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.

Common Law Hostile Work Environment - A behavioral therapist at an Eastern Kentucky hospital alleged she suffered a hostile work environment (extra scrutiny and an invisible target on her back) after she complained to her boss that patients were being discharged too soon if they didn't have money – a jury in Prestonsburg awarded her $400,000 for her emotional suffering and $2,000,000 more in punitive damages – it was an interesting KRS 216B "wrongful discharge" case because it was predicated not on discharge, but rather on hostile environment, a point that the hospital focused upon in since-denied post-trial motions

Shepherd v. Highlands Regional Medical Center, 20-555
Plaintiff: Jerry A. Patton, Prestonsburg
Defense: Laura L. Mays and Gregory A. Jackson, *Steptoe & Johnson*, Lexington
Verdict: $2,400,000 for plaintiff
Court: **Floyd**
Judge: Thomas M. Smith
Date: 8-31-22

Ashley Shepherd worked for several years leading into the fall of 2019 for a contractor that served the Highlands Regional Medical Center in Prestonsburg. She was a behavioral therapist who assisted patients with mental illness. Those patients were often suicidal, psychotic and even homicidal.

In the fall of 2019 the hospital was acquired by Appalachian Regional Health (ARH) and the private contract was terminated. At this time Shepherd was directly hired by the hospital and her duties mostly stayed the same.

A few months later in early 2020, Shepherd had personal conflicta with co-workers. She made a complaint to the hospital's HR department. The complaint was resolved to her satisfaction. At the time she made this complaint, Shepherd said nothing about a larger problem that was bothering her.

Shepherd believed that hospital officials were pressuring her to discharge patients sooner than was medically indicated if those patients couldn't pay for their care. Essentially the hospital was prioritizing profit over patient safety and care. Shepherd indicated she wouldn't follow orders. There was proof she complained about it to her boss ("Bruce") who had enforced the edict. She remembered he mostly shrugged his shoulders and said of the hospital, "This is not a hotel."

Thereafter Shepherd (who wouldn't play ball with the plan) alleged she endured a hostile work environment. She missed out on a promotion. Shepherd also alleged her charts were audited and it felt as if there was an invisible target on her back from the hospital's administration. She quit and took a higher paying job in April of 2020.

Shepherd then sued the hospital and alleged two KRS 216B wrongful discharge counts, (1) retaliation, and (2) hostile environment. That is, while her employment was terminable at will, she alleged she was constructively discharged (or subjected to a hostile environment) because of her opposition to the hospital's plan to discharge patients who couldn't pay. The court directed a verdict for the hospital on the retaliation count.

That left just a single remaining KRS 216B count for the jury to consider. It was a curious one too as while this was technically a "wrongful discharge" case, as the jury was instructed, it was simply about hostile environment. Shepherd's proof burden was that, (1) she reasonably believed patient safety was in jeopardy, (2) she complained about it, and as a result, (3) she was subjected to a hostile work environment. Thus wrongful discharge ultimately (constructive or otherwise) had nothing to do with it in terms of the proof burden in what was ostensibly a wrongful discharge case. If Shepherd prevailed she sought damages for emotional suffering as well as the imposition of punitive damages.

The hospital defended on several fronts. The first was that Shepherd had not made a proper complaint to HR – in fact a proper complaint is not to the purported offender (her boss who gave her the instructions to discharge patients too soon) but rather to the neutral HR department.

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Jefferson County

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Common Law Hostile Work Environment - A behavioral therapist at an Eastern Kentucky hospital alleged she suffered a hostile work environment (extra scrutiny and an invisible target on her back) after she complained to her boss that patients were being discharged too soon if they didn't have money – a jury in Prestonsburg awarded her $400,000 for her emotional suffering and $2,000,000 more in punitive damages – it was an interesting KRS 216B "wrongful discharge" case because it was predicated not on discharge, but rather hostile environment, a point that the hospital focused upon in since-denied post-trial motions - $2,400,000 p. 1

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Medical Negligence - The plaintiff linked several years of testosterone replacement therapy to a near fatal pulmonary embolus – in this lawsuit he alleged the therapy was contra-indicated and that his prescribing urologist failed to monitor the therapy - the urologist denied fault and on causation argued the embolic event was related to the plaintiff's overall poor health including obesity, smoking and black lung - Defense verdict p. 5

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Medical Negligence - The plaintiff's renal artery was punctured by a nephrologist during a kidney biopsy – the plaintiff returned a few days later and was treated by an ER doctor who purportedly mismanaged the plaintiff's presentation which led to his death – the plaintiff settled with several defendants (including the initial nephrologist) then advancing to trial against the ER doctor alone - Defense verdict p. 7

