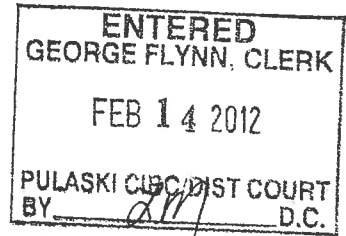


COMMONWEALTH OF KENTUCKY
28TH JUDICIAL CIRCUIT
PULASKI CIRCUIT COURT
DIVISION II
CASE NO: 06-CI-00816



SANDRA HENSLEY, Individually and as the
surviving spouse and Administrator of the
Estate of WAYNE HENSLEY, deceased

PLAINTIFFS

v.

MOHAMMED N. IMAM, M.D.

DEFENDANT

TRIAL ORDER RE: DEFENDANT'S DIRECTED VERDICT MOTIONS
AT THE CLOSE OF THE PLAINTIFFS' CASE AND DEFENDANT'S CASE

AT THE CLOSE OF THE PLAINTIFFS' CASE

At the close of the Plaintiffs' case, the Defendant brought motions for directed verdict based on CR 50.01 as follows:

- (1) That there was insufficient evidence presented that the Defendant deviated from the required standard of care;
- (2) That there exist no triable issue in that no evidence was presented that Defendant's actions, or negligence if any, were a substantial factor in causing Wayne Hensley's death;
- (3) That there is no evidence to support the claim for pain and suffering; and
- (4) That the loss of consortium claim was brought outside the statute of limitations.

Motions (1)-(3) were overruled in that some evidence was presented on each issue by way of witnesses' testimony sufficient to create an issue of fact for the jury to consider. As to motion (4), and the statute of limitations motion that was also brought pre-trial, the Court has the


motion under submission until the last day of trial to allow Plaintiff an opportunity to brief the issue, and has been addressed by separate order.

AT THE CLOSE OF THE DEFENDANT'S CASE

After the close of the Defendant's case, the Defendant's renewed the above motions (1), (2), and (3) for directed verdict. These motions were overruled in that some evidence was presented on each issue by way of witnesses' testimony sufficient to create an issue of fact for the jury to consider. An additional directed verdict motion was made in regard to the Plaintiff's, Wayne Hensley, pain and suffering claim. Among the Defendant's interrogatories was a request, pursuant to CR 8, for the Plaintiff to state the amount of unliquidated damages, including pain and suffering, which would be claimed at trial. The Plaintiff's answer to this interrogatory (#19) on January 22, 2007 did not state an amount to be claimed at trial, nor was the answer supplemented.


Under CR 8.01(2) and Kentucky Supreme rulings in *Fratzke v. Murphy*, 12 S.W.3d 269 (Ky. 1999) and *LaFleur v. Shoney's Inc.*, 83 S.W.3d 474 (Ky. 2002), the unliquidated damages amount claimed at trial shall not exceed the last amount stated in answer to interrogatories. Without an amount stated or claimed for pain and suffering damages in the answer to the interrogatory, the Plaintiff's claim for unliquidated damages is \$0.00. In response to this motion for directed verdict, the Plaintiff motioned to supplement the answer to the interrogatory and state an amount for pain and suffering damages. The motion was overruled because it was not seasonable, being made on the last day of a five day trial, after the close of all evidence. The Court granted the directed verdict pursuant to CR 8.01(2) and Kentucky case law.

Entered this 14 day of February, 2012.


Hon. Jeffrey T. Burdette, Judge
Pulaski Circuit Court

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Pulaski Circuit Clerk) 2-14-12
Date