

Medical Negligence - The plaintiff blamed nursing staff for missing signs of a stroke and failing to communicate with physicians, these purported errors leading to a diagnosis delay and a more serious stroke event – the plaintiff lived with deficits of the catastrophic stroke for 811 days, her estate then advancing this case to trial – as the jury was deliberating the trial court declared a mistrial because of a belief a juror was biased but still permitted the jury (it didn't know about the mistrial) to deliberate and it returned a \$10,007,491 verdict – the court has since sealed the verdict and nullified it as well while the plaintiff has sought to vacate the mistrial and reinstate the verdict

Gauze v. Pikeville Medical Center,
19-233

Plaintiff: Ross F. Mann, *Ross Mann Law*, Lexington and Brian M. Jasper, *Thomas Law Offices*, Louisville

Defense: Daniel G. Brown and James E. Smith, *Gazak Brown*, Louisville

Verdict: \$10,000,000 (mistrial declared as jury deliberated)

Court: **Pike**

Judge: Howard Keith Hall

Date: 2-7-23

Mary Gauze, then age 41, housewife of an underground miner in Mingo, WV and the mother of two young sons, wasn't feeling well on the evening 3-6-18. She went to lie down and collapsed. She was taken to the ER in Williamson, WV to be evaluated. She was worked up for an altered mental status, possible pneumonia, sepsis and other conditions. A CT scan there was negative for a stroke. A little after midnight Gauze was transferred to Pikeville Medical Center (PMC) which provides a higher level of care.

Gauze was admitted directly to the ICU. She was able to wake up and respond to questions. Gauze was however lethargic and sleepy. A stroke was not on the ICU doctor's differential diagnosis and thus no stroke protocols were ordered.

Gauze's condition was unchanged until 8:00 a.m. There was proof that at this time the ICU Charge Nurse noted a delayed response, speech problems, a facial droop and right-sided weakness. The nurse did not notify a physician or chart this electronically. The same symptoms were noted an hour (now 9:00 a.m.) later by the nurse. Again she did not notify a physician.

Finally at 9:35 a.m. the nurse advised a physician who promptly ordered a neurology consult. PMC is a Primary Stroke Center and has a number of protocols including a Code 100 which calls for immediate orders of a CT scan and consult among other things. However the teleneurology consult was not done until 10:20 a.m. The consult was also advised that Gauze's symptoms had started the night before at the Williamson Hospital. Thus the neurologist did not believe Gauze was within the window for tPA therapy.

Later that day an MRI was performed. It revealed a large left middle cerebral artery stroke. The next

The jurors requested to see the trial testimony of Plaintiff Nicky Gauze and were returned to the courtroom to watch the testimony accordingly. The jury returned to deliberations before advising the Court that they would like to adjourn for the day and resume deliberations the following morning. The jury was properly admonished and then adjourned for the evening.


Proceedings resumed on the morning of Friday, February 10, 2023. Before resuming deliberations, a juror asked to approach and advised the Court that the jury had agreed on one instruction but were stuck on a subsequent instruction and thus asked for guidance from the Court. The Court advised the juror to re-read the instructions and proceed accordingly.

A second juror likewise asked to approach at which time he reported to the Court concerns that another juror had made comments which he, and other jurors, purportedly believed to have been disqualifying. The Court inquired of the juror outside the presence of counsel but then shared with them the nature of that juror's concerns. At the request of the parties, the jurors were not allowed to begin deliberations so that the parties could consider these statements, their impact, and decide how they wished to proceed.

The parties were then called back to order and Pikeville Medical Center moved to strike the juror who had reportedly made the comments of concern. Plaintiff agreed that the juror should be stricken and thus did not oppose the motion. Pikeville Medical Center then moved to declare a mistrial and Plaintiff agreed with that request. The Court declared a mistrial accordingly.

Not wanting the time and effort of the parties, the Court, and the jurors to have been for naught, the Court advised the parties that he believed it prudent to allow the jurors to continue deliberating for a period of time in hopes that they might return what would be an advisory verdict that could potentially help inform the parties as to future settlement discussions. The jurors thereafter retired to the jury room and continued deliberating. The jurors advised that they had reached a decision and returned to the Court where their advisory verdict was announced to the parties. The Court and the parties thanked the jurors for their service and proceedings were formally adjourned at that time.

In light of the parties' agreement to the Court's declaration of a mistrial and its non-binding nature, the advisory verdict announced in this matter is null and void. No judgment of any kind has been or will be entered on the advisory verdict returned in this case. A new trial date shall be set accordingly.


