The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

June, 2007 **Statewide Jury Verdict Coverage - Published Monthly** **7 A.J.V.R. 6**

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Civil Jury Verdicts

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

Nursing Home Negligence - An elderly Alzheimer's patient wandered away from her assisted living facility and was injured; her estate blamed the facility for failing to monitor her properly and for failing to protect her from sexual abuse she suffered at the hands of other patients

Estate of Miller v. The Terrace at Grove Park, et al., 01-314
Plaintiff: E.J. Saad, *Atchison Crosby Saad & Beebe, P.C.*, Mobile; Yvonne Gabrielson, Dothan
Defense: Wade H. Baxley, *Ramsey Baxley & McDougle*, Dothan; L. Peyton Chapman, III, *Rushton Stakely Johnston & Garrett, P.A.*, Montgomery
Verdict: $2,200,000 on negligence claim against all defendants except Frederick Fox; defense verdict for all defendants on claims for false imprisonment and wrongful death
Circuit: **Houston**, 2-9-07
Judge: C. Lawson Little

For some time, Mildred Miller had been dealing as best she could with the tragic effects of Alzheimer's dementia. Sadly, it was a battle she could not win. By the fall of 2000, Miller's condition had progressed to the point that she had become incompetent. On 11-1-00, Miller moved into The Terrace at Grove Park (hereinafter, "Terrace"), an assisted living facility in Dothan.

Like many Alzheimer's patients, Miller had a tendency to wander if not monitored constantly. Accordingly, the staff at Terrace fitted Miller with an ankle bracelet called "Wander Guard." The bracelet was equipped with a device that was supposed to trigger an alarm if Miller wandered away. It seems, however, the bracelet did not work properly.

On 1-14-01, just two and a half months after entering the facility, Miller wandered away and was injured. The staff phoned Miller's son, Danny Miller, to inform him of the incident. The staff explained Miller had gone outside next to the building and had a small scratch on her lower leg.

During the conversation the staff minimized the seriousness of the incident and described Miller as being perfectly fine. Nonetheless, the staff assured Danny they would call a doctor the very next day. Terrace claims it followed through with that promise, but the estate tells a different story.

According to the estate, Terrace had misrepresented the length of time Miller had been missing, the location where she was found, and the severity of her injury. Far from being a small scratch, Miller actually had a large tear on the skin of her right shin.

The estate claims Terrace did not take Miller to see a doctor until four days later, and even then it was only at Danny's insistence. By the time Miller received proper medical attention, her wound had developed cellulitis, an inflammation beneath the skin due to a bacterial infection.

Miller died approximately three and a half months later on 5-4-01. The parties would later disagree over whether her death was related to the injury she received when she wandered away from Terrace.

Miller's estate filed suit against Terrace and two of its staff. They were Linda Corcoran and manager Marc Armstrong-Wright. The estate also named Frederick Fox, one of the owners of Terrace, as a co-defendant. The complaint alleged a variety of counts, but those that survived to trial were negligence, false imprisonment, and wrongful death.

The substance of the estate's claims against defendants had several aspects. First, the estate argued Terrace's efforts to monitor Miller to prevent her from wandering away were woefully inadequate.

In particular, there was ample evidence the Wander Guard did not function properly. Terrace knew of this because other residents had wandered away on other occasions. Yet despite this knowledge, Terrace took no corrective action. As a result, Miller did wander away and was injured, and the estate linked that injury to her subsequent death.

Second, the estate argued Terrace had not been issued certain permits required by the state to operate a specialty assisted care facility and was therefore not properly licensed. Terrace disputed that characterization.

Finally, and perhaps most horrifically, the estate claimed that during her stay at Terrace, Miller had been subjected to repeated sexual abuse from other patients. She informed Terrace staff about the abuse and pleaded for it to stop, but her pleas fell on deaf ears.

Terrace, Corcoran, Armstrong-Wright, and Fox defended the case on several fronts. First, they denied failing to monitor Miller properly and that her death was causally related to anything Terrace had done or failed to do.

Defendants also denied the facility was unlicensed. According to them, the law had changed, and the facility was properly licensed under the law that existed at the time of the incident. Fox also put up a unique defense of his own. He pointed out that he was merely an investor in Terrace, and as such he had no input on the facility's operations.

