

The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

January 2007

Statewide Jury Verdict Coverage - Published Monthly

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Unbiased and Independently Researched Jury Verdict Results

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* * *The Book is Back with its Fifth Edition * * *

The AJVR 2006 Year in Review

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Civil Jury Verdicts

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

Religious Discrimination - An administrative employee at a pain clinic alleged she was fired for failing to discuss her religious beliefs with her evangelistic boss

Hall v. Alabama Pain Center, 5:05-200
Plaintiff: John D. Saxon and Lisa D. Davis, *John Saxon, P.C.*, Birmingham
Defense: Phillip Scott Arnston and Donna S. Pate, *Lanier Ford Shaver & Payne*, Huntsville
Verdict: \$115,000 for plaintiff
Federal: **Huntsville**, 12-20-06
Judge: Lynwood Smith

Carolyn Hall was hired in June of 2002 by the Alabama Pain Center (APC) as an insurance specialist. The APC is operated by a physician, Dr.

Dean Willis. Right away it was clear to Hall that religion was important to Willis – in her initial interview, he explained he'd given his medical practice to God.

Hall noticed that meant at the APC that regular prayer meetings (voluntary) were held at work. [This workplace had a chapel onsite.] Willis was also able to explain the affairs of the APC as being God's will – that is new employees were sent to him by God and when it was time for them to leave or be fired, that too was God's will.

Hall stayed with APC into 2003 and after completing a probationary period, she became an office supervisor. Then in October of that year during a regular meeting with Willis, the doctor asked her where she stood with God. Hall replied that this was personal and she didn't want to discuss it.

Thereafter the regular meetings, a fixture of her employment, came to an end. She began to be ostracized and ultimately was fired on 2-3-04. Hall

believed she was let go for not being sufficiently Christian for Willis.

Following her termination, she commenced this suit alleging religious discrimination, that is, she was fired for not being willing to discuss her religious beliefs. If prevailing, she sought both compensatory and punitive damages.

Willis defended the suit against his clinic and first denied the key conversation had ever taken place. As well, while it was true prayer meetings took place at work, Willis emphasized this was strictly voluntary. Finally he cited that Hall was let go because of poor performance. [She countered that up until the meeting in October, her employee evaluations had been good.]

The court's instructions asked if plaintiff's unwillingness to discuss her religion was a substantial or motivating factor in the doctor's decision to fire her. The answer was yes, the jury awarding compensatory damages of \$15,000. Hall took \$100,000 more in punitives, the verdict totaling \$115,000. A consistent judgment followed.

Wrongful Death - A minor at a county jail who was mentally ill was fatally asphyxiated as a jail extraction team carried him out of his jail cell

Haggard v. Montgomery County Detention Center, 2:00-1368

Plaintiff: G. William Gill, G. Griffin Sikes, Jr. and Joseph C. Guillot, Montgomery

Defense: Thomas J. Gallion, III, Montgomery, Constance C. Walker, Montgomery and Michael K.K. Choy, Birmingham, all of *Haskell Slaughter Young & Rediker* and Tyrone C. Means, Christopher K. Whitehead, Ramandanah Salaam-Jones and Camille L. Edwards, *Thomas Means Gillis & Seay*, Montgomery

Verdict: Defense verdict

Federal: **Montgomery**, 12-15-06

Judge: U.W. Clemon

On 10-11-99, Mario Haggard, age 17, was being held as a pre-trial detainee at the Montgomery County Detention Facility. Haggard, who was mentally ill, was held in a solitary cell. In the middle of the night, between four and five in the morning, Haggard began to throw water out of his cell. He was also naked.

Jail guards initially tried to calm Haggard. Haggard remained in an agitated state – that included dunking his

head in his cell commode and attempting to hang himself. A decision was made to bring in the jail extraction team. That represented deputy jailers, Silas Orum, James Thrift, Darryl Wood, Jeffrey Sanderson and Clarence Wilson.

The guards considered it tough work bringing the naked Haggard under control. They finally did and he was ultimately carried out without resistance. Because he was nude, a blanket was placed on top of him. It took the guards several minutes to find another cell for Haggard – when he was finally placed in another cell (he'd been carried around, face down for some time), the guards noticed he was not moving.

A jail nurse was called and she could not resuscitate Haggard. The investigating pathologist, Dr. George Kirkham, concluded that Haggard had asphyxiated. The doctor also ruled the death a homicide.

Haggard's estate then pursued this wrongful death claim, founded in the use of excessive force, against the jail defendants. The plaintiff also added additional facts, garnered from other inmates, including that (1) before entering the cell, the guards had threatened Haggard, (2) then during the struggle in the cell and after Haggard was compliant, he was asked if he'd had enough – when Haggard said yes, the extraction team still sat on him, and (3) finally when carried out of the cell, he was already lifeless.

Thus from the perspective of the estate, Haggard's death was part of a process that began with the forceful extraction and culminated with the positional asphyxiation as he was carried around. As presented to the jury, plaintiff alleged both excessive force and deliberate indifference to a serious medical need.

The jail defendants replied as above – an unruly and mentally ill inmate was brought under control, reasonable methods being used to effectuate this. Then as soon as Haggard appeared lifeless, a nurse was promptly called. Any abuse or indifference was denied.

Initially the government defendants prevailed by summary judgment – that was reversed at the 11th Circuit in a per curiam opinion. Back to trial, the verdict was for the defendants and the estate took nothing.

Product Liability - A golf course groundskeeper was fatally electrocuted while repairing a pond fountain manufactured by the defendants

Walters v. Barebo, Inc., et al, 03-146

Plaintiff: J. Barton Warren, Derek W. Simpson and Fred B. Simpson, *Warren & Simpson*, Huntsville

Defense: Robert V. Rogers, *Wilmer & Lee*, Huntsville, for Barebo

Frank J. Daily, M. Christine Cowles and Patrick S. Nolan, *Quarles & Brady*, Milwaukee, WI, and H. Harold

Stephens, *Bradley Arant Rose & White*, Huntsville for Westinghouse Electric

Verdict: Defense verdict

Circuit: **Morgan**, 9-27-05

Judge: Glenn E. Thompson

Ronald Walters, then age 32, was working for the Decatur Country Club as a groundskeeper on 5-7-02. His task this day, along with co-workers, was to reinstall an underwater fountain on a pond at the course. The fountain was manufactured by Barebo, Inc. Its electric controls were installed by Jim's Electric – Jim's Electric in turn utilized a control panel manufactured and designed by Westinghouse Electric.

The fountain, installed in 1992, had failed and club employees were placing it back in the pond after a repair. Initially it was believed the pump was fixed – but when it didn't start up after being powered, Walters volunteered to swim out and see if he could unclog the pump. As Walters swam out to listen for the clog, the power was turned back on. He was immediately electrocuted and disappeared under the water – by the time he was pulled out, he could not be resuscitated.

In this lawsuit, his estate alleged the electrocution event was caused by an electrical cord that had apparently been gnawed upon by an unknown animal – this gnawing occurred while the fountain was out of the water for repairs. Then when the power was turned back on, instead of flowing into the pump, it spread through the water causing the electrocution. It was the position of the estate in this lawsuit that had the site had a ground fault circuit interrupter (GFI), the electrical supply would have killed that circuit instantly the first time it was turned back on and there would have been no electrocution.

The failure to have a GFI in the

The Alabama Jury Verdict Reporter
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