Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

May 2007 **Published in Louisville, Kentucky** **11 K.T.C.R. 5**

Comprehensive Statewide Jury Verdict Coverage

Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts including circuit, division, presiding judge, parties, case number, attorneys and results.

Medical Negligence - An ER doctor diagnosed the plaintiff with pharyngitis – two days later the plaintiff was dead of an acute cardiac event

Byers v. Muhlenberg Community Hospital, 00-0509
Plaintiff: Charles E. Moore and Dion Moorman, *Moore Malone & Safreed*, Owensboro
Defense: Douglas J. Hallock, *Sheffer Law Firm*, Louisville
Verdict: $750,000 for plaintiff assessed 15% to the defendant
Circuit: **Muhlenberg**, J. Jernigan, 4-2-07

Wanda Byers, then age 54, presented on 11-26-99 at 10:42 in the evening to the ER at Muhlenberg Community Hospital (MCH). Byers was complaining of a sore throat and radiating arm pain. The ER doctor on hand, Michael Crump, did a chest x-ray and an EKG. He made a diagnosis of pharyngitis, carpal tunnel and diffuse chest pain. Byers was discharged almost two hours later at 12:37 in the morning.

Just forty-four hours later on the evening of 11-28-99, Byers was found unresponsive. She had suffered a massive and acute cardiac event.

The estate of Byers then pursued this action against both Crump and MCH. It was alleged that the defendants erred in failing to diagnose the pending cardiac crisis. Experts for the estate were Dr. Cheryl Randolph, Nursing, Bodega Bay, CA and Dr. Harry Selker, ER, Boston, MA. If prevailing, the estate sought pain and suffering of $500,000, plus $870,425 for destruction. Its vocational expert was Gilbert Mathis, Murray.

This litigation was initially delayed as the hospital's insurer was insolvent. By the time that delay was resolved, Crump had his own insurance problems – it turned out that he was uninsured. His counsel withdrew and Crump did so as well in his own way. Giving up any meaningful defense, Crump left the practice of medicine and is now a monk in Italy.

The case then went to trial against both Crump and MCH, but for practical purposes, only MCH remained. It defended the case and denied error – if there was a deviation from the standard of care, Crump was to blame. Defense experts were Dr. Cory Chisholm, ER, Brownsburg, IN and Mary Anderson, Nursing, Moline, IA.

As the jury deliberated, it asked the court a question: Can you explain the word substantial as a factor in causing injury or death? The court didn't answer.

Back with a verdict, it was mixed on liability. Fault was assessed 85% to the absent Crump, the remaining 15% to MCH. Then to damages, plaintiff took $500,000 for suffering, plus $250,000 more for destruction. The raw verdict totaled $750,000 and was assessed 15% to MCH in the court's judgment in the sum of $112,500.

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Premises Liability - An EMT transporting a patient on a stretcher, who had worked at this hospital hundreds of times, tripped on her way into the ER on a small curb adjacent to a ramp – in the resulting fall, the EMT broke her wrist and hip
McIntosh v. Kentucky River Medical Center, 05-0089
Plaintiff: Christopher W. Goode, *Bubalo Hiestand & Rotman*, Lexington
Defense: Denis C. Wiggins, *Phillips Parker Orberson & Moore*, Louisville
Verdict: $155,509 for plaintiff
Circuit: **Breathitt**, J. Fletcher, 4-17-07

Irene McIntosh, age 62, was a paramedic who worked in Jackson for the family ambulance company. As a part of her job, she regularly made emergency runs to Kentucky River Medical Center (KRMC). The proof at trial was that literally, McIntosh had made runs through the ER entrance hundreds of times.

McIntosh was working on 5-27-04, caring for an elderly man who had fallen. She picked him up at home and was in the process of carrying him on a stretcher from the ambulance into KRMC. To enter the ER doors, McIntosh had to first traverse a ramp that led inside.

McIntosh didn't make it. She tripped on a curb next to the ramp (on the side of the slope of the ramp) and landed hard. In the resulting fall, McIntosh broke her wrist and hip. She has since incurred medical bills of $40,509. Her lost wages were $100,000 and she sought $130,000 more for impairment. For past suffering, the jury could award $300,000 – that in the future was limited to $150,000.

In this lawsuit, McIntosh targeted the design of the entrance ramp. Her safety expert, Jim Lapping, Springfield, IL, identified three key criticisms regarding the high-traffic ramp, (1) the entire entrance area should not have had a change in elevation at all, (2) if there was a change, a guardrail should have been present, and (3) if there was no guardrail, the elevation change should have been painted. In this case, the plaintiff argued, KRMC did none of those things.

KRMC's defense focused on a single theme – that is, the condition of the ramp, whatever it was, represented an open and obvious condition. In this case, that didn't mean a theoretical open and obviousness. Rather this particular plaintiff had traversed the area

innumerable times and but for her inattention, she would not have fallen. Plaintiff countered that it was her job to pay attention to the patient and not look for dangerous conditions.

The jury deliberated an hour before returning to the courtroom to announce it could not agree. It was later learned the jury was stuck at 7 for plaintiff and 4 for the hospital, with 1 undecided. Another hour passed and 2 jurors moved their votes and a 9-3 verdict was made.

It then was for the plaintiff on liability, this jury in Jackson finding KRMC 100% at fault. Then to damages, McIntosh took her medicals as claimed, but nothing for lost wages. Impairment was $65,000. Similarly, past suffering was rejected, but the award for that in the future was $50,000. The verdict totaled $155,509 and a consistent judgment has been entered. Pending is the hospital's motion for a new trial – it has repeated trial arguments that noted the condition was open and obvious.

