

1302 - Medical Negligence - Alleged misdiagnosis of pneumonia lead to an acute hospitalization, followed by a full recovery but for post-traumatic stress symptoms

Blythe v. McChord, 97 CI 0612

Plaintiff: Eric Deters, *Eric Deters & Associates*, Fort Mitchell

Defense: Michael Westling, *Deters Benzinger & LaVelle*, Covington

Verdict: \$100,000 for plaintiff

Circuit: **Kenton** (2), J. Stephens,
1-21-00

On 4-1-96, Mary Blythe, age 53 presented at St. Elizabeth's Hospital for chest pain and coughing symptoms she had endured for several days. She was seen by Dr. Kevin McChord, a second-year resident, who identified an upper respiratory infection and pleurisy, advising Blythe to return if problems developed.

Problems did develop the next day as Blythe was rushed back to the ER with difficulty breathing. At this time, acute pneumonia, respiratory failure and a related sepsis were all identified. Placed on a ventilator and enduring a chest tube to evacuate a lung abscess, she was hospitalized for seventeen days. While her condition was grave and life-threatening, Blythe made a complete physical recovery. It is also important to note that Blythe is a long-time and heavy smoker.

Despite that recovery, she has continued to complain of post-traumatic stress symptoms which have dramatically affected her life. While she had previously worked at Frisch's, after this incident she was unable to do so. In support of the depression and psychiatric damage, she produced proof from a Florence psychotherapist, Thomas Graff. At trial, she sought her medical bills of \$65,671, plus \$2,600 for future care. Lost wages were capped at \$31,707, while impairment was limited to \$105,690. No limitation was placed in the instructions on the suffering award.

The claim upon which these damages was predicated was lodged against McChord and the hospital. It alleged that McChord failed to (1) double check her vital signs, (2) rehydrate, (3) administer antibiotics and (4) hospitalize. This was particularly acute in light of Blythe's irregular vitals, a blood pressure reading of 74/52. The hospital was responsible in this action, as McChord's employer. The liability expert for plaintiff was Dr. Mark Peacock, Pulmonology, Nashville.

The defense denied a breach of the standard of care, producing appropriate medical proof in support. A psychologist IME, Dr. David Dahmann, Covington, noted a long-term history of somatic symptoms, failing to identify a causal link to the hospitalization incident. Plaintiff countered that while Dauman had reservations on causation, his MMPI testing did confirm post-traumatic symptoms.

The jury considered the duty of McChord pursuant to the reasonably competent physician standard, also being instructed that the hospital was responsible for the actions of McChord. It found a deviation and turning to damages, Blythe was awarded \$5,000 of her medicals, but nothing for her other specials. The suffering award was \$95,000 and the verdict totaled \$100,000. Post-trial motions by the defense focused on causation issues and the plaintiff's failure to timely supplement suffering damages. Overruled by the court, the defendants have since appealed.

The court record also reflects that the plaintiff conducted focus group review of her claim before trial. Two groups awarded Blythe between \$250,000 and \$375,000, with plaintiff's history of smoking being unimportant. **See the KTCR 1999 Year in Review**, Case No. 781, for a similar factual case, i.e., psychiatric symptoms after a missed pneumonia diagnosis, where a Lexington jury returned with a defense verdict.