

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.

Medical Negligence - An infant did not survive an emergency c-section – his estate and his parents blamed treating Ob-Gyns for ignoring a critical lab test that indicated the mother’s blood was RH-negative and in conflict with the infant’s blood – the defendants admitted the error, but denied conscious disregard – a Bowling Green jury awarded compensatory damages and punitives, but nothing for destruction – the trial court sent them to deliberate again and \$885,000 more was added to the verdict for destruction.

Thurman v. Lyons et al, 09-2159

Plaintiff: B. Todd Thompson, Millicent A. Tanner and Chad O. Propst,

Thompson Miller & Simpson, Louisville
Defense: David F. Broderick, *Broderick & Associates*, Bowling Green and Frank Hampton Moore, Jr., *Cole & Moore*, Bowling Green

Verdict: \$1,702,000 for plaintiff (1st verdict)
\$2,587,000 for plaintiff (2nd verdict)

Court: Warren, J. Grise,
4-22-11

Amanda Thurman became pregnant (with her third child) in January of 2009. The delivery of her first two children was uneventful. However following the second birth, Amanda learned she was RH negative – importantly she was now sensitized having received an RhoGAM injection. This triggered a note in her medical record to test for this during any future pregnancy.

This is because a mother that is RH negative carrying an RH positive baby is at grave risk for losing the child. The child’s own natural defenses in fighting the contrary red blood cells will overwhelm it. A condition known as fetal hydrops can develop which is a very severe form of anemia that can cause

death. Thus as the third pregnancy began for Amanda, it was critical that her RH negative status be monitored. If the condition is recognized in advance by appropriate testing, a referral can be made to a maternal fetal medicine specialist and blood transfusions can occur. There is a 90% survival rate.

Because of the widespread availability of RH testing and other interventions, it is very rare in the U.S. for a baby to be born with severe fetal hydrops. An expert in the case (Dr. Bruce Ferrara, Ob-Gyn, Minneapolis, MN) would explain this was similar to the care he saw mothers (who didn’t have access to a physician) receive while he was working in Cambodia.

At Amanda’s first pre-natal visit on 1-19-09, she was seen at the office of the Ob-Gyn firm, Hewitt Davis & Lyons. [Through her pregnancy, she was managed by Karen Lyons and Keith Hewitt.] At the first visit, a LabCorp report indicated that Amanda was RH negative and had been sensitized – the infant was in grave danger. [A later RhoGAM shot would be of no use to her because of the sensitization.]

However while the standard of care required that Amanda be regularly tested and referred to a maternal fetal medicine specialist, the defendants disregarded the test. [They would later explain first that the test wasn’t important, but by the time of trial, they shifted to an explanation that they had just overlooked the test.]

In any event, the pregnancy advanced and at 28 weeks, Amanda received a RhoGAM shot. It was of no use to her. Then into May and the first week of June, Amanda was complaining that she didn’t feel well – she just knew something was wrong. Hewitt and Lyons reassured her that it was normal pregnancy discomfort.

Finally on 6-15-09, a tearful Amanda could take the discomfort no more. An ultrasound was taken and it was immediately indicative that the infant (a boy named Blake) was suffering fetal hydrops. Hewitt called experts in Nashville and instructed Amanda to drive there herself. [She stopped in Franklin and her husband drove her the rest of the

way.]

Arriving at Baptist Hospital, an emergency c-section was performed. Blake’s condition was grave and a transfusion was planned for the next day. Blake died the next day before that happened. His death was caused by heart failure secondary to severe fetal hydrops. Because of Amanda’s unusual course in this case and her RH negative sensitization status, sterilization was recommended and performed.

This lawsuit followed, the plaintiffs alleging Hewitt and Lyons violated the standard of care in failing to respond to the initial LabCorp test indicating an RH conflict. It was also argued that failing to respond to this test was done consciously and punitive damages were merited. Experts for the plaintiff besides Ferrara were Dr. Kenneth Moise, a world leader in RH sensitivity, Baylor, University and Dr. Michael Ross, Maternal Fetal Medicine, UCLA.

If the verdict was for the Thurmans, they sought \$3,000,000 for Blake’s suffering and \$5,996 more for his medical and funeral bill. His destruction (valued by William Baldwin, Economist, Lexington) was limited in the instructions to \$3,558,251.

Amanda individually sought her medicals of \$30,880 plus \$1.5 million for pain and suffering. Both Amanda and Chris could take \$1.5 million each for their consortium loss. Finally the jury could assess punitive damages of no more than \$1,000,000 combined against both defendants.

As the case was ultimately tried and fault having been admitted, the defense focused on two themes, (1) diminishing the destruction damages, and (2) denying conscious disregard of knowledge of the positive anti-body test. On the first question, a defense economist, Robert Pulsinelli, Bowling Green, suggested the destruction was in the range from \$885,000 to \$1.9 million. [The \$885,000 number was Pulsinelli’s number for a high school graduate.]

To the second question, the defendants postured that the lab test was merely

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