

# The Tennessee Jury Verdict Reporter

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Statewide Jury Verdict Coverage

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**Auto Negligence - The plaintiff treated for whiplash and the aggravation of degenerative conditions after his vehicle was struck by hot tub that came loose from a trailer hitch and struck his car - it was a hard hit and the plaintiff had to be extricated by the Jaws of Life**

*Gooch v. NJH Pool Construction, 23-2140*

Plaintiff: Chaucey Fuller and Annie Berry, *Bart Durham Injury Law*, Nashville

Defense: Allan J. Parker, *Rainey Kizer Reviere & Bell*, Nashville

Verdict: \$125,143 for plaintiff

Court: **Davidson**

Judge: C. David Briley

Date: 11-18-25

Joseph Gooch, age 52, was driving his 2005 Chevrolet sedan on Highway 31W near Old Stone Bridge Road on 10-20-22. At the same time Kevin McGuire operated a pick-up truck that was pulling a trailer. The trailer contained a hot tub. McGuire was employed by NJH Pool Construction. McGuire approached from the opposite direction.

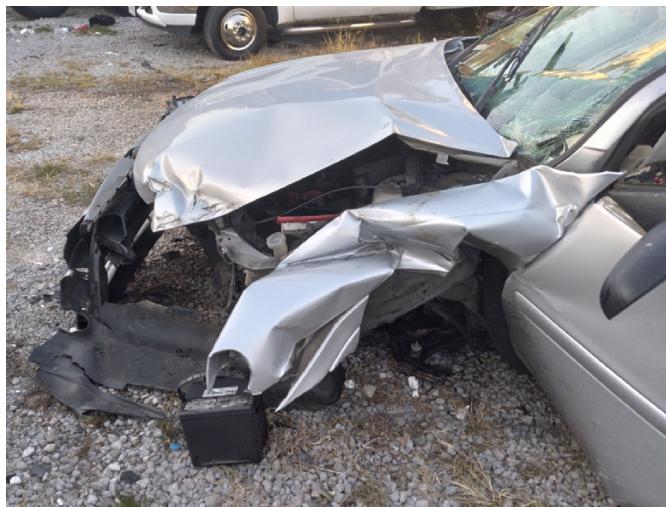
Suddenly the trailer broke loose from its hitch. It crossed the centerline and the hot tub struck Gooch's

oncoming vehicle in the driver's side wheel well area. Gooch explained he had no time to swerve. It was a hard hit and Gooch had to be extricated from his vehicle by the Jaws of Life.

Gooch was taken to a local ER where he was thoroughly checked out. He had not sustained any fractures, but he was shaken up by the crash. His medical bills of \$75,143 mostly represented care at the ER visit.

Gooch has since treated for the aggravation of degenerative conditions including injuries sustained in a prior fall from a tree. He also reports emotional symptoms and no longer feels comfortable driving. A plaintiff's IME, Dr. Ryan Snowden, confirmed the aggravation injury.

In this lawsuit Gooch sought damages from NJH Pool Construction. If Gooch prevailed he



*The Gooch vehicle after the crash*

## Notable Appellate Opinion

**Med Mal defense verdict affirmed at the Court of Appeals in November after an earlier summary judgment for the defendant had been reversed at the appellate court five years earlier**

This med mal case began more than fifteen years ago. The plaintiff, Sylvia Davis, age 40, presented to the ER at Methodist-Germantown on 1-18-11 with a cough and shortness of breath. She was evaluated the next day by an intensivist, Dr. Garrettson Ellis.

Intensivists treat patients in the ICU.

Ellis identified that Davis was in respiratory distress and would likely need intubation in the next 24 hours. Ellis's shift ended. He didn't order her to be intubated. Davis died the next morning (1-19-11) at five in the morning.

The Davis estate (representing her husband) filed suit in 2012 and alleged error by Ellis in failing to intubate Davis and otherwise manage her care. Ellis moved for summary judgment and argued the plaintiff's expert, Dr. Kyle Gunnerson, was inconsistent on the question of causation. Particularly his deposition testimony and affidavit were inconsistent. The presiding Judge Rhynette Hurd agreed and granted summary judgment in 2019. The Davis estate appealed.

The Court of Appeals reversed in November of 2020. Judge Armstrong (joined by Judges Stafford and Goldin) concluded that Gunnerson's testimony was clear that Ellis's purported failure to make a plan to treat Davis had led to her death.

The matter returned to the trial court and advanced to a jury trial in

April of 2024. It concluded with a defense verdict on liability on 4-5-24. Judge Hurd was presiding at trial. This was more than 12 years after Davis had died.

The estate appealed again. In *Davis v. Ellis* (No. 2), the Court of Appeals ruled again. This time the opinion was rendered by McClarty who was joined by Judges Armstrong and Smith. [Armstrong had rendered the opinion in *Davis v. Ellis* (No. 1).] The plaintiff cited a variety of errors including (1) the verdict was contrary to the evidence, (2) disallowing proof of the first appellate opinion, and (3) permitting evidence the husband had remarried. The Court of Appeals affirmed the trial court in a sixteen page opinion

*Davis v. Ellis*

Shelby County: CT-002190-12

Court of Appeals (1): 2019-1367

Court of Appeals (2): 2024-1467

Gary K. Smith and C. Philip M. Campbell, Memphis for appellant (plaintiff at trial)

Jennifer S. Harrison, Memphis and James E. Looper, Nashville, both of *Hall Booth Smith* (defendant at trial)

**Case Documents:**

[Davis v. Ellis](#) (Court of Appeals One)

[Davis v. Ellis](#) (Court of Appeals Two)

## Historical Tennessee Verdicts

**Medical Negligence - An infant sustained a very serious and permanent injury because of a botched circumcision – a Memphis jury in 1952 awarded the boy a record \$200,000 verdict for Shelby County, later reduced three times, (1) by remittitur to \$175,000, and (2) by the Court of Appeals to \$102,644, and (3) finally by a \$100,000 settlement that resolved the case**

*Sykes v. Tolbert et al,*

Plaintiff: Thomas R. Prewitt, Walter Armstrong and Emmett Braden, *McAdden Allen Braden & Goodman*, Memphis

Defense: Walter Chandler, Vincent Beal and Ramsay Wall, *Chandler Shepherd Heiskell & Williams*, Memphis (*Chandler Shepherd* was the predecessor to the present-day *Baker Donelson*)

Verdict: \$200,000 for plaintiff

Court: **Shelby**

Judge: John Wilson

Date: 10-15-52

Gary Sykes was four days old on 7-27-51 when he underwent a circumcision. It was performed by Dr. Louis Tolbert with an electro-surgical knife. Tolbert worked at the Highland Hospital which was operated by Dr. Howard Ellzey. Tolbert botched the circumcision and little Gary suffered severe third-degree burns to his penis. The record at the time is not entirely clear, but the injury was apparently very serious. It reflects the entire area "sloughed" off, suggesting the boy was left with very little of his penis.

The Sykes family (representing Gary and his parents) filed suit against Tolbert and Ellzey and alleged malpractice. The case was tried in October of 1952. A total of ten

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