

5956 - Medical Negligence - The plaintiff coded after his tracheotomy tube became dislodged – he suffered a massive brain injury during the code and died a week later when support was withdrawn – his estate alleged hospital nurses failed to properly monitor him during an asphyxiation event when he was just eleven feet from a nurse’s station – the plaintiff received a spoliation instruction regarding missing cardiac rhythm records from during the code – the plaintiff took substantial damages including the odd sum of \$1,529,583.34 for the wife’s consortium interest, the jury reaching its verdict by a quotient method

Reddington v. Jewish Hospital, 17-253

Plaintiff: Jack Conway, *Dolt Thompson Shepherd & Conway*, Louisville

Defense: B. Todd Thompson and Eleanor M.B. Davis, *Thompson Miller & Simpson*, Louisville

Verdict: \$3,913,178 for plaintiff

Court: **Jefferson**

Judge: Mitch Perry

Date: 3-10-22

Donald Reddington, age 65 and retired from LGE, went for an outpatient shoulder surgery on 4-29-16 to repair a damaged rotator cuff. Reddington had a history of heart disease, smoking, obesity and the prior placement of a cardiac stent. The surgery was a success.

However following the surgery there was difficulty extubating Reddington and he struggled to maintain his oxygen level. He was admitted to the ICU at Jewish Hospital and a tracheotomy was placed ten days later.

Reddington spent three weeks in the ICU at Jewish Hospital. While he still had a tracheotomy, there was proof that by 5-22-16 (a Sunday) he was improving and had visitors. His hospital room was eleven feet from a nurse’s station.

There was proof Reddington’s tracheotomy was dislodged – his nurse at the time was on break. Another nurse discovered him and he was turning blue. A code was called but there were delays as the right-sized tracheotomy was not yet available. Ultimately Reddington was resuscitated but in the interim he had sustained a massive brain injury. He died eight days later after support was withdrawn. He was survived by his wife, Karen.

The Reddington estate sued the hospital and alleged it erred by failing to properly monitor Reddington leading up to the code. There were then errors alleged in the response time to the code and then communication amongst hospital staff.

The plaintiff argued that a primary nurse removed pulse oximetry monitoring despite an order that it be in place – the treating physician however testified he did not order pulse oximetry. The lack of pulse oximetry deprived the hospital of response time when the tracheotomy was dislodged.

The heart of the plaintiff’s case was that Reddington should not have asphyxiated just 11 feet from a nurse’s station and that the entire event was preventable. It was further alleged that the hospital’s conduct was grossly negligent.

The estate also sought and received spoliation instruction regarding the cardiac rhythm strips during the code. The implication was that they were deleted as they were accessed the next day by hospital staff during the investigation but not preserved. The hospital denied any misconduct and explained the records automatically roll over every 48 hours. The plaintiff countered with hospital employees who testified the records should have been preserved in light of the code.

The plaintiff’s experts included Dr. Leslie Selbovitz, Hospital Management, Milford, MA, Elaine Bridge, Nurse Administration, Holliston, MA, Dr. Jesse Hall, Pulmonology, Chicago, IL Dr. Edward Feldman, Neurology, Springfield, MA and Carole Cheeley, RN, Petersburg, VA.

The hospital responded on the merits that after either Reddington pulled out his tracheotomy or it simply became dislodged, alarms went off and a code was properly administered. Despite that prompt response Reddington was unfortunately not responsive when revived. The hospital also denied its

conduct rose to a level meriting the imposition of punitive damages. Defense experts included Lynn Kelso, RN, Lexington and Dr. Gregory Schmidt, Pulmonology, Iowa City, IA.

This case had a notable pre-trial history. After the legislature amended KRS 311.377 to create a peer-review privilege, the hospital sought to exclude various review documents it produced prior to amendment of the statute, including a root-cause analysis, relating to Reddington's care. Judge Perry allowed the use of such documents for impeachment purposes.

The hospital sought a writ, which was ultimately granted by the Supreme Court in *Jewish Hosp. v. Perry*, 626 S.W.3d 509 (Ky. 2021). The hospital sought to exclude additional review documents before trial based on the Supreme Court's ruling and took the position that the policy changes recommended in the root cause were also subsequent remedial measures, but the trial court denied the motion. The estate referenced the documents and the policy changes that resulted during the trial.

This case was tried for nine days. The court's prefatory instructions described the spoliation charge and also explained that the nurses, respiratory therapists and telemetry staff were all employees of Jewish Hospital.

Then regarding the liability instruction, the defense was held to a two-pronged standard, (1) a duty to establish and follow procedures regulating the administration of care to patients including the plaintiff, and (2) a duty to exercise the ordinary care and skill of a reasonably prudent hospital acting through its employees. The jury found by a 9-3 count that Jewish Hospital had violated these several duties.

The jury then moved to compensatory damages. The estate took the medicals and funeral bill as claimed. Reddington's pain and suffering was \$1.6 million. His wife took the oddly specific sum of \$1,529,583.34 (it included cents) for her consortium interest. The compensatory damages totaled \$3,521,512.34. [**Ed. Note** - Why the odd number? The jury asked for a calculator during deliberations and apparently the jurors wrote down an amount for each category and the foreman then added the total and divided by twelve. It was a classic quotient verdict.]

The jury then determined the estate was entitled to punitive damages. It again assessed an odd number – the punitives were \$391,666. The combined verdict for the plaintiff was \$3,913,178. A consistent judgment was entered by the court.

The hospital has since filed a joint JNOV/New Trial motion. It argued among other things that the liability instruction introduced two duties, (1) to establish and follow procedures, AND, (2) to exercise ordinary care. The motion posited there was no common law duty to create and follow policies, and further that Kentucky favors barebones instructions. The estate replied any instruction error was not preserved because the hospital only generally objected to the court's instructions and failed to tender instructions consistent with *Palmore's* treatise. The motion was denied on 4-29-22. The hospital has since appealed.

Case Documents:

[Plaintiff Trial Memorandum](#)

[Defense Trial Memorandum](#)

[Jury Verdict](#)

[Defense JNOV/New Trial Motion](#)

[Plaintiff JNOV/New Trial Response](#)