

**1790 - Auto Negligence - Serious right of way “whodunit” asks which defendant was driving**

*Byrd v. Peteet & Donahoo*, 98 CI 0013

Plaintiff: B. Alan Simpson, *Pierce Simpson & Shadoan*, Bowling Green

Defense: William S. Haynes, *Hodge & Haynes*, Bowling Green for Donahoo

T. Richard Alexander, II, *Richardson Gardner & Barrickman*, Glasgow for Peteet

Verdict: \$394,619 for plaintiff against Donahoo only and less 85% comparative fault

Circuit: **Allen**, J. Harris, 8-14-00

It was a hot summer day a week after Independence Day in the summer of 1997 at Barren River Lake. Two teens, Jill Peteet and Jesse Donahoo spent part of the day on a boat. Donahoo was drinking. The day wore on and around six that evening, along with another friend, the pair headed back to town.

At the same time, Deborah Byrd, age 49, was headed to her lodge on the lake after a visit to the grocery. On Ky. 252, she approached the superior Ky. 1533, an intersection controlled by a stop sign. While she would remember nothing, Byrd apparently pulled across Ky. 1533 and into the path of an oncoming Geo Tracker.

In a slightly offset crash, Byrd's Escort station wagon was struck nearly head-on. It knocked her unconscious. She was taken by ambulance to Bowling Green where Dr. Frank Buono, Orthopedics, noted her concussion injury. He also treated a comminuted femur fracture and a broken hip. Surgery was required to repair the injuries. Complications later developed after a hip dislocation and Byrd underwent a second surgery. Her medical bills were \$51,919 and she sought \$17,700 for future care. Past and future suffering were also sought in separate categories, each capped at \$250,000. Dennis, her husband, presented a consortium claim that was limited to \$500,000 by the instructions.

That Byrd was seriously hurt was without question. The mystery of this case turned upon the identity of the driver of the Geo. What was certainly known is that it belonged to Jesse. Initially it appeared that Jill was driving as she so advised the investigating officer.

Later it was learned that secret agreement existed between Jesse and Jill. Namely, as he was drinking, the parties deceived the investigating officer, as it was Jesse who was driving. That later explanation meant little to the injured Byrd and she sued both.

The court directed fault against Byrd in pulling into the path of the Geo. However, she blamed its driver, whoever that might be, for excessive speed and failing to keep a proper look-out and avert collision. There was also proof that if it was Jesse who had the wheel, alcohol intoxication may have played a role. Developing this proof was an accident reconstructionist, Kenneth Agent, Lexington.

In this “whodunit” both defendants were agreed that Jesse was the driver of the Geo Tracker. Jesse then described that he drove at a safe speed, only to encounter Byrd's car as it pulled into his path. He denied being drunk, but was unable in deposition to remember how much he was drinking.

This unusual case ended in August of 2000 in Scottsville. The first inquiry from the court asked who was driving the Geo Tracker. The jury answered that it was Jesse. While, plaintiff's fault was directed, the panel went on to consider the duties of Jesse, having just found he was the driver. It so continued and found a deviation. Next was comparative fault -- this panel found Jesse 15% at fault, remainder to plaintiff.

Then to damages, plaintiff took her past and future medicals as claimed. Past suffering was valued at \$150,000, while she took another \$100,000 for that in the future. Her husband's consortium claim was valued at \$75,000. The verdict for the Byrd family, assessed to Donahoo only, totaled \$394,619 less 85% comparative fault. A consistent judgment has since been entered on behalf of plaintiffs. While deliberating the jury had questions, asking if the medical bills were paid by *insurence* or auto *insurence*? The court didn't answer.

**2843 - Parking Negligence - A teenager lost control trying to avoid a parked UPS truck, then crashing into plaintiff; settling with the teen, plaintiff moved forward against UPS**

*Pride v. UPS*, 02-0357

Plaintiff: Charles S. Wible, *Charles Wible Law Offices*, Owensboro

Defense: Dov Moore, *Cole & Moore*, Bowling Green

Verdict: \$205,870 for plaintiff assessed 30% to UPS

Circuit: **Allen**, J. Harris, 1-30-04

On 9-25-01, Chris Shelton, a teenager, was driving uphill on a narrow residential street in Scottsville. At the top of the hill and in a slight curve, Clyde Hill had parked his UPS truck. Making a delivery, the truck was partially on the roadway. Hill illuminated the truck's flasher. At the same time, Fred Pride, then age 30, was coming down the same hill.

Shelton saw the parked truck and lost control, careening into Pride's path. While Pride hit the brakes, he couldn't avoid collision. Shelton and Pride struck in a significant head-on impact.

Pride has since treated for radiating pain. Dr. Thomas Becherer, Neurology, Louisville, first used injections, later performing an L4-5 disc surgery. Pride has also treated with Dr. Warren Bilkey, Physical Medicine, Louisville; Bilkey assigned a 10% impairment.

Pride's medical bills were \$39,451 and working in a maintenance position, lost wages totaled \$17,981. Edward Berla, Vocational Expert, Louisville, quantified impairment at \$372,446. The instructions limited suffering to \$159,820. Pride's wife Christi sought \$50,000 for her consortium interest.

In this lawsuit, Pride moved against Shelton, blaming the teen for losing control. He settled with Pride. The matter moved forward against UPS, Pride blaming its driver for parking in the traveled portion of the roadway.

UPS defended and blamed the wreck mostly on the teenage Shelton, noting his speed contributed. An accident expert, Larry Owens, Corydon, talked sight-lines and explained that Shelton lost control before he even saw the UPS truck. UPS also countered on economic damages, relying on an economist, Robert Pulsinelli and a vocational expert, Stephen Schnacke, both of Bowling Green.

After three days of proof, the jury's verdict was mixed on fault. It found both Shelton and UPS at fault, assessing 70% to the teen, remainder to UPS. Then moving to damages, Pride took his medicals as claimed, plus \$7,300 for lost wages. Impairment was valued at \$111,173, plus \$47,946 for suffering. Wife's consortium was rejected. The verdict totaled \$205,870, assessed \$61,761 against UPS. When reviewed by the KTCR, no judgment had been entered.

Interestingly, in reaching its damage awards, (medical bills aside), Pride took exactly 30% of his claimed damages. The jury's intention is not clear. Did it do what it intended, i.e., award Pride 30% of what he claimed? Or instead was it confused, doing its own comparative fault reduction, thus subjecting Pride to a double-shock of comparative fault. The record supports the second option as in its hand-written notes, the jury did the math for the damage awards for both 40% and 50%.