

The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

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Statewide Jury Verdict Coverage - Published Monthly

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Unbiased and Independently Researched Jury Verdict Results

In This Issue

Jefferson County

Auto Negligence - \$15,000	p. 2
Auto Negligence - Defense verdict	p. 4
Auto Negligence - Defense verdict	p. 5
Government Negligence - \$10,000	p. 7
Auto Negligence - \$9,500	p. 9
Premises Liability - \$50,000	p. 11

Tuscaloosa County

Home Care Negligence - \$2,658,199	p. 1
------------------------------------	------

Montgomery County

Premises Liability - \$2,750,000	p. 2
Medical Negligence - Defense verdict	p. 8

Baldwin County

Construction Neg. - Defense verdict	p. 4
Fraud - Defense verdict	p. 10
Auto Negligence - \$2,805	p. 11
Auto Negligence - \$181,046	p. 12

Federal Court - Huntsville

8 th Amendment - Defense verdict	p. 5
---	------

Mobile County

Breach of Contract - \$7,828	p. 6
Auto Negligence - Defense verdict	p. 8
Auto Negligence - Defense verdict	p. 10

Etowah County

Auto Negligence - \$9,539	p. 7
Breach of Contract - \$3,000	p. 10

Madison County

Auto Negligence - Defense verdict	p. 12
-----------------------------------	-------

DeKalb County

Medical Negligence - Defense verdict	p. 12
--------------------------------------	-------

Butler County

Underinsured Mot. - Defense verdict	p. 13
-------------------------------------	-------

Shelby County

Auto Negligence - Defense verdict	p. 13
-----------------------------------	-------

Houston County

Truck Negligence - Defense verdict	p. 13
------------------------------------	-------

St. Clair County

Auto Negligence - Defense verdict	p. 14
-----------------------------------	-------

Conecuh County

Underinsured Mot. - Defense verdict	p. 14
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Home Care Negligence - A home health worker did not appear for two consecutive visits with a client suffering from cerebral palsy, leaving him unattended for a total four days

Ballard v. Gentiva Certified Healthcare Corp., et al., 05-1459

Plaintiff: Clinton Delaine Mountain, Jr., *Mountain & Baird*, Tuscaloosa
Defense: J. Mitchell Frost, Jr., and Michael Hagel Gregory, *Ferguson Frost & Dodson, LLP.*, Birmingham, for Gentiva; Collins was *pro se*
Verdict: \$2,500,000 against Gentiva and Dempsey (comprised of \$500,000 in compensatory damages and \$2,000,000 in punitive damages) and \$158,199 against Collins (comprised of \$58,199 in compensatory damages and \$100,000 in punitive damages)

Circuit: **Tuscaloosa**, 3-12-10

Judge: Charles Malone

Since the 1990s, Nathan Ballard, a 55-year-old advocate for the disabled

who himself suffers from cerebral palsy, had been a client of Gentiva Health Services, an agency that provided home health services to residents of Alabama in accordance with its agreement with Alabama's Independent Living Program. Five days a week, Gentiva sent an employee to Ballard's apartment to help him with obtaining his meals, grooming, bathing, and other necessary household chores.

During March 2005, Ballard's assigned home health worker was Tracy Collins. Collins had been working for Gentiva for about a year, and she had undergone preemployment testing, a skills checklist, a criminal background check, and two reference checks before being hired.

According to Gentiva's policy, if Collins happened to be unable to make a visit to any client's home, she was required to call Gentiva's office to notify them. Gentiva would then send a

replacement.

On Friday, 3-18-05, Collins skipped her scheduled visit with Ballard for personal reasons. Although she later said she called both Gentiva and Ballard to inform them of her decision not to visit Ballard, phone records showed no such calls were made.

On Monday, 3-21-05, Collins again skipped her scheduled visit. Just after midnight on 3-22, Ballard was able to make enough noise to alert neighbors, who called 911. According to a printed source, he was then taken to a hospital and treated for dehydration and injuries to his hip, shoulder, and leg caused by his abandonment. The record does not show the amount of his medical expenses. When Gentiva learned of Collins' malfeasance, it fired her.

This was not enough for Ballard, who filed suit against Gentiva, Collins, and Collins' alleged supervisor, Denise Dempsey. He blamed Collins for not showing up to perform the contracted services for him and, by extension, Gentiva. His theories included negligence, wantonness, negligent and wanton supervision and hiring, breach of contract, breach of the standard of care, and outrage.