Medical Negligence - **This complex catastrophic birth injury case concerned a 1985 delivery, the matter then taking eight years to advance to trial – the verdict then was for the remaining defendant, the delivering Ob-Gyn, the plaintiff having settled just before trial with the hospital**

Lawson v. Dawson, 98-0317
Plaintiff: Gary R. Hillerich, Louisville and Irwin M. Ellerin, Atlanta, GA
Defense: Joe L. Travis and Daniel G. Yeast, *Travis Pruitt Powers & Yeast*, Somerset
Verdict: Defense verdict on liability
Circuit: **Whitley**, J. Lay, 12-15-06

Deborah Lawson was pregnant in the fall of 1985 – her treating Ob-Gyn was Dr. James Dawson. At an ultrasound taken on 10-31-85, there were signs of interuterine growth retardation (IUGR).

Four days later, Lawson was back at Baptist Regional Medical Center (BRMC) – she was in labor. That day she delivered a baby girl, Brittany Lawson. Brittany was very premature and weighed just three pounds at birth. She suffers from cerebral palsy and is both blind and a severe quadriplegic, confined permanently to a wheelchair.

In 1998, the girl's mother began a lawsuit against both Dawson and the hospital. It alleged her catastrophic birth injury was related to medical error. Particularly, the evidence of the IUGR made her pregnancy high risk and a premature birth likely. Because of that risk, she should have been considered high risk and monitored at a different hospital.

That didn't happen and the premature delivery came with the catastrophic consequences. Plaintiff's theory was that the IUGR made her unable to withstand birth trauma – her birth complications were then linked to asphyxiation related to the trauma of birth. Had a c-section been performed, the complications would have been lessened.

Liability and causation experts for the estate included Dr. Bernard Nathanson, Ob-Gyn, New York, NY, Dr. Andrew Zimmerman, Pediatric Neurology, Baltimore, MD, Dr. Richard Fields, Ob-Gyn, Southfield, MI, Dr. Stewart Ater, Neurology, Houston, TX. Economic damages were developed by a life care plan expert, Catherine Ingebrightsen, Louisville – numbers were applied to the plan by an economist, Ronald Missun. If prevailing at trial, the estate sought past medicals of $402,416, plus $19,172,826 for the life care plan. Past suffering was capped at $10,535,024, Brittany seeking $1,897,222 for that in the future.

Dawson defended the case that his care was proper. He blamed Lawson's injury on a classic intraventricular bleed, a condition that couldn't be foreseen or prevented. Thus from the defense perspective, it was the bleed, not the labor and delivery that caused the girl's injury. Defense experts were Dr. Gary Wright, Ob-Gyn, Corpus Christi, TX, Dr. Robert Lerer, Neotanatology, Fairfield, OH and Dr. Cynthia Kaplan, Pathology, Stony Brook, NY. The doctor also introduced proof of comparative fault by both the hospital and Brittany's mother in the form of smoking during her pregnancy.

The first trial judge in this case, Winchester, dismissed the case in 2002. He did so citing two grounds, (1) the case had already been continued several times, the plaintiff seeking a further continuance (she was then between attorneys), and in any event, (2) plaintiff had not timely answered CR 8.01(2) interrogatories.

Lawson appealed. In a non-published opinion, rendered in August of 2004, the Court of Appeals reversed. Judge Barber wrote for the court that Winchester abused his discretion in failing to continue the case again. Barber noted that while the case previously had been continued twice, those continuances were not sought by plaintiff. Then to the *Fratzke* question, Barber further explained that if the continuance had been granted, plaintiff would have seasonably supplemented her answers, making that ancillary question moot.

The matter then returned to Whitley County. Winchester, his impartiality having been questioned by the plaintiff, recused himself. Judge Lay from London was appointed to finish the case. The case was further simplified just before trial, the hospital settling with Lawson.

The settlement with the hospital, interestingly, was the second in the case. Originally the plaintiff had settled with the hospital for $25,000, proceeding with her original attorney in the case, Robert Bowling of Middlesboro. After Bowling withdrew, plaintiff successfully set the settlement aside because it did not have judicial approval as required for a minor settlement over $10,000. Thus that set Lawson up for a second settlement – the amount of that second settlement is not known.

This case was tried for ten days in Williamsburg against Dawson alone. The verdict was for the doctor on liability, finding he had not violated the 1985 standard of care. Having so concluded, the jury did not reach the duties of the hospital or plaintiff's mother. A defense judgment ended this case.

Medical Negligence - **A post-operative heart patient suffered a neurological injury that was linked to a delay by an ER doctor in intubating him**

Dillihanty v. Wilkins, 03-6810
Plaintiff: Carl D. Frederick and Kirsten Daniel, *Seiller & Handmaker*, Louisville
Defense: Gerald R. Toner and Michael R. McDonner, *O'Bryan Brown & Toner*, Louisville
Verdict: Defense verdict on liability
Circuit: **Jefferson**, J. Mershon, 9-5-06

Mark Dillihanty, in his early fifties, had open-heart surgery on 8-26-02 at Audubon Norton Hospital, Dr. Ron Barbee performing the procedure. In the middle of the night on 8-30-02, Dillihanty began to suffer respiratory distress and his oxygen levels were low.

That morning at 5:25 a.m., an ER doctor in the hospital, Gina Wilkins, responded to a page and came to see Dillihanty. Recognizing his oxygen