

The Tennessee Jury Verdict Reporter

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May 2011

Statewide Jury Verdict Coverage

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Civil Jury Verdicts

Timely coverage of civil jury verdicts in Tennessee including court, division, presiding judge, parties, case number, attorneys and results.

Preschool Negligence - A toddler at a church preschool suffered fatal injuries after choking on a peach slice – his estate sued the preschool and alleged negligence by it in serving a piece that was too large and failing to properly supervise the food service

Fond v. Lambuth Memorial United

Methodist Preschool, 09-123

Plaintiff: R. Sadler Bailey and Wilton

H. McNeely, *Bailey & Greer*, Memphis

and Stephen C. Brooks, Jackson

Defense: Floyd S. Flippin, *Flippin*

Atkins & Crider, Humboldt for Lambuth

Preschool

John Barry Burgess and Marc

A. Sorin, *McNabb Bragorgos &*

Burgess, Memphis and John E. Hall, Jr.,

Hall Booth Smith & Slover, Nashville for

Nutrition Services

Verdict: \$1,500,000 for plaintiff

against Lambuth Preschool only;

Defense verdict for Nutrition Services

Court: **Madison**

Judge: Roger A. Page

Date: 3-28-11

Ford Bond, then 22-months old, was in the care of the Lambuth Memorial Preschool on 12-8-08. The preschool is operated by its affiliated United Methodist Church. The local church is affiliated with the larger Memphis Conference of the United Methodist Church.

Nutrition Services, a company operated by Shirley Adams, provided lunches to the preschool – that included two snacks for four dollars a day. The preschool event would then simply serve the pre-prepared meals.

This day little Ford was served a snack of peach slices. [The canned peaches were placed in bowls by Nutrition Services and served directly to the students.] Suddenly Ford began to choke on a peach slice. He quickly collapsed. EMS was called and a paramedic

removed the peach with forceps. He was without oxygen for approximately 12 minutes. Ford was rushed to a local hospital and then transferred to Vanderbilt. Ford had suffered a hypoxic brain injury and he died three days later when life support was removed.

His mother, LaFonda, pursued this lawsuit on behalf of Ford's estate against the preschool, the Memphis Conference and Nutrition Services. She was critical of the preschool for failing to adequately supervise the food service. The theory was two-part, (1) the peach slices were too large for such young students, and (2) there were not enough teachers for the number of children present. The boy's economic loss was developed by a vocational expert from Louisville, KY, Anthony Gamboa – it was valued at \$1.9 million.

Nutrition Services too was blamed for providing pre-prepared portions of peach slices that were too large. The estate settled before trial with the third defendant, the Memphis Conference, just before trial for \$175,000. It was represented by Warren D. McWhirter, *McWhirter Wyatt & Elder*, Memphis.

Nutrition Services defended that it simply provided the pre-prepared meals in bulk and had no role in the service or supervision of the children. Its expert in food science was Bonnie Berube, who noted such a choking event on a peach was extremely rare. The preschool by contrast focused that it had no role in preparing the food, Nutrition Services being responsible for the portion size.

This Jackson jury deliberated a total of eight hours. It returned a mixed verdict. While finding Lambuth Methodist at fault, Nutrition Services was exonerated.

[There was no apportionment then.]

Turning to damages, the estate took \$1.1 million in conscious pain and suffering plus \$400,000 more in pecuniary loss.

judgment closed the case.

Auto Negligence - A disputed red light case was resolved for the defendant on liability

Daniel v. Hood, 11712

Plaintiff: Gregory M. O'Neal,
Winchester

Defense: Scott A. Rhodes, *White & Rhodes*, Brentwood

Verdict: Defense verdict on liability

Court: **Bedford**

Judge: Lee Russell

Date: 11-15-10

There was a disputed red light case in Shelbyville on 11-21-07. It occurred at the intersection of Main and Madison Streets. The plaintiff, Penny Daniel, then age 47, alleged that she had a green turn arrow – as she entered the intersection, she was struck by the oncoming Jimmy Hood. Hood for his part countered that he had a green light.

However it happened, there was an impact and Daniel was hurt. She has since treated for radiating low-back pain that she linked to the aggravation of pre-existing conditions. Her medical bills were approximately \$16,000.

In this lawsuit, Daniel sought damages from Hood. He defended on fault as noted above and also diminished the claimed injury.

