the trial court entered a final judgment in favor of Abbott, Mead, and SLCH on all of K.W.'s claims. A month later, K.W. filed a motion for new trial. Subsequently, SLCH filed a petition for approval of a minor settlement, and the trial court entered an order approving the settlement between K.W. and SLCH.[2] Then, the trial court granted Respondents' motion for new trial against Abbott and Mead.

In granting K.W.'s motion, the trial court stated several reasons for ordering a new trial. In relevant part, the trial court found "the verdict was against the weight of the evidence and in accordance with Rule 78.02, a new trial is appropriate."

This appeal follows.

Standard of Review

Pursuant to Rule 78.02, a trial court may grant a new trial on the ground the verdict is against the weight of the evidence.[3] "[A] trial court 'has nearly unfettered discretion in deciding whether or not to grant a new trial on the ground that the verdict

[2] SLCH is no longer a party in the underlying matter and is not part of this appeal.
[3] All rule references are to Missouri Supreme Court Rules (2024).

was against the weight of the evidence.'" *Revis v. Bassman*, 604 S.W.3d 644, 650 (Mo. App. E.D. 2020) (quoting *Stehno v. Sprint Spectrum, L.P.*, 186 S.W.3d 247, 250 (Mo. banc 2006)).

As long as the plaintiff makes a submissible case, the trial court's ruling upon that ground will not be disturbed "unless there is a clear abuse of discretion, despite the fact we might have ruled differently." *Collier v. Steinbach*, 669 S.W.3d 356, 359 (Mo. App. E.D. 2023); *Stehno*, 186 S.W.3d at 250. In reviewing the grant of a motion for a new trial, this Court "must view the evidence and all reasonable inferences therefrom in the light most favorable to the [trial court's] order." *Winchester v. Sunshine*, 446 S.W.3d 278, 281 (Mo. App. E.D. 2014) (quoting *Badahman v. Catering St. Louis*, 395 S.W.3d 29, 39 (Mo. banc 2013)). This Court "may not, however, weigh the evidence, as that is solely the function of the trial court in considering a motion for new trial where the ground asserted is that the verdict is against the weight of the evidence." *Id.* (quoting *Vogt v. Katz*, 745 S.W.2d 221, 222 (Mo. App. E.D. 1987)).

Appellate courts are more liberal in affirming the grant of a new trial than the denial of one. *Thurman v. St. Andrews Mgmt. Servs., Inc*., 268 S.W.3d 434, 441 (Mo. App. E.D. 2008). The Supreme Court of Missouri has explained the reasoning behind the appellate courts' tendency to affirm the trial court's decision to grant a new trial on the ground the verdict was against the weight of the evidence, stating:

> [T]he policy is founded upon the fundamental inappropriateness of appellate courts' endeavoring to weigh evidence. We have only the cold transcript before us which reveals very few of the numerous factors to be considered in weighing evidence…. [W]eighing evidence is not simply a matter of quantitative analysis, but is primarily a qualitative analysis. While

> we might well determine which litigant produced the larger quantity of evidence, our position is far inferior to that of the trial court in analyzing the quality of the evidence. Consequently[,] we must rely upon the trial court's proper exercise of the discretion entrusted to it in such matters.

Gentry by Gentry v. Douglas, 744 S.W.2d 788, 789 (Mo. banc 1988) (quoting *Clark v. Quality Dairy Co*., 400 S.W.2d 78, 82 (Mo. 1966)).

Discussion

In the present case, Abbott and Mead challenge the various grounds the trial court cited in ordering a new trial. "On appeal from an order granting a new trial, the appellate court affirms if the ruling by the trial court can be sustained on any of the grounds specified in the motion for new trial." *Hazziez v. City of Kansas City*, 728 S.W.3d 609, 613 (Mo. App. W.D. 2025) (internal quotation marks and citation omitted). As a result, our analysis will focus only on Appellants' points on appeal concerning the trial court's finding the verdict was against the weight of the evidence.

