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In This Issue

* * *Order the 2018 TJVR Year in Review * * *

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Premises Liability - The plaintiff slipped on a wet floor at Wal-Mart – while the spot was identified by a store associate an hour before the fall, the plaintiff alleged the spill was not cleaned up

Choate v. Wal-Mart, 3:17-534

Plaintiff: Steven E. Marshall, Sevierville

Defense: Gregory W. Callaway, *Howell & Fisher*, Nashville

Verdict: Defense verdict on liability

Federal: **Knoxville**

Judge: Thomas W. Phillips

Date: 6-19-19

Christel Choate was a patron at the Chapman Highway Wal-Mart in Knoxville. She walked into the store and had no idea what had happened an hour before. As she traversed the store, she slipped in a clear liquid spill.

Choate landed hard and sustained an L5-S1 disc injury as well as an annular disc tear. She went through a course of physical therapy as well as epidural injections. Her medical bills were $14,336.

What happened an hour before? There was a spill on the floor and a store associate (Shirley) saw it happen. The spill was not immediately cleaned

up. Instead a shopping cart was placed over the spill – it was moved a short time later. Choate then arrived and fell in the spill, there being no warning of the danger. Interestingly the entire course of events, from the time of the spill to Choate's fall was captured on surveillance video. The jury would see it all.

Choate sued Wal-Mart in state court (Wal-Mart later removed to federal court) and alleged negligence by the retailer in failing to clean up the spill. The plaintiff argued that Wal-Mart should have first simply cleaned up the spill and moreover, it couldn't simply leave the spill unguarded.

Wal-Mart defended and pointed to a different version of what happened. It cited that Shirley did clean up the spill with a mop and then used towels to dry the area. She then placed a cart over the area and installed a warning cone. The cart and cone were removed before Choate fell but only because the area of the spill had dried. The defense also argued that in any event, Choate was more than 50% at fault for the fall and thus her claim was barred by Tennessee's tort scheme.

Choate countered this version and pointed to the video. While Wal-Mart claimed the spill was clean and dry, the video clearly showed a wet area indicating the spill. Wal-Mart replied that the "bright spot" on the floor did not reflect the floor was wet but rather that it was literally a reflection of light. However it all happened, dry or wet, reflection or not, the jury could observe the video for themselves.

This case was tried for two days in Knoxville. The jury was asked if Choate proved by a preponderance of the evidence that Wal-Mart was at fault for her slip and fall. The jury answered "no" and then didn't reach Choate's duties, apportionment or damages. A defense judgment was entered.

Case Documents:
The Pretrial Order
The Jury Verdict

First Amendment - A MAGA-loving 911 operator celebrated President Trump's election victory with an election night Facebook post that even "niggaz and latinos" voted for Trump in addition to "Rednecks" – her co-workers didn't appreciate the racial slur and the 911 operator was fired – she sued the government and alleged the firing represented retaliation for her protected speech – the government countered that she was let go not because of the content itself, but rather the use of a slur

Bennett v. Metro Government, 3:17-630
Plaintiff: Larry L. Crain and Emily A. Castro, *Crain Schuette*, Brentwood
Defense: Allison L. Bussell and Paul J. Campbell, II, *Metropolitan Legal Department*, Nashville
Verdict: $25,250 for plaintiff
Federal: **Nashville**
Judge: Eli J. Richardson
Date: 6-25-19

Danyelle Bennett worked for many years as a 911 operator for Metro Government in Nashville. Bennett took a liking to then-candidate Donald Trump. In early 2016 on "Superhero Day" at work, she wore a Trump sweatshirt and a bright red "Make America Great Again" hat. Some co-workers were uncomfortable and she was asked to change.

Fast forwarding to election night in 2016, Bennett's candidate prevailed. She was elated. Bennett promptly posted a "red-blue" electoral map reflecting Trump's victory. A person unknown to Bennett commented on Facebook that "Rednecks" voted for Trump, while "niggaz and latinos" voted for Hillary.

A still ebullient Bennett engaged the commenter and wrote in reply that she was thankful to God that there were so many "America loving rednecks." She concluded her political analysis of the election that "niggaz and latinos" voted for Trump too. Then to emphasize her point, Bennett used multiple train emojis (symbolizing the Trump Train) punctuated with both a prayer and United States flag emoji.

