

The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

July 2012

Statewide Jury Verdict Coverage

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Medical Negligence - An anesthesiologist was blamed for mismanaging a fatal infection in a patient who had undergone a kidney stone surgery – the estate of the patient, who had been a successful real estate developer, sought some \$40 million in economic loss at trial
Neel v. Gairhan, CT-001653-08
Plaintiff: Gayle Malone, Jr. and Charles I. Malone, *Walker Tipps & Malone*, Nashville and Steven E. Anderson, *Anderson & Reynolds*, Nashville

Defense: Katherine L. Frazier, *Domico Kyle*, Memphis and William H. Haltom, Jr., *Thomason Hendrix Harvey Johnson & Mitchell*, Memphis

Verdict: \$20,000,000 for plaintiff assessed 70% to the defendant

Court: **Shelby**

Judge: Jerry Stokes

Date: 3-29-12

Mark Neel, age 45 and a Collierville real estate developer who was described as healthy and active, suffered abdominal pains on his birthday on 5-16-07. He suspected a kidney stone. Neel

presented to a doctor the next day and was referred to the Conrad/Pearson Clinic and a urologist, Dr. David Hickey. Hickey diagnosed kidney stones and a surgery was set for the next day.

Before that surgery could be performed, Neel reported severe pain. He was also turning blue. He was taken to the emergency room and there was some concern he had suffered a seizure. Neel improved and the surgery went on the next day at the clinic. Dr. Charles Gairhan provided anesthesia during Hickey's operation. During the surgery, Hickey perforated Neel's ureter.

As Neel was already suffering an infection, infected urine poured into his body. In the post-operative period, Neel began to show signs of decline. He was finally transferred from the surgical center at Conrad/Pearson to Methodist Germantown. His decline continued as infection and sepsis consumed his body. He suffered a cardiopulmonary arrest – while resuscitated, Neel suffered a brain death. Life support was withdrawn the next day and Neel died. He was survived by his wife of 23 years and three minor children.

remainder to Gabriela. That ended the deliberations and the plaintiff took nothing.

Medical Negligence - A successful record producer alleged he was improperly detained against his will after reporting to the ER with symptoms of depression – particularly the producer blamed the ER doctor on duty for not personally examining him before seeking a commitment order – the doctor defended and raised a fact dispute, recalling she did examine the plaintiff

Buckingham v. Vanderbilt Hospital, 10-2302

Plaintiff: F. Dulin Kelly and Clinton L. Kelly, *Kelly Kelly & Allman*, Hendersonville

Defense: C.J. Gideon and Chris J. Tardio, *Gideon Cooper & Essary*, Nashville

Verdict: Defense verdict

Court: **Davidson**

Judge: Thomas W. Brothers

Date: 5-22-12

Stephen Buckingham, then age 60 and a long-time Nashville record producer with a history of 27 number one records by numerous artists, presented to the ER at Vanderbilt Hospital on 8-15-09. His ex-wife (Andy) had received communications from Buckingham that suggested suicidal ideations. The ex-wife came to his home and called 911. Upon his arrival at the ER, Buckingham would recall that he was depressed, but not suicidal.

At the Vanderbilt emergency room, he was evaluated by an ER doctor, Nicole McCoin. McCoin believed that based on the totality of the circumstances (including those that led Buckingham to the hospital) she could not just send him home. There were simply too many risk factors for suicide. McCoin signed off a Certificate of Need for Involuntary Commitment. This led to Buckingham being held at the hospital for three days.

Buckingham was mortified at the commitment and denied that he had ever been suicidal. In this lawsuit he alleged both false imprisonment and medical negligence by McCoin in committing

him. He focused that prior to the commitment, she never personally examined him and asked him questions in a face-to-face manner.

Buckingham's liability expert, Dr. Bruce Janiak, ER, Augusta, GA, explained that commitment is a drastic measure – he suggested there were other options, there being proof the ex-wife would have agreed to stay with Buckingham upon his release. Buckingham's damages were developed in part by a treating psychiatrist, Dr. Kirby Pate, Nashville, who identified that the plaintiff suffered from post-traumatic stress related to the commitment.

Vanderbilt defended the care of its employee (McCoin) and asserted as above that based on the totality of the circumstances, she acted in good faith in seeking commitment. A fact dispute was also developed – while Buckingham said McCoin never examined him personally, McCoin explained that she had. Defense experts were Dr. Brian McMurray, ER, Nashville, Dr. Michael Baron, Psychiatry, Atlanta, GA.

The jury first answered for Buckingham that he was detained against his will. The jury further found that McCoin was privileged and met statutory requirements in committing Buckingham. This was an affirmative defense that defeated Buckingham's false imprisonment count. The jury continued and also answered "no" to a query that asked if McCoin violated the medical standard of care in seeking commitment. A defense judgment was entered.

