The Louisiana Jury Verdict Reporter

The Most Current and Complete Summary of Louisiana Jury Verdicts

July 2023 **Statewide Jury Verdict Coverage** **14 LaJVR 7**

In This Issue

Civil Jury Verdicts

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

Medical Malpractice - The plaintiff alleged a little boy (age 12) died in 2008 of a liver toxicity related to a drug regimen prescribed by his pediatric neurologist after she failed to monitor his liver function with lab testing – the case came to trial almost fourteen years after the boy's death and a New Orleans jury exonerated the physician

Steiner v. McGuire, 13-11186
Plaintiff: David H. Hanchey and Todd A. Townsley, *The Townsley Law Firm*, Lake Charles
Defense: Peter J. Wanek and Elicia D. Ford, *Wanek Kirsch Davies*, New Orleans
Verdict: Defense verdict on liability
Parish: **Orleans**
Judge: Lori Jupiter
Date: 5-15-23

Alex Steiner, then age 11 and an otherwise healthy boy in Lake Charles, began to suffer seizures in June of 2008. He was placed on a combination of anti-epileptic drugs (AEDs). These drugs require frequent lab monitoring of liver function because of their well-documented history of side effects, contraindications and fatal toxicity.

Moving forward to September of 2008, Steiner was unable to see his regular pediatric neurologist at a children's hospital in Texas because of a hurricane. He instead presented on 9-15-08 to Children's Hospital in New Orleans. The on-call pediatric neurologist was Dr. Shannon McGuire. She was then a state employee of LSU Health Sciences Center.

McGuire started Steiner on an AED known as Depakote. This was in addition to the other AEDs the boy was already prescribed. Steiner saw McGuire a month later in October and she increased the dose. She did the same thing again in November and December. During that period McGuire did not obtain liver function labs.

Steiner's mother sought a second opinion on 1-7-09 at the Children's Hospital of Alabama. There was proof that McGuire terminated Steiner as a patient and cancelled the boy's appointments. The Steiner family would later argue McGuire left the boy's health up to chance – his liver function was not being monitored and there was no testing at all from September of 2008 until January of 2009.

Steiner went to an ER in Lake Charles on 1-26-09. He had a two-day history of being lethargic, weak and having a poor appetite. Testing revealed the boy was suffering liver dysfunction and pancreatitis among other conditions. He died four days later. An autopsy was not conclusive as to the cause of death but it looked to both pancreatitis and ischemic injury to the boy's brain.

Thereafter Steiner's parents (Raymond and Julie) alleged that McGuire had mismanaged the boy's care. The heart of the case was that McGuire failed to test his liver function after prescribing Depakote and then upping the dosages repeatedly. Had McGuire done the testing, there would have been markers indicating liver dysfunction.

Richard on the severity of her injuries with social media photographs depicting her in a variety of activities (some were sort of sedentary) they included getting a pedicure, playing putt putt, sitting in a pool and eating ice cream.

This case was tried for three days in Lake Charles and the jury deliberated for 70 minutes. The jury was asked if Richard had proven by a preponderance of the evidence that Dollar General was at fault. The answer was "no" and the jury then did not reach the plaintiff's duties, apportionment or damages. A defense judgment was entered.

Medical Malpractice - The plaintiff was seriously injured in a car wreck and was airlifted to the LSU Hospital where he underwent an emergency spinal fusion surgery from C5-T-4 – he suffered paralysis that he linked to a surgical error in failing to identify and repair a massive distraction at T2-3 that occurred during the surgery – the jury found the defendant neurosurgeons at fault and awarded substantial damages of $13,837,220 which represented $8,510,220 in specials plus $5,327,000 more in non-economic damages

Kilpatrick v. LSU Health Sciences Center-Shreveport, 623588
Plaintiff: Sage Thibodaux and Todd A. Townsley, *The Townsley Law Firm*, Lake Charles
Defense: David H. Nelson and F. William Sartor, Jr., *Nelson Zentner Sartor & Snellings*, Monroe
Verdict: $13,837,220 for plaintiff
Parish: **Caddo**
Judge: Ramon Lafitte
Date: 5-26-23

Evan Kilpatrick, then age 38, was involved in a serious car wreck on 8-6-16 in West Monroe. He was airlifted to LSU Health Sciences Center-Shreveport. A team of neurosurgeons led by Dr. Bharat Guthikonda (and joined by residents Dr. Frank Farokhi and Dr. Richard Menger) performed an emergency spinal surgery on Kilpatrick. The procedure was described as a C5-T-4 fusion and T2-3 laminectomy. Following the surgery Kilpatrick suffered from permanent and disabling paralysis.