Abbott's Points Eight, Nine, Ten, and Eleven and Mead's Points Four, Five, and Six contend the trial court erred in finding the verdict was against the weight of the evidence because: (1) the order does not make a weight-of-the-evidence finding since it is based on other purported error and fails to include a "weight of the evidence analysis"; (2) the trial court applied the incorrect standard in ordering a new trial; and (3) K.W. failed to make a submissible case on all of his claims.[4]

[4] This Court notes some of Appellants' arguments fail to "substantially follow the order of the points relied on," violating Rule 84.04(e), because the arguments are not limited to the error specified therein. This violation does not go unnoticed. However, we review those arguments *ex gratia* so long as they relate to the claimed error asserted in the point relied on.

This Court is constrained by its standard of review and the principles governing the grant of a motion for new trial. Thus, this Court denies Abbott's Points Eight, Nine, Ten, and Eleven and Mead's Points Four, Five, and Six, and finds the trial court did not abuse its discretion in granting a new trial on the ground the verdict is against the weight of the evidence. Accordingly, the order is affirmed on that basis and we do not reach the merits of the remaining points on appeal. *See id*. (affirming the trial court's grant of a new trial on one point without reaching appellant's other points on appeal). For ease of analysis, this Court discusses some of Appellants' points on appeal together.

K.W. made a submissible case on all of his claims

Our analysis begins with Appellants' arguments that contend K.W. failed to make a submissible case on all of his claims. Appellants' arguments present four different issues. First, Appellants contend K.W. failed to make a submissible case because he failed to establish causation for any of his claims. Second, Appellants argue K.W. failed to carry his burden on his failure to warn claim because the learned intermediary doctrine precludes this claim. Third, Abbott alone argues K.W. failed to make a submissible case on his design defect claim because he attacks an "entire category" of products, which is impermissible. And last, Mead alone contends the trial court erred in granting the motion for new trial on the ground the verdict was against the weight of the evidence because the trial court cited the incorrect standard in ordering a new trial. This Court finds Appellants failed to demonstrate the trial court erred in finding K.W. made a submissible case.

We discuss each argument in turn.

Causation

In Abbott's Point Eleven and Mead's Point Six, Appellants contend K.W. failed to make a submissible case because he failed to meet his burden at trial. Specifically, Appellants contend K.W. failed to establish causation, a required element of every claim.

In granting the motion for new trial, the trial court found K.W. had made a submissible case on all claims. Appellants disagree and highlight certain expert testimony to conclude K.W. did not establish the required element of causation for any of his claims. Appellants further suggest this Court should adopt a standard that gives deference to the jury's verdict. Appellants' arguments are uncompelling and fall short of what is required for this Court to find reversible error.

This Court acknowledges a high volume of evidence was put forth by both parties during the four-week trial. On appeal, however, Appellants cherry-pick certain evidence from expert witnesses that is favorable to their defense. Appellants' arguments fail for two reasons. First, simply because the jury rendered a verdict in Appellants' favor does not mean K.W. failed to make a submissible case. *See Cunningham v. Bellerive Hotel, Inc*., 490 S.W.2d 104, 107–108 (Mo. 1973) (reviewing the trial court's decision to grant a new trial following a jury verdict for defendant, and finding plaintiff made a submissible case and the trial court did not abuse its discretion in granting a new trial on the ground the verdict was against the weight of the evidence); *see also Vogt*, 745 S.W.2d at 221, 223 (same). Second, by crafting an argument focused on evidence favorable to the defense, Appellants ignore our standard of review, which this Court is duty-bound to follow. This Court declines the invitation to adopt a new standard of review.

