

1715 - Medical Negligence - Sponge was left in an elderly woman during a breast biopsy, leading to a mastectomy

Murphy v. St. Elizabeth Medical Center, 99 CI 1499

Plaintiff: Colleen M. Hegge, *Waite Schneider Bayless & Chesley*, Cincinnati

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

Verdict: \$310,000 for plaintiff

Circuit: **Kenton** (3), J. Bartlett,
3-2-01

Vivian Murphy was in her early eighties and had a history of cancer when she underwent a needle biopsy and lumpectomy on 4-10-98 at St. Elizabeth Medical Center. It was performed by Dr. George Hall. The procedure was apparently without incident, and the sponge count was reported as accurate.

Still, the wound was slow to heal and losing faith with her doctors, Murphy treated in December with Dr. Rank Dawson, Plastic Surgery, Cincinnati. At that time, he detected a sponge inside her breast. In May of 1999, it was removed, also leading to a mastectomy. She later underwent a secondary surgery to reconstruct the breast. Photographs indicate a grotesque injury.

In this action, she sued Hall and the hospital for the inaccurate sponge count. Just a few weeks after filing and of unrelated causes, Murphy died at age 83. The matter continued to be prosecuted by her estate. If it prevailed, Murphy sought incurred medicals of \$42,933, plus \$932,066 for suffering. The record reflects a demand of \$975,000, while there was an offer of judgment from the hospital in the sum of \$75,000.

As a matter of law, the court determined the defendants at fault, leaving the jury to consider damages only. In a strange procedural twist, hospital agreed to indemnify Hall and at trial, the doctor did not participate. Still, the instructions continued to name both the hospital and the doctor.

The case progressed and the estate developed proof of her complications and suffering, per the treating Dr. Dawson. St. Elizabeth countered that other conditions, including her prior chemotherapy, had contributed to her slow healing after the initial procedure by Hall.

Considering damage issues only in this case, the jury in Covington had questions for the court. It asked when was suit filed, which the court answered. The next two questions raised liability, which was no issue as explained by the court in response. The queries were, (1) is it possible that two sponges were stuck together, and (2) if medical attention had been sought sooner, might there have been a better result. Back to the constraints of the instructions, the panel reached damages. It awarded the estate \$10,000 of the medicals, plus \$300,000 for suffering, totaling \$310,000. A consistent judgment has been entered against the hospital, also recognizing the procedural relationship between it and Hall. **See the KTCR 2000 Year in Review, the Medical Negligence Report**, page 39, which summarizes the reported forgotten sponges cases in Kentucky.