

# The Tennessee Jury Verdict Reporter

The Most Current and Complete Summary of Tennessee Jury Verdicts

December, 2005

Statewide Jury Verdict Coverage

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*Unbiased and Independently Researched Jury Verdict Results*

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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.

*Coming in January of 2005*

The Tennessee Jury Verdict Reporter 2005 Year in Review  
The complete and essential summary on Tennessee litigation with detailed statistics and reports on every sort of civil case and damage element.  
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### Medical Negligence - A middle-aged woman presented to the ER with nausea, vomiting and a fever – the ER doctor discharged her with a flu diagnosis, missing sepsis from a GI bleed that proved fatal

*Weatherspoon v. Ort*, H-3476

Plaintiff: Timothy W. Smith and John P. Sheahan, *SmithSheahan*, Memphis  
Defense: Marty R. Phillips, *Rainey Kizer Reviere & Bell*, Jackson  
Verdict: Defense verdict  
County: **Gibson**  
Judge: Clayburn L. Peeples  
1-27-05

Nell Weatherspoon, age 49, began to feel ill on the evening of 12-10-03. Complaining of nausea, vomiting and diarrhea, she reported to the ER at Humboldt General Hospital. There she was seen by Dr. Michael Ort.

Weatherspoon's temperature was high – it was measured at 103.7 degrees. Ort evaluated Weatherspoon and concluded she had flu-like symptoms. He discharged her with a flu-diagnosis just before 11:00 p.m.

Weatherspoon went home and took the medicine that was prescribed to her. She slept through the night. By the next morning, Weatherspoon was much worse. She called her family doctor, Beryl Yancey, and made an on-the-spot appointment.

Yancey saw Weatherspoon promptly and knew something was wrong – she sent her next door to the ER. Despite intervention and the administration of

antibiotics, Weatherspoon died of cardiac arrest just after two that afternoon. While no autopsy was performed, her death was linked to sepsis from GI bleeding.

In this lawsuit, Weatherspoon's estate alleged negligence by Ort in failing to treat or diagnose her developing sepsis. Had he made a proper work-out and admitted her to the hospital, it was argued Weatherspoon would have survived. The estate's expert, Dr. David Tarlow, ER, St. Louis, MO, blamed plaintiff's premature death on error by Ort.

The case took an interesting turn regarding proof from Yancey. A week or so after Weatherspoon's death, Yancey signed a document indicating she believed Ort had violated the standard of care. Then deposed about the matter, Yancey explained she was a fact witness, not an expert witness. This point was emphasized by her counsel – interestingly, this was her insurance counsel from State Volunteer, which just incidentally was (1) representing Yancey in another lawsuit, and (2) representing Ort in this case. Finally answering the question in a later deposition, Yancey conceded she'd signed the document but claimed she was tricked by plaintiff's counsel. [Plaintiff denied any deceit, pointing to the document and Yancey's signature.]

Ort defended the case that his diagnosis was reasonable in light of Weatherspoon's presentation – namely, it was consistent with the flu, the