As a point of clarification, in reviewing the trial court's grant of a motion for a new trial, this Court is not permitted to consider whether there was substantial evidence to support a verdict in favor of the *defendants*. *See Talley v. Swift Transp. Co*., 320 S.W.3d 752, 755 (Mo. App. W.D. 2010). Rather, this Court views the evidence and all reasonable inferences therefrom in the light most favorable to the *trial court's decision*. *Winchester*, 446 S.W.3d at 281. Simply put, Appellants' approach ignores evidence that is favorable to the trial court's decision. K.W. presented his expert witnesses and Appellants presented their own expert testimony to counter his causation theory. It is common for experts to disagree on causation and, pursuant to our standard of review, this Court will not weigh the evidence anew, *see id.* at 281. This function of weighing the evidence is solely for the trial court. *Id*. Nor can this Court assess the credibility of witnesses, deferring instead to the trial court's credibility determinations because it "is in a better position to weigh the contested and conflicting evidence[.]" *Larsen v. Union Pac. R.R. Co*., 503 S.W.3d 213, 222 (Mo. App. W.D. 2016) (quoting *Frazier v. City of Kansas*, 467 S.W.3d 327, 346 (Mo. App. W.D. 2015)).

Failure to Warn

In part of Mead's Point Six, Mead argues K.W. failed to carry his burden on his failure to warn claim because the learned intermediary doctrine precludes his claim. Mead further argues a warning would not have mattered because Whitfield never saw the bottle given to K.W. Abbott's Point Nine makes a similar argument.

The record shows that, prior to trial, the trial court found K.W. was entitled to partial summary judgment on Appellants' affirmative defense related to the learned

intermediary defense. In particular, the trial court found the learned intermediary doctrine did not apply to the preterm infant formulas at issue because they were not a recognized prescription medication or medical device. The trial court also declined to expand the scope of the doctrine "to include medical treatment rendered in the hospital to include [Appellants' preterm infant formulas.]"

Appellants' argument concentrates on the applicability of the learned intermediary doctrine. To the extent Appellants request this Court to decide whether the trial court erred in granting partial summary judgment in favor of K.W. on this issue, Appellants fail to demonstrate how we can review the issue on appeal from a motion for a new trial nor provided any legal basis for this Court to conclude the trial court improperly granted partial summary judgment in favor of K.W. Thus, this Court will not address any arguments, directly or indirectly, which assert that K.W.'s claim is precluded by the learned intermediary doctrine.

With respect to Appellants' contention that K.W. did not make a submissible case on his failure to warn claim because a warning would not have mattered or changed the outcome, we find this argument without merit. To establish causation for a failure to warn claim, "a plaintiff must show that the absence of a warning was the proximate cause of the injury." *Moore v. Ford Motor Co*., 332 S.W.3d 749, 762 (Mo. banc 2011).

To meet his or her burden, "a plaintiff must show that she did not have the information the warning would have imparted already and that, if she had the information, it would have affected her conduct." *Id*. Undoubtedly, "[t]his creates a 'Catch–22' in which the plaintiff must prove what she would have done had a warning

been given to prove causation, but evidence on this issue must be precluded as speculative." *Id*. at 762–63. But "this dilemma is avoided in Missouri … by the use of a presumption that had an adequate warning been given, it would have been heeded." *Id*. at 763. Here, "[s]uch a presumption would make a prima facie case that had [Appellants] given [Whitfield] an adequate warning, [Whitfield] would have heeded it." *Id*. at 762. Therefore, Appellants' argument fails.

Design Defect

In its Point Ten, Abbott argues K.W. failed to make a submissible case on his design defect claim because he attacks an "entire category" of products, which is impermissible. To support its position, Abbott contends K.W. argued its infant "formula is defective simply because it is 'made from cow's milk[,]'" and, thus, K.W. challenged an "***entire category*** of cow's-milk formula products—or as [K.W.'s] counsel put it, … the 'entire premature formula industry.'"