Auto Negligence - The plaintiff was found 51% at fault in a right of way turning crash case and thus took no damages

Cantrell v. Campbell, L-17198

Plaintiff: David M. Boyd, *The Boyd Firm*, Knoxville

Defense: Jennifer P. Craig, Knoxville

Verdict: Defense verdict

Court: **Blount**

Judge: David Duggan

Date: 5-10-12

The plaintiff, James Cantrell, made a left turn from the median of Highway

411 in Maryville and into a gas station. As Cantrell made his turn, he was struck by the oncoming Billy Campbell. That impact pushed Cantrell into another vehicle pulling from the gas station.

Cantrell has since treated for soft-tissue back pain. He followed with Dr. Jonathan Degman, Orthopedics, incurring medicals of \$6,808. In this lawsuit Cantrell sought damages from Campbell. Cantrell would explain he had never seen Campbell coming, suggesting the defendant was traveling at a high rate of speed. The plaintiff's accident expert was Bobby Jones.

Campbell defended the case simply enough – Cantrell had pulled in front of him. A defense accident expert who buttressed this version was David Huskey.

This jury deliberated three hours. The verdict was mixed on fault. It was assessed 51% to Cantrell and the remainder to Campbell – that finding was fatal to Cantrell's claim and he took nothing. A defense judgment was entered. [Interestingly, Campbell had also maintained a personal injury claim against the plaintiff – it settled without the benefit of a lawsuit.]

Auto Negligence - In this disputed red light case, the jury assessed 50% of the fault to the plaintiff – the finding was fatal to the claim for damages

Dunigan v. Lamon, CT-001631-11

Plaintiff: Jennifer M. Bermel, *Morgan & Morgan*, Memphis

Defense: Melanie M. Stewart, *Stewart Law Group*, Germantown

Verdict: Defense verdict

Court: **Shelby**

Judge: James F. Russell

Date: 4-19-12

Margarett Dunigan, then age 53, was involved in a red light case in Memphis on 6-4-05. It occurred at the intersection of Rhodes Avenue and Robin Hood Lane. Dunigan blamed Kristen Lamon for running the light, the collision spinning her vehicle around 180 degrees.

Dunigan was taken to the ER with soft-tissue symptoms, facial cuts and chest wall bruising. It was not until several days later that a pelvic fracture was identified – Dunigan had first thought it

If you make contact with someone, does that automatically declare negligence at fault? There was no answer to the second question. [It was an interesting question as fault was no issue.]

The jury returned with a verdict and it was for Davis. She took a general award of \$301. A consistent judgment was entered.

Davis subsequently moved for a new trial and/or additur and argued the award was inadequate in light of her proven medical bills. [The award was only equal to her initial medical clinic bills.] The motion was denied and the judgment has been satisfied.

Auto Negligence - The plaintiff complained of vertigo after a right of way collision – the plaintiff's awarded non-economic damages were less than the medicals

Volk v. Cobb, 10-2023

Plaintiff: William D. Leader, Jr.,
Leader Bulso & Nolan, Nashville

Defense: William G. McCaskill, Jr.,
LeVan Sprader Patton & McCaskill,
Nashville

Verdict: \$13,682 for plaintiff

Court: **Davidson**

Judge: Thomas W. Brothers

Date: 4-17-12

There was a right of way crash in Nashville on 12-17-09. The plaintiff, Janice Volk, alleged that Evan Cobb turned left in front of her at the intersection of Harding Pike and Kenner Avenue. It was a moderate collision. Cobb admitted fault.

Volk was taken from the scene to the ER at St. Thomas Hospital with soft-tissue symptoms and an apparent closed head injury. She has continued to suffer from benign positional vertigo that is related to an inner ear injury. Her treating ENT, Dr. Mitchell Schwaber, identified the injury and that it was trauma-related – Schwaber also explained it is the sort of injury that can't be faked.

In this lawsuit Volk sought damages from Cobb. He defended and relied on an IME expert, Dr. Martin Wagner, Neurology, Nashville. Wagner believed that Volk had suffered just a temporary

whiplash injury. He linked her dizzy symptoms not to this collision, but instead to an unrelated case of Meniere's Disease.

The case was tried on damages only, the jury hearing proof for two days and then deliberating two hours. Volk took medicals of \$8,682, but nothing for future care. While her past pain and suffering was \$5,000, the jury rejected any in the future as well as impairment and loss of enjoyment of life. The verdict for Volk totaled \$13,682. A consistent judgment was entered.

Volk has since moved for a new trial and/or additur, arguing the award was inadequate. Cobb has replied that the matter was for the jury to decide. The motion was pending when the record was reviewed.

A Notable Arkansas Verdict

Truck Negligence - An elderly woman was killed in an icy interstate crash in West Memphis when she lost control and was struck by a tractor-trailer

Sims v. Willis Shaw Transport, 04-376

Plaintiff: Ronald Wilson, *Wilson & Associates*, West Memphis, AR and
Sheila F. Campbell, Little Rock, R

Defense: Richard E. Glassman and
Edwin E. Wallis, III, *Glassman Edwards*

Wyatt Tuttle & Cox, Memphis, TN

Verdict: Defense verdict on liability

Court: **Marion, Arkansas
Crittenden Circuit Court**

Judge: Cindy Thyer

Date: 4-29-11

It was in the middle of the night on 2-26-03 and Ruby Sims, age 68, traveled on I-55 in West Memphis. A wet sleet was falling. As Sims entered the elevated portion of a concrete bridge, she encountered icy conditions.

