

**4914 - Dental Negligence - During a denture repair procedure, the defendant dentist dropped a dental tool into the plaintiff's mouth – the plaintiff swallowed it – the dentist then sent the plaintiff to a chiropractor friend to have an x-ray to be sure the tool wasn't lodged in her throat – while the tool wasn't in her throat, it did become stuck in her digestive tract and had to be surgically removed**

*David v. Galbreath*, 12-1975

Plaintiff: Edwin H. Clark, *Clark Law*

*Office*, Lexington

Defense: Daniel E. Murner and

Lacey Fiorella, *Landrum & Shouse*, Lexington

Verdict: Defense verdict on liability

Court: **Fayette**, J. Goodwine,  
7-25-13

Lena David, then age 71, visited a dentist, Dr. W.B. Galbreath, on 5-26-11 for a cleaning. To accomplish the cleaning, Galbreath removed her implants utilizing a dental tool known as a hex driver. It is a small screwdriver. As Galbreath did his work, he dropped the hex driver into David's mouth and she swallowed it.

Galbreath was immediately concerned that the tool might be lodged in her throat or esophagus. Thinking quickly the dentist sent David to another doctor for an x-ray. This doctor was a nearby chiropractor friend. The chiropractor conducted the x-ray and concluded the tool had safely passed into David's stomach. Galbreath suggested to his patient that she simply wait for the tool to pass naturally.

The hex driver had other plans. David continued to report abdominal pain in the weeks after this dental snafu. The tool had not passed and was lodged in her digestive tract. It was surgically removed at St. Joseph's Hospital on 6-23-11. David remained in the hospital a week and endured a lengthy recovery. Her medical bills were \$25,685.

In this negligence lawsuit, David alleged error by Galbreath in two key ways, (1) dropping the tool in the first place by losing control of it and not utilizing a protective dental dam, and (2) his post-dropping care in sending David to a chiropractor and telling her to simply let the tool pass. The plaintiff's expert was Dr. Hugh Skidmore, Dentist, Lake City, FL. If David prevailed at trial she sought her medical bills and \$171,000 more for her pain and suffering.

Galbreath defended that he met the standard of care, the dropping of a dental tool being not uncommon. Faced with that circumstance, Galbreath continued, he properly managed David by sending her for an x-ray. Defense experts were Dr. Richard Rubeling and Dr. Catherine Fowler, both dentists in Lexington.

As the trial proceeded David sought a mistrial. She complained the Judge Goodwine failed to permit her to call defense witnesses in her case-in-chief – David wanted to read their discovery depositions. Goodwine declined and ruled that as they were only discovery depositions, they could not be utilized at trial. David had countered that the depositions could be used for all purposes.

The jury answered for Galbreath (unanimously) that he had not violated the reasonably competent dentist standard and David took nothing. A defense judgment was entered. During the course of the trial, the jury asked some 58 questions of witnesses, most of which were very fact specific.

**4884 - Dental Negligence - The plaintiff went to her dentist to have several crowns placed – instead of using alginate (the gooey stuff used in impressions), the dental assistant utilized “Snap Stone” on the plaintiff’s mouth – Snap Stone is a harder than concrete sudden setting hardening compound – it took the plaintiff’s dentist some 3 ½ hours with a drill bit to clear the compound, the plaintiff continuing to complain of pain in her teeth**

*Butler v. Mortenson Family Dental,*

11-6535

Plaintiff: Aaron M. Murphy, *Murphy*  
& *Powell*, Louisville

Defense: Craig L. Johnson,  
*Whonsetler & Johnson*, Louisville

Verdict: Defense verdict on liability

Court: **Jefferson**, J. Stevens,  
3-7-13

Crystal Butler, then age 45, had neglected her teeth and by February of 2011, she was missing twelve. Butler began to treat with Dr. Jere Redman-Owens at Mortenson Family Dental location in Shepherdsville. On 2-14-11 another dentist at the location had placed a crown.

Redman-Owens was preparing to place a third crown. She directed a dental assistant (Rachel Pizzaro) to take impressions. Pizzaro, who floats between Mortenson locations, was new to the Shepherdsville office. Pizzaro should have used alginate to make the impressions – alginate is the gooey gel like substance used to make impressions.

Instead of alginate, Pizzaro made the impression with “Snap Stone”. Snap Stone is a dental hardening compound that is used to hold dental work in place. It is some two to six times as hard as concrete. Pizzaro realized the problem almost right away – Butler did too, the dental tray being affixed to her mouth. She was also in discomfort, Snap Stone hardening quickly at a temperature of 130 degrees or so.

Pizzaro called in Redman-Owens and a repair began. Redman-Owens spent some 3 ½ hours with a carbide drill bit – that included cutting through the dental tray and clearing the Snap Stone from Butler’s mouth. Redman-Owens would later recall she used a local anesthetic and it was not painful for Butler.

Butler on the receiving end of the drill had a different view. She recalled it was painful and beyond the pain, she endured anxiety during the event. Beyond the acute phase (when the Snap Stone was drilled out of her mouth), she has continued to complain of sore teeth.

Her dental expert, Dr. Michael Kirk, Louisville, explained that the high temperatures where Snap Stone sets can cause damage to the pulp of the tooth. In this lawsuit Butler alleged negligence individually by Pizzaro, Redman-Owens and the medical group. [Mortenson Family was implicated regarding its training of Pizzaro.] Kirk served as both her liability and causation expert. If Butler prevailed at trial, her only claimed element of damages was pain and suffering – it was limited in the instructions to \$90,000.

The defendants denied fault and diminished the notion that Butler had suffered any pain. The defense expert was Dr. Christopher Cook, Endodontist, Louisville – he concluded Butler had suffered no permanent injury.

The jury’s verdict was for each of the three defendants on the separate counts by a 10-2 count and Butler took nothing. A defense judgment followed this three-day trial and the case is concluded.