JUDGE, PIKE CIRCUIT COURT
February 20, 2023
Date

Relevant portions of Judge Hall's version of the mistrial as described in his order

day a vascular consult recommended a transfer to UK. However the effect of the stroke was devastating and Gauze was left severely debilitated. She lived for 811 days before dying – she developed a severe bedsore near the end of her life.

The Gauze estate (representing her husband and the two sons) sued PMC and alleged the stroke event occurred at or around 8:00 a.m. while at PMC. The best proof of this was the CT scan the night before in Williamson was clear. Thus the hospital violated the standard of care in several ways in responding to the stroke.

The nursing staff failed to appreciate her symptoms, communicate about them and notify a physician. This “egregious” error led to a diagnosis delay which eliminated the opportunity to begin tPA treatment and reduce the severity of the stroke. PMC was also criticized for failing to implement the Code 100 protocols. If they had been followed a CT scan would have identified the stroke and Gauze would have been within the window of time to be transferred to UK where a mechanical thrombectomy could have been performed to remove the blood clot. Gauze then would have been left with a minor disability instead of a catastrophic brain injury which resulted in her premature death.

The experts for the estate were Ginger Alford, RN, Lexington, Dr. Christopher Polen, Critical Care and Dr. John Gaughen, Neuroradiology, Charlottesville. If the estate prevailed it sought the funeral bill, Gauze’s suffering, the husband’s pre- and post-death consortium as well as the consortium interests of the two children.

PMC had a different theory of the case and went to the timing of the stroke. The hospital believed the stroke began three or four days earlier and thus Gauze was never a candidate for either tPA or thrombectomy. What about the clear CT scan at Williamson Hospital? The defense thought the radiologist there had missed subtle signs of a brewing stroke. Thus what the plaintiff called a sudden stroke at 8:00 a.m. on 3-8-18 was not a new event. Thus in sum the hospital’s care met the standard of care and it was not responsible for Gauze’s injuries.

The defense experts at trial were Dr. Ralph Caldrony, Internist, Buena Vista, VA, Dr. David Preston, Neurology, Cleveland, OH, Dr. Kenneth Gaines, Neurology, Nashville, TN and Dr. Dennis Whaley, Neuroradiology, Lexington.

This case was tried over two weeks (over 10 days) and the jury deliberated two days. It was at this juncture that this interesting but otherwise ordinary med mal case went off the rails. In the middle of the deliberations a juror reported that another juror had commented (at the start of the deliberations) that she’d never take her husband to PMC for treatment.

The defendant moved for a mistrial as the jury had purportedly formed an opinion. Judge Hall granted the motion. However he decided to permit the jury to continue to deliberate in advisory fashion.

The jury then returned a verdict on liability for the plaintiff by a 10-2 verdict. It was 9-3 on causation. The jury then went to damages and awarded the funeral expense of \$7,491.

Gauze’s pain and suffering was \$6,000,000. The husband’s pre-death consortium was \$2,000,000 while his post-death (Ohio County Hospital) consortium was \$1,000,000. Each of Gauze’s children took \$500,000 for their consortium interests. The verdict totaled \$10,007,491.

Judge Hall has since made two interesting orders. First he sealed the verdict. He also signed an Order of Proceedings that declared the verdict was advisory (because of the mistrial) and that it was null and void. Hall has ordered a new trial date.

The plaintiff has since filed two motions. The first is to modify the Order of Proceedings. It has argued the order was inaccurate because the plaintiff had not agreed to a mistrial.

The plaintiffs have also moved to vacate the mistrial order and reinstate verdict. The motion argued that the juror who communicated with the court had misled the court about the juror communications and those communications only occurred after the deliberations had begun. The juror who had complained indicated they came before the deliberations. The court then erred in declaring a mistrial without conducting a voir dire of the jurors. This in turn led to the jury deliberating to a verdict without

knowing a mistrial had been declared.

The motion explained how the process went. The foreperson (the one who had expressed the opinion about not taking her husband to PMC) only learned about the mistrial when she saw it on the KTCR Facebook page. She reached out to plaintiff's counsel to express her concern. The motion to reinstate the verdict is supported by five juror affidavits including from the foreperson. The motion concluded that as the verdict was untainted (the jury knew nothing of the mistrial and there was no misconduct), the jury's work should stand. At the time of this report the hospital had not responded to the plaintiff's motion. It is set for hearing on 4-6-23.

Judge Hall has also spoken publicly about the case. He indicated the parties agreed to the mistrial. [The plaintiff has disputed this.] He further explained in a *Courier-Journal* interview that he hated to waste the effort of a long trial and permitted the jury to deliberate to give the parties an idea of the case's value. He likened his efforts to conducting a mock trial.