Essentially, Abbott attempts to demonstrate that K.W. put forth an "entire category" challenge of a product by directing this Court to a single statement made by K.W.'s counsel during closing argument. The statement Abbott relies on reads as follows:

> It is important that the **entire premature formula industry** is in this courtroom together before a jury together for the first time. You have seen that they're in a death struggle for market share. And if one of them warns about this risk and the other doesn't, they're in trouble. They're toast. They'll lose the entire share in hospitals, which they admit is what drives parents to buy their brand later, and their retail sales will plummet. And it's -- it's important why they're both here, because you have an opportunity to say something to both of them at the same time. Because, respectfully, I

> don't think they're going to change anything unless they both have to do it at the same time.

A complete reading of the closing argument at issue not only supports the statement is taken out of context, but also refutes Abbott's assertion that K.W. argued that *all* infant formula is unreasonably dangerous in design. Rather, it is clear K.W. simply informed the jury that Appellants – two of the largest manufacturers of infant formula – are involved in this matter and urged the jury to send a message to Appellants by finding in his favor. Additionally, this statement is not evidence of an "entire category" of products because, as a general principle, "statements made during opening and closing argument are not evidence." *Hill v. SSM Health Care St. Louis*, 563 S.W.3d 757, 763 (Mo. App. E.D. 2018). Therefore, Abbott failed to demonstrate K.W. made a categorical attack on infant formulas.

The trial court did not apply an incorrect standard in ordering a new trial

In Point Five, Mead contends the trial court erred in ordering a new trial on the ground the verdict was against the weight of the evidence because the trial court applied the incorrect standard by viewing the evidence in the light most favorable to K.W.

To support its argument, Mead points to the following language in the trial court's order: "When conducting its review, this Court views the evidence in the light most favorable to the plaintiff, and the plaintiff is given the benefit of all reasonable inferences." *Dodson v. Ferrara*, 491 S.W.3d 542, 551 (Mo. banc 2016). Indeed, this standard of review is used by appellate courts in reviewing a trial court's decision to grant or overrule a motion for a directed verdict. *See id*. While this Court agrees with

Mead the trial court *cited* a standard of review that is not applicable in deciding whether to grant a motion for new trial on a discretionary ground, Mead ignores that immediately thereafter the trial court referred to all of the evidence. Specifically, following its citation to *Dodson*, the trial court concluded, "Having reviewed [K.W.'s] claims against [Appellants], and ***all of the evidence presented***, this Court … finds [K.W.] made a submissible case on all claims." (emphasis added). Further, Mead fails to point to any authority identifying the standard the trial court should have applied and, more importantly, fails to demonstrate how the citation to *Dodson* constitutes reversible error. This Court does not find persuasive Mead's argument contending the trial court should be reversed because it cited an inapplicable standard.

The trial court granted K.W.'s motion for new trial on the discretionary ground the verdict was against the weight of the evidence

We now turn to Appellants' contention that the trial court did not grant K.W.'s motion for new trial on the discretionary ground the verdict was against the weight of the evidence. In Abbott's Point Eight and Mead's Point Four, Appellants contend the trial court erred in granting a new trial on the ground the verdict was against the weight of the evidence because the trial court's decision was based on other purported errors rather than the actual weight of the evidence. Appellants further assert the trial court did not order a new trial on the discretionary ground the verdict was against the weight of the evidence because the order failed to include a "weight of the evidence analysis" citing to and weighing the evidence presented at trial.

