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January 2011

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Medical Negligence - Because of a snafu at the hospital, the slide of the plaintiff's colon polyp was confused with that of another patient - the plaintiff then was erroneously advised he had colon cancer and subsequently, he had a large portion of his colon removed - only later did the plaintiff learn he didn't have cancer

Collins v. St. Thomas Hospital, 09-4151

Plaintiff: Steven E. Anderson and Sara F. Reynolds, *Walker Tipps & Malone*, Nashville

Defense: C. Bennett Harrison, Jr. and Brian W. Holmes, *Cornelius & Collins*, Nashville

Verdict: \$1,855,000 for plaintiff

Court: **Davidson**

Judge: Thomas W. Brothers
10-14-10

Tony Collins, then age 37, had a family history of colon cancer. He made a decision to undergo an early colonoscopy. It was performed on 11-28-05 by Dr. George Wright. During the colonoscopy, Wright removed a polyp from Collins's colon. A sample of the polyp was sent to St. Thomas Hospital

for a pathology review. [Collins himself never set foot inside St. Thomas.]

The slide was reviewed at St. Thomas and the news was bad - Collins had cancer. Several weeks later he underwent surgery to remove some six inches to a foot of his colon. Following that surgery, Collins had a bowel obstruction and other complications. While the cancer was ostensibly cured, Collins continued to complain of constipation and other problems related to the surgical intervention.

Collins would learn in April of 2007 that he never had cancer. St. Thomas had confused its slides and read another patient's biopsy (a female patient) as if it belonged to Collins.

Collins sued the hospital and alleged error by the hospital in mixing up the slides. The hospital conceded fault. Thus the matter advanced on damages only. Collins developed as above that while mostly healed, beyond the unnecessary surgery, he continues to complain of chronic constipation. The plaintiff's wife (Melissa) also sought consortium damages.

The hospital defended as well as it could and focused on the plaintiff's good recovery. Within three months of the surgery, he was back to his job as a bus driver. St. Thomas also introduced proof that the plaintiff's ongoing constipation is related to other causes.

Proof was introduced over four days. As the case was deliberated on damages only, Collins took disfigurement of \$5,000 but nothing for impairment. Loss of enjoyment of life in the past was \$500,000 – he took nothing for in the future. The jury added \$1,000,000 for past suffering and \$100,000 more for that in the future. His wife took \$250,000 more for consortium.

The verdict totaled \$1,855,000. A consistent judgment was entered. The hospital has since moved to remit the verdict arguing the verdict was excessive. The motion is pending.

Postal Negligence - The publisher of a gay erotica magazine sent an explicit postal solicitation to the plaintiff (a former *Big Brother 2* contestant) – the plaintiff's daughter opened the solicitation and was shocked to see the explicit sexual material – the father and daughter (age 12) sued the publisher and alleged negligence and outrage regarding the solicitation

Blackwelder v. Speciality Publications, 3:07-486

Plaintiff: David A. Burkhalter, II, *Burkhalter Rayson & Associates*, Knoxville

Defense: Richard L. Hollow, *Hollow & Hollow*, Knoxville

Verdict: Defense verdict

Federal: **Knoxville**

Judge: Thomas A. Varlan
12-15-10

Madison Blackwelder, then age 12, lived with her father, Kent Blackwelder. [Blackwelder was a minor celebrity of sorts. Several years earlier in 2001, he had appeared on *Big Brother II* as the so-called token conservative. He was voted off mid-season.] In any event, the mail came and Madison retrieved it.

In the mail was a postal solicitation in a sealed white envelope. It promised a

free DVD. Madison, a self-described curious child, thought the DVD might be from Disney. She opened it and saw a multi-color brochure. The girl was shocked.

The solicitation had been mailed from the California-based Speciality Publications and it was not in the genre of Disney. It was gay erotica, featuring explicit penis images and an offer to subscribe to a magazine known as "Freshman." The proof was that the chaste Madison reviewed these images for five seconds. She was horrified. Her father was too when he learned what had happened.

This litigation followed, the Blackwelders suing Speciality Publications and alleging both negligence and outrage in sending the solicitation. Particularly, the plaintiffs cited that sending this explicit and unwanted solicitation violated postal regulations. If the plaintiffs prevailed, they sought both compensatory and punitive damages.

Speciality Publications defended the lawsuit and argued that Blackwelder received the solicitation because he had signed up and provided his address as a part of an online contest to win a gay-themed vacation. [Blackwelder vehemently denied any such thing.] The publisher countered that perhaps as part of a prank, Blackwelder's prior co-workers had entered him in the contest – that prior work relationship had been contentious, Blackwelder alleging reverse race discrimination.

In any event, from the perspective of Speciality Publication, it appropriately received Blackwelder's address and thus was entitled (and constitutionally protected) to utilize the postal system to solicit customers. Regarding the solicitation itself, the defense also noted that it was sealed and contained a warning label – it suggested the duty to police a family's mail rested with the family. Speciality Publications also sought to implicate (for purposes of comparative fault), not just the plaintiffs, but also five other non-parties involved in the printing and distribution of the piece.

A federal jury in Knoxville decided

the case for Speciality Publications on both negligence and outrage, the Blackwelder plaintiffs taking nothing. A defense judgment was entered.

Airport Security Negligence - After an airport passenger mouthed off to a TSA agent at the Memphis airport, she was roughly arrested by airport policemen

Colon v. Memphis-Shelby County Airport, 2:07-2256

Plaintiff: Brett B. Stein, Robert Chamoun and Larry A. Diamond, Memphis

Defense: David Feigelson and Andrea L. Murff, *Petkoff & Feigelson*, Memphis

Verdict: Defense verdict

Federal: **Memphis**

Judge: Bernice B. Donald
10-28-10

Donna Colon was flying on 4-17-06 from the airport in Memphis to Chicago. As she came to a TSA checkpoint, she twice set off a metal detector. She was advised that she would need additional screening.

As the screening continued, Colon advised the TSA agent that the entire process was stupid. The agent explained that if she didn't like it, she didn't have to fly. Colon told her to continue. The search was completed and Colon had no contraband.

Following the search, there was a fact dispute regarding what happened next. Colon recalled that she was told she had better shut up or she wouldn't be allowed to board. Airport police were called and they came in the form of Robert Andrews, Kendrick Jones and Brian Jenkins.

Colon was roughly arrested and led away in handcuffs. She has since treated for wrist and shoulder pain related to the arrest. The police brought disorderly conduct charges against Colon. They were later dismissed.

Colon sued the airport and alleged a variety of tort counts, including false arrest, false imprisonment and negligence. An additional claim was presented against the airport that alleged it had negligently trained its officer. Quite simply, there was no reason to roughly arrest Colon when she clearly did not represent a threat.

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