Kilpatrick alleged medical error in the surgery in that a massive distraction (a spinal flexion injury) (it was more than 10mm) occurred at the T2-3 level (it caused the paralysis) and importantly, the defendants failed to note or address the distraction. Because of the failure to recognize the distraction, the defendants failed to intervene and promptly repair it. That delay in turn led to the permanent injury.

The matter was first submitted to a Medical Review Panel. It found for Kilpatrick against Guthikonda but exonerated Farokhi and Menger. A member of the panel (Dr. Andrew Vitter, Neurosurgery, Shreveport) would later testify at trial. The panel also included two general surgeons, Dr. Mark Mainous and Dr. Michael Banda.

Ritter explained that any distraction over 5 mm (it was 10 mm here) is associated with a spinal cord injury. Moreover Ritter explained the injury occurred during the surgery and was visible on intra-operative imaging. Kilpatrick subsequently filed suit in Caddo Parish in May of 2020.

The paralyzed Kilpatrick's damages were enormous even though he has had some improvement and limited movement in his legs. The damages were developed by a team of experts including Dr. Howard Katz, Physical Medicine, Jackson, MS, who described the injuries. The numbers were quantified by Shael Wolfson, Vocational Expert and Elizabeth Peralta, Life Care Plan. The case proceeded against LSU Health Sciences Center-Shreveport as the employer of the three surgeons involved in the case.

The defense of the case denied fault and also contested causation. The defense liability expert was Dr. Aaron Dumont, Neurosurgery, New Orleans.

This case was tried over five days in Shreveport and the jury then deliberated for three hours. The court's instructions asked if the treatment rendered to Kilpatrick fell below the standard of care ordinarily practiced by physicians specializing in neurosurgery. It was interesting the court's inquiry did not ask the jury to decide between any of the three treating physicians. However while the jury charge didn't name the physicians, the jury instructions did explain error was alleged on the part of Guthikonda, Menger and Farokhi.

The jury answered for Kilpatrick that "the physicians" had violated the standard of care and that it caused damage to Kilpatrick. The jury then went to damages.

Kilpatrick took $1,140,220 in medicals and $5.5 million more for in the future. Kilpatrick's lost wages were $370,000 and his future lost wages were $1.5 million. His special damages totaled $8,510,200.

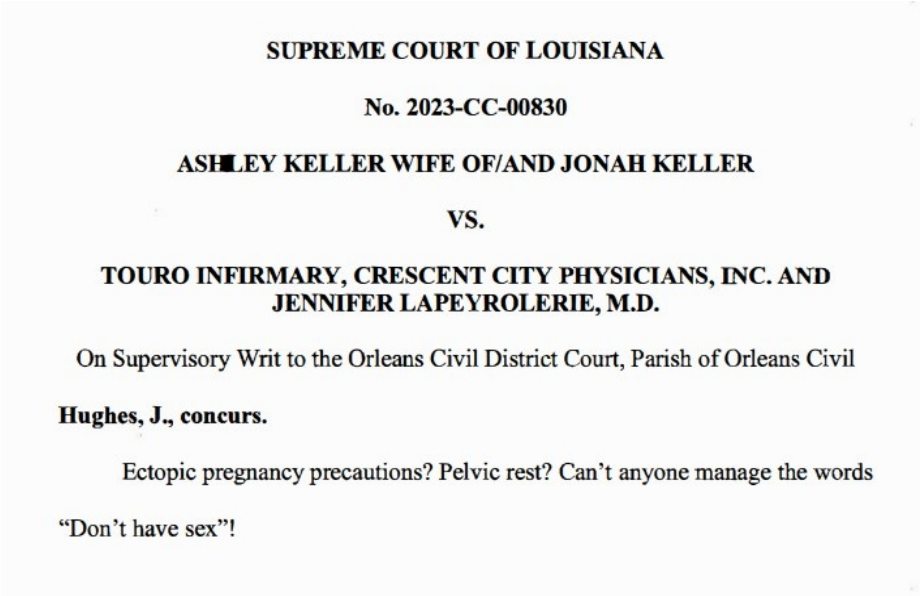
Then turning to non-economic damages, the jury awarded Kilpatrick a total of $5,327,000 over eight separate categories.
Past suffering: $205,000

Medical Malpractice - A woman suffered an ectopic pregnancy rupture (this was after she thought the pregnancy was terminated) after having sex with her husband – she blamed her Ob-Gyn for failing to fully inform her about the meaning of "pelvic rest" and the need to avoid sex – the case went to the Supreme Court on a writ question about how many experts the defendant could call at trial – the Supreme Court granted the writ in a per curiam opinion – Justice Hughes penned a bizarre 13-word concurrence that ended with a cryptic warning to the litigants "Don't have sex"!