Essentially, Appellants request this Court determine whether the trial court exercised its discretionary authority within the constraints of Rules 78.02, 78.03, and 84.05. As previously explained in our standard of review, Rule 78.02 allows a trial court to grant one new trial on the ground the verdict is against the weight of the evidence. However, the trial court's discretion to grant a new trial is subject to the qualifications imposed by Rules 78.03 and 84.05. Pursuant to Rule 78.03, every order for new trial must specify the ground or grounds on which a new trial is granted, and "failure to do so renders the trial court's order granting the motion for new trial presumptively erroneous" under Rule 84.05(c). *Yust v. FasterHouse, LLC*, 699 S.W.3d 766, 773 (Mo. App. E.D. 2024). Moreover, though a trial court has discretion to grant a new trial on the ground the verdict was against the weight of the evidence, it "has no discretion when ruling on an issue of law in a motion for new trial." *Dick v. Children's Mercy Hosp*., 140 S.W.3d 131, 137 (Mo. App. W.D. 2004) (quoting *Ivy v. Hawk*, 878 S.W.2d 442, 445 (Mo. banc 1994)).

To support their argument that the trial court's order does not make a weight-of-the-evidence finding, Appellants rely on *McDowell v. Kawasaki Motors Corporation USA*, 799 S.W.2d 854 (Mo. App. W.D. 1990) and *Dick*, 140 S.W.3d 131.[5] This Court

[5] Mead alone relies on *Herbert v. Hawley*, 32 S.W.2d 1095, 1096–97 (Mo. App. 1930). This Court does not find *Herbert* persuasive as it does not consider the developments in the law over the last ninety plus years. Importantly, *Herbert* does not consider Rules 78.02 and 78.03, and it holds less persuasive value than the most recent caselaw pertinent to this issue.

disagrees with Appellants' interpretation of the trial court's judgment and finds Appellants' reliance on *McDowell* and *Dick* is misplaced.

In *McDowell*, the trial court granted Kawasaki Motors a new trial after a jury found in favor of the McDowells. *McDowell*, 799 S.W.2d at 857. In sustaining the motion, the trial court's referenced paragraphs from Kawasaki Motors' motion for new trial. *Id*. at 859. The McDowells appealed. *Id*. at 858. On appeal, the appellate court was asked to determine whether the trial court's order complied with Rules 78.03 and 84.05. *Id.* at 859. The McDowells argued the trial court's order did not comply with Rule 78.03 because it failed to specify the ground(s) for granting the motion for new trial. *Id*. Kawasaki Motors, on the other hand, argued the trial court's order should be affirmed because paragraphs six, seven, and eight, incorporated in the new trial order, indicated the new trial was ordered on the discretionary ground that the verdict was against the weight of the evidence. *Id*. After eliminating paragraphs six and eight, the appellate court was left to review paragraph seven, in which Kawasaki Motors claimed the verdict was against the weight of the evidence for the reasons stated in paragraph six. *Id*. at 860–61. The appellate court found none of the reasons stated in paragraph six were valid, and held paragraph seven did not warrant a new trial. *Id*. at 861–67.

Dick is factually similar. There, the Dicks sued a hospital under the theory of premises liability. *Dick*, 140 S.W.3d at 134. The matter proceeded to trial and the jury returned a verdict in favor of the hospital. *Id*. at 134–35. The Dicks filed a motion for a new trial citing several reasons why a new trial was warranted. *Id*. at 135. In granting the motion, the trial court concluded "the trial errors committed as alleged in Points No. 1, 2,

3, 4, 6 and 8 of [the Dicks'] motion for new trial were of sufficient magnitude to deny [the Dicks] a fair trial and that a new trial on all issues is warranted and required upon the circumstances." *Id*. On appeal, the hospital argued the trial court did not grant the new trial on the discretionary ground that the verdict was against the weight of the evidence, pursuant to Rule 78.02, but rather did so for erroneous legal reasons. *Id*. at 136. This argument focused on Point No. 1 of the Dicks' post-trial motion. *Id*. at 137. After reviewing Point No. 1, the appellate court found the reasons adduced in Point No. 1 were inadequate to conclude the verdict was against the weight of the evidence. *Id*. at 138. The appellate court further found the trial court's language in sustaining the motion clearly showed "the court did not say nor did it rely on the discretionary ground of the verdict being against the weight of the evidence to sustain the new trial motion." *Id*. at 139. Thus, the appellate court held there was "no reason to believe that the grant was for anything but trial error." *Id*.