At the same time, a Robert Boyer, a trucker for Willis Shaw Transport, was operating a tractor-trailer. He had just reentered the interstate after stopping at a weigh station. It was his recollection that it was raining – he did not see any ice on the road when he first exited the weigh station. Suddenly though as he

came to the bridge, the ice was present. A second trucker, Charles Harris, working for Navajo Express, was also proceeding on the bridge.

Sims lost control on the bridge when she hit the ice and spun into a retaining wall. She was then clipped by Casey Dyson was operating a sedan. Sims's vehicle rotated and she was broadsided by the Navajo Express driver. At nearly the same time, she was hit by Boyer. The combination of these collisions, even if not clear which one exactly, resulted in Sims's death.

In this lawsuit prosecuted by her estate, it first sought damages from Navajo Express. Navajo Express settled and paid \$750,000. The jury would know there was a settlement but not the amount.

[Dyson was not sued.]

The estate also targeted Boyer and his employer regarding the crash – the theory implicated his lack of care in failing to take caution for the icy conditions. An expert for the estate, Frank Peretti, Pathology, Little Rock (he did the autopsy) spoke to the issue of what killed Sims – it was his opinion that she was alive when her vehicle was struck by the truckers.

Willis Shaw Transport defended and denied fault – it noted that Boyer came to the bridge, there was no reason for him to suspect the conditions were icy. This was confirmed by an independent witness (another trucker) who witnessed the crash. The defense also developed a theme that it was impossible to say which of the four impacts (the wall, Dyson, Navajo Express and Boyer's truck) had resulted in her death.

This case was tried for a week in Marion. The jury answered that noone was at fault, including the decedent, the defendant, the non-party Navajo Express driver and the final non-party (not sued) Dyson. Thus damages were not reached. A defense judgment closed the case.

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A Notable Mississippi Verdict

Childcare Negligence - A five-month old infant was dropped off at daycare in the morning – when he was picked up in the afternoon, it was discovered that his femur was broken – the boy’s mother blamed the injury on neglect by childcare staff – the daycare defended that there was no specific proof how the boy was injured, the plaintiff countering (with a forensic pathologist) that these sorts of injuries do not occur without neglect or abuse

Zelaya v. Creative Kids of Clinton,
10-438

Plaintiff: Matt Newman and Don H.

Evans, *Don Evans, PLLC*, Jackson

Defense: Wade G. Manor and James L. Banks, IV, *Scott Sullivan Streetman & Fox*, Jackson

Verdict: \$130,400 for plaintiff

Court: **Jackson, Mississippi
Hinds Circuit Court**

Judge: Tomie L. Green

Date: 5-16-12

Emory Zelaya, then five months old, was dropped off at the Creative Kids of Clinton daycare on the morning of 3-25-10 by his mother. During the course of the day, Emory remained in the exclusive custody and control of the daycare. He could not sit up, crawl or walk by himself.

When his mother picked Emory up in the afternoon, the boy showed signs of distress. Childcare staff reassured the mother that they had no idea what was wrong – little Emory was hysterical. Creative Kids staff thought he might be hungry. His mother took him to the emergency room when she noticed his leg was swollen

It was learned at the hospital that Emory had suffered a broken femur. His treating orthopedist, Dr. Lawrence Haber, Jackson, would describe the injury as a spiral fracture. A second doctor, Scott Benton, Forensic Pathology, Jackson, would opine the injury was a function of abuse or neglect – infants don’t just break their legs.

In this lawsuit (prosecuted by his mother), Emory sought damages from the

daycare. His theory was simple – but for the neglect (and/or abuse by the daycare), he would not have sustained injury. A child care administration expert for the plaintiff was Elizabeth Dickerhoof, West Palm Beach, FL.

The daycare defended and denied fault – it focused that there was no proof of negligence beyond speculation. Zelaya countered that infants (that can’t hurt themselves) don’t sustain these sorts of injuries in the absence of abuse or neglect. Damages were also diminished, there being proof that the boy was well-healed within six weeks.

The jury’s verdict was for the plaintiff and he took medicals of \$5,400. His pain and suffering was valued at \$125,000. The verdict totaled \$130,400. A consistent judgment followed.

Creative Kids has since moved for JNOV relief. It focused on two arguments, (1) there was no proof it was negligent beyond speculation, and (2) the damages were excessive, little Emory having fully recovered. Judge Green denied the motion.

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Trial Judge _____ Date Verdict _____

Verdict _____

For plaintiff _____ (Name, City, Firm)

For defense _____ (Name, City, Firm)

Fact Summary _____

Injury/Damages _____

Submitted by: _____

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