
COURT DISCUSSES STANDARD FOR APPLYING REMITTITUR AND ADDITUR

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Hanscome v. Evergreen at Foothills

Ct. Appeals, Div. One, April 21, 2011

Authored by the [JSH Appellate Team](#)

Plaintiff Hanscome, as the wife of decedent and on behalf of decedent's estate and minor child, sued Evergreen at Foothills Rehabilitation Center for elder abuse, negligence and wrongful death. Following a trial, the jury declined to award punitive damages, but awarded the minor child \$1.2 million and the estate \$200,000 in compensatory damages. The jury awarded nothing to the wife. Defendants moved for a remittitur or new trial, arguing that the award to the minor child was outrageously excessive. The court remitted the minor child's award of \$1.2 million to \$500,000, and held that an additur of \$200,000 for the wife was appropriate. The court did not specify whether its analysis was based on what the court thought was reasonable, or what the evidence supported. The court ruled that if both parties rejected the proposed remittitur and additur, a new trial would take place.

Both parties rejected the remittitur/additur and appealed. The court of appeals stated that the proper standard in determining whether an adjustment to a jury award is appropriate is whether there is sufficient evidence to support the award, not whether the trial court believes the award is reasonable. As to the award to the minor son, the court held that because the trial court was not clear on the standard it applied, remand for further analysis was appropriate. The court then held that the additur for the wife was inappropriate because additur is not available when a jury award is zero. Finally, because Plaintiff failed to file a motion for new trial within fifteen days as required by Rule 59(g), Ariz.R.Civ.P., the trial court improperly granted Plaintiff a new trial on damages. The court held that the Defendants' timely filed motion did not authorize the court to grant relief to Plaintiff absent a timely motion.