McDowell and *Dick* offer no support to Appellants because, in each case, the trial courts employed the highly criticized and ambiguous practice of not stating the grounds for granting a new trial and merely referred to paragraphs in the moving party's post-trial motion. *See McDowell*, 799 S.W.2d at 859; *see also Dick*, 140 S.W.3d at 135. In both cases, the trial court's failure to clearly state it was sustaining the motion on the discretionary ground the verdict was against the weight of the evidence left the appellate court with the task of determining why the new trials were ordered. *See McDowell*, 799 S.W.2d at 861–67; *see also Dick*, 140 S.W.3d at 139. Conversely, here, the trial court did not incorporate by reference any part of K.W.'s motion, and clearly stated the grounds for

granting a new trial.[6] Specifically, the trial court concluded: "the Court finds the verdict was against the weight of the evidence and in accordance with Rule 78.02, a new trial is appropriate." Albeit brief, the trial court was not required to state anything more to grant the motion for new trial on the discretionary ground the verdict was against the weight of the evidence. In fact, *McDowell* supports this conclusion and explained that if the trial court had "concluded that the verdict for appellants was against the weight of the evidence, it [only needed to] have entered its order so stating and the cause of controversy in th[e] appeal would have been eliminated." *McDowell*, 799 S.W.2d at 859. Thus, by explicitly stating a new trial was warranted on the ground the verdict was against the weight of the evidence, this Court is not left to speculate the reason for the trial court's ruling or whether the ruling was predicated upon an improper basis.

With respect to Appellants' complaint the trial court failed to conduct a "weight of the evidence analysis," the precedent is clear. It is well settled a trial court that grants a new trial on the ground the verdict was against the weight of the evidence "is not required to set forth its reasons for the conclusion reached or the mental process by which the determination was made" and, in the event it does, "its efforts should be considered as no more than an attempt to explain the order to the parties and their attorneys." *McCormack*

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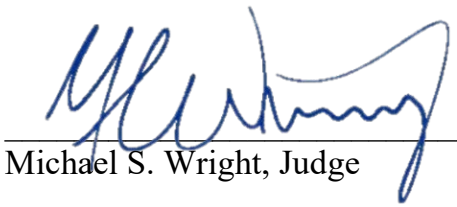
[6] This Court notes Mead takes issue with K.W. telling the trial court the following: "Judge, as long as we put on -- the law is that as long as we put on any evidence to support our claims -- and we certainly did, the Court already found it at motions for directed verdict -- the trial court essentially cannot be overturned. It gets a freebie, if this is listed as a basis in Your Honor's order. That's what the law says." Mead essentially suggests the trial court did not make its against-the-weight-of-the-evidence finding on its own and only put it in its order because K.W. suggested it. Nothing in the record or the order supports Mead's belief.

v. Capital Elec. Const. Co., Inc., 35 S.W.3d 410, 414 (Mo. App. W.D. 2000) (citation omitted); *see also Resco Const. Co. v. Dawson Cabinet Co*., 656 S.W.2d 324, 326–27 (Mo. App. S.D. 1983). Even in a situation where the trial court gives "obscure, incorrect or erroneous reasons for its order granting a new trial on the ground that the verdict was against the weight of the evidence, the decision is conclusively presumed to have been made on that ground." *McCormack*, 35 S.W.3d at 414 (citation omitted).

Therefore, this Court finds the trial court's order granting a new trial was on the discretionary ground the verdict was against the weight of the evidence.

Conclusion

Being constrained by our standard of review, and for the foregoing reasons, this Court holds the trial court did not abuse its discretion in finding a new trial was warranted on the ground the verdict was against the weight of the evidence. Accordingly, the trial court's order is affirmed.



Michael S. Wright, Judge

John P. Torbitzky, Presiding Judge and
Virginia W. Lay, Judge concur.