Boyle County

Medical Negligence - The plaintiff presented to an ER in the midst of a slow-developing stroke – an ER doctor was blamed for failing to make the diagnosis (he thought the plaintiff had hypotension and a complicated migraine), the stroke event then becoming much worse – the doctor defended his diagnosis was reasonable and in any event, the stroke had already begun two days earlier and there the die was already cast - Defense verdict p. 8

Kenton County

Underinsured Motorist - The plaintiff (she underwent a cervical fusion) sought UIM coverage from a single carrier regarding two separate collisions – the floor of coverage was different as to each crash and making causation more complex, the plaintiff had been involved in two other wrecks - $100,000/$200,000 p. 9

Notable Indiana Verdict

Indianapolis, Indiana (Marion County)

Medical Negligence - A woman underwent cataract surgery on her right eye at the hands of an ophthalmologist; when the woman subsequently lost the eye due to a post-operative infection, she blamed the ophthalmologist for failing to treat the infection appropriately - Defense verdict p. 11

and discomfort as well as the risk of a future embolic event.

In this lawsuit Abshire alleged medical error by Swofford in prescribing testosterone therapy in the first place. His expert, Dr. Michael Hallet, Urology, New Albany, OH, believed that Swofford should have considered less risky treatments. Hallet also explained that Swofford's perfunctory exams (they were sometimes just for a minute or two) were inadequate to meaningfully evaluate the ongoing dosage and therapy. Those errors, the plaintiff's theory alleged, led to the pulmonary embolus and related complications.

Beyond a simple medical negligence theory, Abshire also advanced a medical battery claim. His medical bills were $90,423 and he sought $1,000,000 each for past and future suffering.

Swofford defended the case that his diagnosis was proper and that the use of testosterone therapy was indicated. He also claimed that he reasonably monitored Abshire's condition from 2015 until the embolic event on 4-2-15.

That then led to causation. Swofford blamed the embolus not on the testosterone therapy but instead on Abshire's several co-morbidities including obesity, smoking, COPD and black lung. The pulmonary embolus was then totally unrelated to Swofford's care. The defense expert was Dr. Edward Kim, Urology, Knoxville, TN.

This case was tried in Pikeville for four days. The jury's verdict was for Swofford by an 11-1 measure on both counts, negligence and informed consent. Judge Hall entered a final judgment in favor of Swofford on 1-31-23.

Case Documents:
Complaint
Plaintiff Expert Disclosure
Defense Expert Disclosure
Jury Instructions/Verdict
Final Judgment

Breach of Contract/Consumer Protection Act - The plaintiffs alleged their brand new 2019 Ford Explorer (they paid $59,732 for it) was defective from the get go and in this lawsuit they alleged a breach of contract, and moreover that the local dealer knew of the defects and the sale of the SUV represented a consumer protection violation

Palm v. Paducah Ford, 20-12
Plaintiff: Jonathan R. Oliver and Amy I. Peoples, *Olsen & Oliver*, Paducah
Defense: E. Frederick Straub, Jr. and Darren R. Smith, *Whitlow Roberts Houston & Straub*, Paducah
Verdict: $86,843 for plaintiff; Defense verdict on Consumer Protection Act claim
Court: **McCracken**
Judge: Timothy Kaltenbach
Date: 8-4-22

Jeff and Lori Palm were happily driving a 2017 Ford Explorer when they were contacted by a salesman with Paducah Ford. They'd bought the earlier vehicle from the same dealer. They were persuaded to look at a new 2019 Ford Explorer.

The Palms purchased the vehicle in April of 2019. They paid $59,732. It was brand new. Almost immediately they noticed defects in the vehicle that included not just the finishing but also the frame. There were numerous repairs but the Palms remained unhappy.

In March of 2020 the Palms sued Paducah Ford and alleged breach of contract. As the case came to trial they sought damages associated with the car's defects which included the purchase price and associated costs including interest on the loan and insurance. This was predicated on the vehicle then being returned to Paducah Ford.

Beyond a simple contract claim, the Palms also alleged a consumer protection violation. This was predicated on a theory Paducah Ford knew the vehicle was defective and still aggressively sought to sell it to the plaintiffs. The plaintiffs called two automotive experts, Carl Sandler and Caleb Swanson.

Paducah Ford denied the vehicle was defective and argued they appropriately addressed the plaintiffs' repair concerns. Their primary witness was their own auto technician. Paducah Ford also denied it had misled the Palms about the SUV's condition.

This case was tried for three days. The jury answered that there was a non-conformity in the vehicle that "substantially" impaired its value, Paducah Ford failed to correct it or didn't correct it in a timely fashion, and thus the plaintiffs were entitled to revoke the contract.

The jury awarded the Palms a total of $86,843 which included the purchase price and other related expenses. The jury conversely rejected the Consumer Protection Act count.