The case was tried to a jury in Dothan. For each count, the jury was first asked whether it found for or against each defendant. Only then was the jury asked about damages. On the count for negligence and personal injury, the jury found for the estate against all defendants except Fox. On the counts for false imprisonment and wrongful death, the jury found for all defendants.

Having settled the issue of liability, the jury went on to award the estate damages in the amount of $2,200,000 on the negligence claim against Terrace, Armstrong-Wright, and Corcoran jointly. If the court entered a judgment, it was not part of the record at the time the AJVR reviewed it. Prior to trial, defendants made an Offer of Judgment in the amount of $50,000.

Ambulance Negligence - A teenage girl was killed in a red light crash with a speeding ambulance that was not on an emergency run

Bowden v. Lincoln Medical Center EMS et al, 5:05-2503
Plaintiff: Joe A. King, Jr. and Harvey B. Morris, *Morris Conchin & King*, Huntsville
Defense: W. Dudley Motlow, Jr., *Porterfield Harper Mills & Motlow*, Birmingham for Lincoln Medical Center
J.R. Brooks, *Lanier Ford Shaver & Payne*, Huntsville for Eakes
Verdict: $3,100,000 for plaintiff
Federal: **Huntsville**, 4-27-07
Judge: C. Lynwood Smith, Jr.

On the evening of 10-13-05, Chris Eakes, an ambulance driver for Lincoln Medical Center EMS (of Lincoln County, TN), was transporting a patient from Tennessee to a hospital in Huntsville. It was not an emergency run, the patient being stable and non-critical. Traveling at what was later estimated to be 81 mph in a 60 mph zone, Eakes ran a red light at the intersection of U.S. 231/431 and Limestone Road near Hazel Green, AL.

In the intersection, the 10,000 pound ambulance struck an oncoming vehicle. It was a Dodge Neon (weighing 3,000 pounds) that was driven by Dianna Bowden, age 18. The collision knocked the Neon 217 feet. Bowden was killed instantly.

Bowden's estate pursued this death claim against Lincoln Medical Center and Eakes – the theory alleged both negligence and wantonness, focusing on the facts that Eakes ran the red light and he was speeding while on a non-emergency run. In this regard, plaintiff cited witnesses who recalled the speeding ambulance had neither lights nor sirens on at the moment of impact. Eakes and his employer denied that he ran the light. Eakes testified at trial that his driving was safe and acceptable under the circumstances.

Beyond this civil lawsuit, Eakes also faces criminal manslaughter charges in state court. A trial is set for September 21 before Judge Karen Hall. Eakes has pleaded not guilty.

In the civil case, the verdict in Huntsville was for the Bowden estate in the sum of $3,100,000 – the jury had deliberated five hours over two days. A

consistent judgment followed. The defendants have sought post-trial relief arguing (1) they should be subject to a statutory cap as a government entity, and (2) the damages were excessive. The motion is pending.

Auto Negligence - A woman and her passengers claimed injury when a drunk driver in a fit of road rage repeatedly rear-ended them on the interstate

Hill, et al. v. Peruzzi, et al., 06-3046
Plaintiff: Derek B. Simms, *Simms & Associates*, Birmingham
Defense: Staci G. Cornelius and Shelley Lewis, *Gaines Wolter & Kinney, P.C.*, Birmingham
Verdict: $26,500 for Bernida Hill (allocated $1,500 compensatory and $25,000 punitive); defense verdict on claims of Peterson and Deginald Hill
Circuit: **Jefferson**, 3-2-07
Judge: Tom King, Jr.

On 10-6-04, Bernida Hill, then age 44, was driving south on I-59 near Bush Boulevard. Her passengers were Valerie Patterson, age 45, and Deginald Hill, Jr. Behind them was a vehicle being driven by Mario Peruzzi, Jr.

It would later be determined that Peruzzi was intoxicated at the time. Perhaps facilitated by his impaired condition, Peruzzi apparently indulged himself in a bit of road rage. The record does not detail the sequence of events that triggered Peruzzi's anger, but he expressed his displeasure by repeatedly rear-ending Hill's vehicle.