Bennett's friends at work at the Emergency Communications Center were also her Facebook friends. They were not happy about her Facebook post and particularly her use of the n-word. While Bennett took the post down within 12 hours, the word was out. Bigwigs at the Metro Government had meetings and made a decision to fire Bennett because of her use of the racial slur.

Bennett sued Metro Government


Mohamed Aboulmaouahib
Redneck states voter for Trump , niggaz and latinos states votre for hillary

(*Id.* at 82). Plaintiff responded:

Danyelle Elaine Bennett
Thank god we have more America loving rednecks. Red spread across all America. Even niggaz and latinos voted for trump too!

The Bennett Facebook Post

and alleged the firing represented First Amendment retaliation. Her case was simple enough. She engaged in political speech (punctuated by her n-word remark) and in response she suffered an adverse employment action (the firing). If Bennett prevailed at trial, she sought back pay as well as damages for her humiliation and embarrassment.

Metro Government denied that Bennett's Facebook post represented political speech in the first place. It also countered that even if it was, the firing was not because of the political element of that speech (her support of candidate Trump) but instead her use of a racial slur. This was described as impairing discipline at the Emergency Communications Center and otherwise interfering with orderly operations. Bennett replied that it was the political statement that motivated her firing, noting the action was presaged by the early 2016 action when she was made to remove her red MAGA hat.

Judge Richardson evaluated the case under the U.S. Supreme Court progeny of *Pickering v. Bd' of Education*, 391 U.S. 563 (1968) and concluded Bennett's proof burden had three parts. The first, a question of law, was whether she engaged in constitutionally protected speech. The second element (conceded by all) was whether there was an adverse action. The final prong of her case was causation.

The court made an interesting and unusual decision on how to try the case. He'd first conduct an advisory jury trial on whether Bennett had engaged in constitutionally protected speech. At this first full-blown trial, the jury would answer particular inquiries about the case to assist the court in deciding this question of law. The court would then decide, with the advice of the jury in hand, whether it was such speech. Only then . . .would there be a second trial on causation.

The first advisory phase of the trial lasted for five days. The jury answered particular questions about how Bennett's speech affected discipline and working conditions at the Emergency Communications Center. The result was mixed, the jury finding it was detrimental in some respects (affecting close working relationships and undermining the call center's mission) and not in others (didn't impair discipline or impede Bennett's duties).

Judge Richardson then took a pause to consider the jury's advice. He then issued a post-trial opinion in which he concluded that Bennett's Facebook post represented constitutionally protected speech. The second phase on causation would go forward.

The second phase lasted just two days. The jury's verdict was for Bennett on the retaliation claim. She took back pay of $6,500 and $18,750 more for embarrassment and humiliation. The verdict totaled $25,250 and was reflected in the court's judgment. The actual verdict was sealed (without explanation) by the court.

Case Documents:
Summary Judgment Order
The Post-Trial Order
The Jury Verdict (First one)

Auto Negligence-Intentional Infliction of Emotional Distress - An intoxicated driver turned left in front of an oncoming vehicle – the driver of that vehicle died at the scene, his wife not only suffering physical injuries but a separate emotional injury for having had her husband die in her arms – a McMinnville jury valued her personal injury pain and suffering at $300,000, awarding the woman $750,000 more for her emotional distress

Winburn et al v. Smartt, 18-953
Plaintiff: Michael D. Galligan and M. Trevor Galligan, *Galligan & Newman*, McMinnville
Defense: Joshua G. Offutt and Jennifer P. Ogletree, *Joshua Offutt & Associates*, Nashville
Verdict: $2,185,682 for plaintiffs broken down as follows: $79,942 on Johnny's death claim; $1,355,740 for Deanna on personal injury claim and $750,000 more for intentional infliction of emotional distress
Court: **Warren**
Judge: Larry B. Stanley, Jr.
Date: 5-2-10

There was evidence that Asia Smartt, then age 28, was driving while intoxicated on 12-21-17 in McMinnville. Testing would later reveal that there were methamphetamines in her system. An instant later on the local bypass, Smartt turned in front of oncoming traffic.

Smartt struck a vehicle head-on that was driven by Johnny Winburn. Winburn, age 75, was a former member of the 101st Airborne "Screaming Eagles." His beloved wife of many years, Deanna, was a front seat passenger. This was a