The Palms moved for JNOV relief on the consumer protection claim. Paducah Ford resisted that motion and moved for an award of attorney fees as the prevailing party on the consumer protection claim. Judge Kaltenbach denied both motions. The judgment has since been satisfied and it is expected that the Ford Explorer is to be returned to Paducah Ford.

Case Documents:
Defense Trial Memorandum
Plaintiff Trial Memorandum
Final Judgment
Order on JNOV/Attorney Fees Motion

voir dire and Judge Gill (from Russellville) came in to pinch hit and try the case. The jury returned a verdict for Wasson that he had not violated the ER standard of care. A defense judgment (signed by Judge Gill) was entered and the case is closed.

Case Documents:
Complaint
Plaintiff Expert Disclosure
Defense Expert Disclosure
Plaintiff Trial Memorandum
Defense Trial Memorandum

Defamation - A contract worker (she's a behavioral analyst) alleged the principal of the company for whom she saw clients suddenly terminated her contract and defamed her with allegations she'd committed ethical violations – a Louisville jury was persuaded and assessed punitives of $450,000

Mick v. Applied Behavioral Advancements, 17-6418
Plaintiff: Thomas R. Coffey, *Morgan Pottinger McGarvey*, Louisville
Defense: Paul R. Schurman, Jr. and MaKenzie Ackerman, *Schurman & Ackerman*, Louisville
Verdict: $560,000 for plaintiff
Court: **Jefferson**
Judge: Brian Edwards
Date: 6-10-22

Jennifer Mick is a behavioral analyst and she worked on a contract for several years with Applied Behavioral Advancements (ABA). Its principal is Christopher George. Mick would serve clients with severe development and behavioral issues that included cognitive therapy to improve their lives. Mick would provide the services and then ABA would bill Medicaid. After Medicaid paid those bills, ABA would pay Mick less its cut.

The trouble started in October of 2017. George asked Mick for documentation on her billing. Her father was in the hospital and she apparently didn't reply soon enough to George. He then terminated the contract with her.

Beyond that George made reports that she was committing Medicaid fraud. He made those report to state officials at the Cabinet for Health and Family Services as well as a state inspector general. George further reported Mick to several state boards that govern behavioral analysts. Beyond that reporting George also contacted prospective employers about Mick.

Mick was exhausted and frustrated and promptly filed this lawsuit against George and ABA. She flatly denied his allegation and really had no explanation (other than he acted in a fit of pique when she was slow to respond to his billing request) and then began a smear campaign. Her case was framed in several counts, (1) defamation, (2) outrage, (3) conversion (ABA had not paid her for all her work), and (4) breach of contract. She sought both compensatory and punitive damages.

George and ABA denied they had acted improperly. The defense was simple enough. At all times he was concerned about Mick's lack of documentation for her Medicaid-paid services and in fact, he felt he had a duty to report it

This case was tried for four days. Mick prevailed on defamation as to both defendants as well as on conversion and breach of contract. The jury rejected the outrage claim.

Moving to damages she took $75,000 for defamation, $25,000 for conversion and $10,000 more for the contract claim. Her compensatory damages were $110,000. The jury assessed $450,000 more in punitives which represented $300,000 as to George and $150,000 more against ABA. The verdict totaled $560,000 and a consistent judgment was entered. The defendants have appealed.

Case Documents:
Defense Trial Memorandum
Final Judgment

Medical Negligence - The plaintiff presented to an ER in the midst of a slow-developing stroke – an ER doctor was blamed for failing to make the diagnosis (he thought the plaintiff had hypotension and a complicated migraine), the stroke event then becoming much worse – the doctor argued that his diagnosis was reasonable and in any event, the stroke had already begun two days earlier and at that time the die was already cast

Napier v. Rodgers, 19-222
Plaintiff: Ephraim W. Helton and Brendan J. Shevlin, *Helton Law Office*, Danville
Defense: John F. Parker, Jr. and Colleen O. Davis, *Phillips Parker Orberson & Arnett*, Louisville
Verdict: Defense verdict on liability
Court: **Boyle**
Judge: Jeffrey Dotson
Date: 1-27-23

James Napier, then age 53 and the operator of the marina at Lake Herrington, reported to the ER at Ephraim McDowell Regional Medical Center on 6-5-18. He had a two-day history of a floater in his right eye. The floater had gone away two hours before the ER visit and at this time, he had facial numbness, high blood pressure and a headache.

Napier was evaluated by an ER physician, Dr. Gregory Rodgers. He ordered a CT scan. It was negative for a stroke. Rodgers ultimately diagnosed Napier with hypotension and a complicated migraine. Napier was discharged with instructions to see his primary care physician.

Some 32 hours later Napier reported to the ER at UK with numbness on his right side that had