Keller v. Laypeyrolerie, 19-13360/20-9735
Plaintiff: Carey Wicker, III, *Capitelli & Wicker*, New Orleans
Defense: Erica Andrews and Kathryn M. Carraway, *Carraway LeBlanc*, New Orleans
Verdict: Writ granted for defendant at Supreme Court
Parish: **Orleans**
Judge: Inemesit O'Boyle
Date: 6-17-23

Ashley Keller, age 32, was diagnosed with an ectopic pregnancy on 4-16-18 at the Touro Infirmary. This is when the embryo implants in the fallopian tubes. An ectopic pregnancy is not viable and will rupture and likely lead to the mother's death. Keller elected to terminate the pregnancy by medication (Methotrexate) rather than by surgery.

Eight days later Keller followed with Dr. Jennifer Laypeyrolerie (Ob-Gyn) who was covering for Keller's regular physician. Laypeyrolerie tested Keller's BHGC levels (this is a hormone associated with pregnancy) and otherwise counseled Keller. The medical record was silent as to any advice about "pelvic rest."



SUPREME COURT OF LOUISIANA

No. 2023-CC-00830

ASHLEY KELLER WIFE OF/AND JONAH KELLER

VS.

TOURO INFIRMARY, CRESCENT CITY PHYSICIANS, INC. AND JENNIFER LAPEYROLERIE, M.D.

On Supervisory Writ to the Orleans Civil District Court, Parish of Orleans Civil

Hughes, J., concurs.

Ectopic pregnancy precautions? Pelvic rest? Can't anyone manage the words "Don't have sex"!

The 13-word Hughes Concurrence

Keller was seen a week later and her BHGC levels were again measured. Laypeyrolerie called Keller the next day (5-1-18) and advised the levels had dropped significantly. This was suggestive that the medical abortion was a success and the ectopic pregnancy had ended.

Five days later on 5-6-18 (this was now 20 days since the administration of Methotrexate), Keller had sex with her husband. In the hours that passed Keller became delirious and ultimately fell unconscious. Her husband was terrified and called 911. The sexual activity had ruptured the ectopic pregnancy and Keller was dying. She underwent an emergency and life-saving surgery. While Keller survived, her fertility is impaired as she has only one fallopian tube.

Keller filed this lawsuit against Laypeyrolerie and the hospital. The allegation of error was that Laypeyrolerie didn't fully inform Keller of the meaning of pelvic rest and the need to avoid sexual activity. Keller noted the medical record was silent on Laypeyrolerie's counseling. Keller's liability expert is Dr. Henry Klapholz.

Laypeyrolerie's defense was simple enough. She had fully informed Keller of the risks including sexual activity. It seemed to be a classic fact dispute – had Laypeyrolerie informed Keller about pelvic rest?

The Medical Review Panel in this case sided with Laypeyrolerie and concluded based on Laypeyrolerie's testimony and the general references to pelvic rest that Keller had been appropriately informed. As the trial approached Laypeyrolerie sought to call two of the panel's members as experts at trial, Drs. Michael Graham and Elizabeth Lapeyre.

Keller moved to limit Laypeyrolerie to just one expert via a motion in limine. Judge Boyle agreed and granted the motion. Laypeyrolerie sought a writ at the Supreme Court.

The Supreme Court granted the writ in a per curiam opinion. (See the link below). It was ordinary and unremarkable. The matter was remanded to the trial court for consistent instructions in the lead-up to trial.

What was interesting was a concurrence by Justice Jefferson Hughes who indicated he "assigns reasons." The reasons he assigned in his weird concurrence were expressed in an efficient (and strange) 13 words. He advised the litigants:

Ectopic pregnancy precautions? Pelvic rest? Can't anyone manage the words, "Don't have sex"!

The Hughes concurrence had nothing to do with any of the issues raised in the writ. He might as well have advised them of any other life advice that's important to him, i.e., eat a high fiber diet, attend church when you can or even write a letter of apology when you've made a mistake.

Alternatively Hughes was simply telling the parties and litigants in Louisiana (out of the blue and just because) that doctors should use ordinary language rather than technical jargon in communicating with patients. If that was his intention, he could have said that and especially if that issue were germane to the appeal. He didn't and of course, that had nothing to do with the merits of the appeal. In any event, the 13-word concurrence was strange.

The Supreme Court Opinion
(*External link*)

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The Louisiana Jury Verdict Reporter is published at 9462 Brownsboro Road, No. 133, Louisville, Kentucky 40241. Phone at 1-866-228-2447. Denise Miller, Publisher, Shannon Ragland, Editor, Sandra Tharp, Editor Emeritus and Aaron Spurling, Assistant Editor.

Annual subscriptions are $329.00 per year.

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