Collins failed to retain counsel, and a default was soon entered against her. Gentiva and Dempsey defended and questioned Ballard's story of having been completely abandoned for four days.

According to defendants, at least three people had paid visits to Ballard that weekend—two friends and a former social worker. The former social worker had checked on Ballard three times, brought him a box of KFC and cookies, refilled his water cup, and emptied his urinal. He had also allegedly offered to call an ambulance for Ballard, who had refused the offer.

In addition, Gentiva believed it should not be held liable for Collins' failure to care for Ballard because she had not been acting within the course of her employment when she failed to show up. Gentiva argued it should not be held to blame when Collins had been violating its rules and procedures.

Before trial, Gentiva made an offer of judgment of \$20,000. Ballard turned it down, and the parties proceeded to court.

A Tuscaloosa jury heard the evidence and returned a verdict of \$500,000 in compensatory damages as against Gentiva and Dempsey, plus \$2,000,000 in punitive damages. As for Collins, the jury's decision was to assess \$158,199 in compensatory damages against her and \$100,000 in punitive damages. At the time the AJVR reviewed the record, the court had not yet entered a judgment.

Auto Negligence - Two cars on a freeway tried to occupy the same space

Teal v. Landers, 08-830

Plaintiff: Robert Gorham, *Gorham & Associates*, Birmingham

Defense: Ralph D. Gaines, III, and Stephen R. Shows, *Gaines Wolter & Kinney, P.C.*, Birmingham

Verdict: \$15,000 for plaintiff

Circuit: **Jefferson**, 7-28-09

Judge: Michael G. Graffeo

On 5-13-07, Tina Teal was a passenger in a vehicle that was traveling north on I-59 in Birmingham near its intersection with I-65 and 17th Street North. At the same time, Sheila Landers was also driving north on the same road.

At the point where Teal and Landers were traveling, I-59 was three lanes wide. Landers tried to merge from the right lane into the center lane and unexpectedly found the center lane occupied by the vehicle in which Teal was a passenger.

Frantically, Landers tried to veer back into the right lane. Unfortunately, she was unable to do so. The front driver-side corner of her vehicle came into contact with the right rear of the vehicle in which Teal was a passenger.

In the collision, Teal was injured. She later claimed to have suffered a rotator cuff tear and lower back pain. She underwent surgery to repair her rotator cuff, and her medical expenses totaled approximately \$24,000. Of these, however, her health insurer paid only \$5,574.

Teal filed suit against Landers and blamed her for causing the collision by merging into the center lane without looking to see whether another vehicle was already there. Her theories included negligence and wantonness. She also named Progressive Casualty

Insurance Company, her UM/UIM carrier, as a co-defendant.

Landers defended and provided her own version of the accident. According to her, the vehicle in which Teal had been a passenger had not been in the center lane when Landers started to merge.

Instead, the other vehicle had been in the left lane traveling at a high rate of speed, and it had simply started to merge into the center lane at the same time that Landers had been merging. Landers did not believe the collision had been her fault.

Landers also did not believe that Teal's rotator cuff injury was her fault, either. She thought Teal's rotator cuff tear was the result of degeneration from repetitive movement, not the acute trauma of a car crash. Progressive opted out.

Before trial, Teal made a final settlement demand of \$25,000. Landers was unwilling to pay this much, and the parties proceeded to a trial before a Birmingham jury. The jury returned a verdict for Teal in the amount of \$15,000. The court has since entered a consistent judgment that has been satisfied.

Products Liability - A Ford Explorer's driver died when her vehicle rolled over and suffered roof damage; her estate claimed defective design of the roof

Estate of Parker v. Ford Motor Co., 08-900641

Plaintiff: Benjamin E. Baker, Jr., J. Cole Portis, and J. Greg Allen, *Beasley Allen Crow Methvin Portis & Miles, P.C.*, Montgomery

Defense: D. Alan Thomas, Paul F. Male and John Isaac Southerland, *Huie Fernambucq & Stewart, LLP.*, Birmingham

Verdict: \$2,750,000 for plaintiff

Circuit: **Montgomery**, 3-12-10

Judge: William A. Shashy

On 7-22-07, Catherine Parker was driving a 1999 Ford Explorer on U.S. Hwy. 29 in Covington County near the intersection of County Road 63 and County Road 39. For reasons not disclosed by the record, Parker's Explorer overturned and its roof was damaged. Despite the fact that Parker was wearing a seat belt, she was killed.