The jury's verdict was for Hood on liability and Daniel took nothing. A consistent judgment followed. Daniel then moved for a new trial and argued the result was contrary to the evidence. The motion was denied.

Auto Negligence - The plaintiff prevailed in a disputed red light crash case

Shepherd v. Jones, CT-004170-08

Plaintiff: Matthew V. Porter, *Porter & Strange*, Memphis

Defense: Nicole M. Grida, *Leitner Williams Dooley & Napolitan*, Memphis

Verdict: \$20,000 for plaintiff less 45% comparative fault

Court: **Shelby**

Judge: Jerry Stokes

Date: 11-16-10

Lavonzelle Shepherd, then age 54, traveled on Frayser Boulevard and

Overton Crossing on 7-4-08. As Shepherd proceeded through the intersection with a green turn arrow, she was struck by a teen driver, Ashley Jones.

Shepherd, who works as a medical clerk, has since treated for soft-tissue symptoms with a chiropractor, Warren Cassreil. Her incurred medical bills were approximately \$6,000. In this lawsuit, Shepherd sought damages from Jones. Jones defended on fault that he had a green light and that it was the plaintiff that crashed into him.

The jury's verdict was mixed on fault. It was assessed 55% to the defendant, the remainder to Shepherd. Then to damages, Shepherd took a general award of \$20,000. A judgment less comparative fault for \$11,000 was entered for the plaintiff.

Medical Negligence - In a case alleging neurosurgery error, a Nashville jury deliberated for ten hours before reporting it was stuck at 7-5 and could not reach a verdict

Bearden v. Lanford, 09-2281

Plaintiff: Joe Bednarz, Sr., *Bednarz & Bednarz*, Nashville

Defense: C.J. Gideon and Brian Cummings, *Gideon Cooper & Essary*, Nashville

Verdict: Mistrial

Court: **Davidson**

Judge: Joe P. Binkley, Jr.

Date: 1-21-11

Cynthia Bearden treated with Dr. Gregory Lanford, Neurosurgery, for radiating neck pain. After a course of conservative care, Bearden consented to a discectomy/fusion surgery. It was performed by Lanford on 7-7-06 at Baptist North Tower Surgical Hospital.

During the surgery, the dura of Bearden's spinal cord was injured by Lanford. Bearden was not sure if the injury was caused by a needle or a blade, but all of plaintiff's experts believed Lanford had penetrated the dura and that this injury represented a deviation from the standard of care.

In this lawsuit, Bearden sued Lanford and alleged error in performing the surgery. She has since been left with a

significant injury. Lanford denied that Bearden sustained a penetrating injury of the dura – he linked Bearden's condition to an embolic stroke.

This case was tried for over ten days and it went to a jury at 1:20 in the afternoon. The jury then deliberated until nine in the evening. It sent a note to the court indicating it was divided 7-5. [The record does not indicate who had seven and who had five.]

The jury did indicate in a note that it was unable to agree on the following matters, (1) if reaching the spinal cord was below the standard of care, (2) if Lanford was negligent, and (3) if Lanford had exclusive control of the instrumentality.

The court recharged the jury and they continued to deliberate until 10:30. Still no verdict could be reached and Judge Binkley ordered a mistrial. The case has been set for retrial in April of 2012.

Auto Negligence - While the plaintiff prevailed in a disputed stop sign crash, the award was much less than the incurred medicals

King v. Rhymer, 07-681

Plaintiff: C. Mark Warren, *Warren & Griffin*, Chattanooga

Defense: Douglas M. Campbell, *Campbell & Campbell*, Chattanooga

Verdict: \$628 for plaintiff less 50% comparative fault

Court: **Hamilton**

Judge: W. Neil Thomas, III

Date: 7-21-10

Winona King was involved in a stop sign crash on 9-9-02. It occurred at the intersection of Jersey Pike and Tricia Drive. As King proceeded on Jersey Pike, Sherry Rhymer pulled from the inferior Tricia Drive and into her path. A moderate collision resulted.

King was treated that day at the ER and released. She has since followed with a course of physical therapy for soft-tissue symptoms. Her medical bills were \$3,810 and in this lawsuit, she sought damages from Rhymer. Her husband presented a derivative consortium claim.

Rhymer defended on liability and sought to apportion fault to two non-parties, the City of Chattanooga and the

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