Bernida Hill complained of injuries to her neck and back due to the impacts. If her passengers suffered physical injuries, they are not described in the record. However, all the occupants of Hill's vehicle were frightened by the ordeal.

Bernida and Deginald Hill, along with Peterson, filed suit against Peruzzi on claims for negligence, wantonness, and assault and battery. They blamed him for driving drunk and deliberately rear-ending them. If successful, the plaintiffs sought both punitive and compensatory damages.

Plaintiffs also presented an uninsured/underinsured motorist claim against Bernida's insurer, Alfa Insurance. However, Alfa later opted out of the case, and the litigation proceeded against Peruzzi.

In addition to being sued in civil court, Peruzzi was also prosecuted for driving under the influence based on a B.A.C. reading of .15. He pleaded guilty to the charge, but the record is silent on his sentence. On the civil case, he defended and minimized the claimed injuries.

The case was tried for five days in Birmingham. The jury returned a verdict for Bernida and awarded her compensatory damages of $1,500. To this amount was added another $25,000 in punitive damages. That brought her total award to $26,500. The jury also returned defense verdicts for Peruzzi on the claims of Deginald Hill and Peterson. The court entered a judgment that reflected the verdict.

Fraud - Two separate plaintiffs hired a man to restore their classic automobiles; plaintiffs later accused the man of fraud and breach of contract when he went out of business nearly a year later and returned the vehicles unrestored and in even worse condition than when he got them

Going, et al. v. Rouze, et al., 05-320
Plaintiff: William D. Azar, Montgomery
Defense: Richard D. Lively, *Law Office of Richard D. Lively*, Prattville
Verdict: $300,000 for plaintiffs
Circuit: **Autauga**, 3-9-07
Judge: John B. Bush

In the autumn months of 2004, James Going was interested in restoring a 1968 Chevrolet Camaro owned by his wife, Terri Going. At the same time, Ida Clark was also interested in having a restoration job done on a 1938 Chevrolet half-ton pickup truck that had been owned by her late husband.

Both Going and Clark thought they had found the man for the job in the person of Edward Rouze, owner of Central Alabama Restorations, LLC. (hereinafter, "CAR"). Rouze did business out of a facility located at 1665 McQueen Road in Prattville.

Going and Clark each made a deal with Rouze to carry out the respective restoration projects. The terms were that Going would pay a deposit of $10,000, while Clark would pay a deposit of $20,000. Rouze would charge $38.00 per hour for his labor on the projects and would bill for his time and for parts on a monthly basis.

The initial billings would be against the deposits, but more payments might be required in the future. However, Going would later recall specifically telling Rouze that he did not want to spend more on the project than the Camaro was worth. For his part, Rouze was to restore the vehicles to like new condition.

Both Going and Clark paid their respective deposits, and Rouze took possession of the vehicles. Thereafter, Going stayed in regular contact with Rouze to keep himself informed of the status of the project. During each conversation, Rouze assured Going that the project was proceeding as it should.

Over the following months, Going ended up paying Rouze more than $35,000, while Clark paid approximately $40,000. Yet neither project was complete. Some eleven months after the projects began, matters came to a head when Going learned that Rouze was closing down CARS.

When Rouze broke the news that he closing his business, he instructed Going to retrieve the Camaro within twelve days. When Going arrived at Rouze's shop to pick up the vehicle, he found it literally in pieces.

The inside of the Camaro had been dismantled, the roof and other areas of the body were still rusted, certain pieces were missing, and other pieces had to be transported to Going's home in boxes. Clark also found her truck in similar condition. It too was in pieces, the bumper had been removed, and both the truck bed and the tailgate were either lost or stolen.

Going and Clark filed suit against Rouze and CAR for their losses. Their claims were combined in a single action because the facts were similar, the defendants were the same, and the issues arose out of contracts that were virtually identical.

Plaintiffs alleged a number of causes of action, but they were eventually reduced to just three: (1) breach of contract, (2) fraudulent misrepresentation, and (3) fraudulent suppression. In essence, plaintiffs claimed Rouze had not in fact done the work he had agreed to do, he charged for work he didn't do, what little work he did was substandard, he pocketed the money entrusted to him and disposed of parts that were irreplaceable, and he returned the vehicles to their respective