

Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

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Comprehensive Statewide Jury Verdict Coverage

Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts including circuit, division, presiding judge, parties, case number, attorneys and results.

Civil Rights - The county clerk in Morehead refused to issue marriage licenses to gay couples after the landmark *Obergefell* opinion from the Supreme Court recognized their constitutional right to marry – the clerk flouted the law and explained she answered to God’s authority – two couples who were denied marriage licenses by the clerk sued her and alleged she violated their civil rights – the trial court decided liability for the plaintiffs on summary judgment and the jury considered damages only

Ermold et al v. Rowan County Clerk,
0:15-46/0:15-62

Plaintiff: Joseph D. Buckles, *Buckles Law Office*, Lexington and Michael J. Gartland, *Del Cotto Law Group*, Lexington for Ermold plaintiffs
Rene B. Heinrich, *The Heinrich Firm*, Newport and W. Kash Stilz, Jr., *Roush & Stilz*, Covington for Yates plaintiffs
Defense: Daniel J. Schmid and Horatio G. Mihet, *Liberty Counsel*, Orlando, FL and A.C. Donahue, *Donahue Law Group*, Somerset
Verdict: \$100,000 for Ermold plaintiffs; Defense verdict for Yates plaintiffs

Court: **Lexington**

Judge: David C. Bunning

Date: 9-13-23

The United States Supreme Court

decided *Obergefell v. Hodges* on 6-26-15 and determined that same-sex couples had a constitutional right to marry under the Equal Protection clause. Kim Davis was then the elected county clerk in Rowan County (Morehead, KY). The plaintiffs in this case were two gay couples who sought marriage licenses in Rowan County. David Ermold and David Moore (Ermold) were one couple. The other were James Yates and Will Smith (Yates).

Both couples (Ermold and Yates) presented to the clerk’s office in Rowan County and asked for a marriage license from Davis. She refused. The law was now clear on the subject. The Supreme Court had decided it. Davis explained her basis for flouting the law was that she acted on God’s authority. Ermold and Yates sought a marriage license several other times. She again denied them.

The matter became an international incident as Davis continued to defy the law. Ultimately Judge David Bunning (also presiding in this litigation) jailed Davis for contempt. She was ultimately released from jail when she agreed that other members of her office could issue the marriage licenses. Ermold and Yates received marriage licenses. However both couples would testify they suffered emotional distress because of Davis having deprived them of their lawful right to marry.

Ermold and Yates subsequently filed separate lawsuits against Davis seeking damages for the deprivation of their constitutionally-protected rights. Davis defended the case that she her First Amendment religious rights trumped the rights of the plaintiffs and in any event, their

* * *The KTCR Blog***

We launched our blog last fall and it stays current on litigation news for Kentucky lawyers. We have regular updates on verdicts, motions and opinions.

It’s good stuff that you won’t read about anywhere else.

The verdict form from the big case . . .yesterday.

We probably published it there.

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Faheem v. Martin, 18-5264

Plaintiff: Linda Y. Atkins, *Atkins & Atkins*, Louisville and C. Mike Moulton, *Moulton & Long*, Elizabethtown

Defense: James P. Grohmann and Justin W. Janes, *O’ Bryan Brown & Toner*, Louisville

Verdict: Defense verdict on liability

Court: **Jefferson**

Judge: Melissa L. Bellows

Date: 4-6-23

Dr. Amjad Faheem, he is an internist in Elizabethtown and then age 61, was diagnosed with gastric cancer in January of 2016. He came under the care of a surgical oncologist, Dr. Robert Martin. That month Martin performed an excision of the cancer in a so-called esophagogastrectomy. Faheem was a complex patient (he had several comorbidities including diabetes and heart disease) and even though the cancer was removed, it was not possible to remove all the malignant cells.

A January 2017 CT-scan (a year after the surgery) was read by a radiologist, Dr. Brian Jones. It was highly suggestive of a recurrence of gastric cancer. Martin concluded the mass was related to the plaintiff’s naturally-evolving spleen after the

cancer surgery. It was recommendation to follow-up with Faheem in several months.

At that May 2017 follow-up the plan was for a repeat CT-scan. It was conducted in September of 2017. The mass (also seen in the January 2017 scan) was identified a recurrence of Faheem’s cancer. Martin performed a biopsy and thereafter Faheem sought a course of care at the MD Anderson Cancer Center in Houston, TX. Despite that intervention there was proof that Faheem has a poor prognosis and reduced life expectancy.

In this lawsuit Faheem alleged error by Martin in failing to make the diagnosis of the recurrence of the gastric cancer. His expert, Dr. Patricia Hodul, Surgical Oncology, Tampa, FL, believed that Martin disregarded the radiology report from Jones. The standard of care as she described compelled additional and immediate intervention including a biopsy, quick follow-up or even bringing together a tumor board to assess the CT-scan.

Instead Hodul argued an “over confident” Martin dismissed the report and believed the mass was Faheem’s spleen. This led to the eight-month diagnosis delay and a loss of a risk of survival. Faheem, now age 65, was still alive at the time of trial. His claimed damages represented his pain and suffering. Faheem also identified himself as a medical expert in this case. The plaintiff also called Dr. Richard Cohen, Radiology, Ann Arbor, MI.

While Faheem has not worked since January of 2017 (the self-employed doctor made approximately \$130,000 a year), did not make a claim for impairment at trial. Why? In October of 2018 he suffered a devastating stroke that affected his speech and limited his ability to ambulate.

Martin defended on several fronts. The first was to deny he had disregarded the Jones radiology report. Instead he carefully considered and correlated Faheem’s complex status. Martin made a decision to follow-up in several months, that follow-up then led to the CT scan and the diagnosis of a recurrence. The proof on liability was complex and involved the comparison and analysis of multiple CT-scans and expert testimony regarding gastric cancer, gastric resection and the proper surveillance of gastric cancer post-surgery.

Beyond complying with the standard of care, Martin also contested damages or that there was any reduction in Faheem’s life expectancy. He noted the cancer recurrence in January of 2017 was already at Stage IV and thus the course was already set at that time – rather than Martin’s care, it was the gastric cancer which has a very high rate of recurrence. Moreover any ongoing damages that Faheem has sustained are related to his stroke and other medical conditions. The defense expert was Dr. Malcolm Bilimoria, Surgery, Arlington Heights, IL.

This case was tried for three days. A Louisville jury found that Martin had not violated the “surgical oncology” standard of care and Faheem took nothing. A defense judgment was entered and there was no appeal. The case is closed.

Case Documents:

[Complaint](#)

[Plaintiff Expert Disclosure](#)

[Defense Expert Disclosure](#)

[Final Judgment](#)