Kentucky Law and Medical Malpractice Trial Review

Kentucky Society for Healthcare Risk Management
Advanced Risk Management Seminar and Annual Business Meeting

Ronald G. Sheffer
Sheffer Law Firm PLLC
National City Tower
101 South First Street
Suite 1450
Louisville, KY 40202
Developments in Kentucky Case Law that Impact Health Care Liability and Medical Malpractice Trial Verdicts

I. Plaintiff’s Verdicts
II. Fascinating Facts
III. Infection Cases
IV. Delayed Diagnoses
V. Causation Lacking
VI. No Liability – Same Outcome Regardless of Treatment
VII. No Liability – Treatment Within the Standard of Care
VIII. Supreme Court Opinion
Plaintiff’s Verdicts

(1) Hamilton v. T.J. Samson Hospital et al.
(2) Burris v. Young
Hamilton v. T.J. Samson Hospital et al.

Infant’s catastrophic brain injury at birth linked to overstimulated labor from excessive Pitocin. Plaintiff initially proceeded against both the hospital and the Ob-Gyn, but by the time of trial the plaintiff argued that the hospital was solely at fault and that the doctor should be exonerated. Plaintiff’s Verdict.
Burris v. Young

Plaintiff blamed her dental team for failing to diagnose gum disease over the course of some 20 visits, which ultimately caused her to lose all of her upper teeth. Defendants contended that they provided appropriate care and plaintiff’s substance abuse contributed to her condition. Plaintiff’s verdict.
Fascinating Facts

1) Thomas v. Brumfield
3) Smith v. Casey County Public Hospital
4) Jackson v. Salerno
5) Hart v. Bartlett
Thomas v. Brumfield

Plaintiff suffered a collapsed lung following a pacemaker placement – the plaintiff elected not to call an expert at trial and presented a *res ipsa loquitur* case predicated on his cardiologist’s postsurgical admission, “I’m sorry, it’s my fault.” Defense verdict.

FACTS

ARGUMENTS

JURY

Plaintiff alleged he was a victim of a scheme by cardiologists and a London hospital to perform unnecessary cardiac operations. Defendants argued the procedures were necessary. Interestingly, although the hospital paid $16.5 million to settle federal fraud claims for the unnecessary cardiac surgeries and one physician is in federal prison, a London jury found for the defendants. Defense Verdict.
Smith v. Casey County Public Hospital

Plaintiff made a tenuous causal link that the defendant’s failure to timely administer Zofran lead to a code event for vomiting, and during the code nurses administered epinephrine, which led to the amputation of plaintiff’s arm below the elbow. Defense verdict.
Jackson v. Salerno

Plaintiff claimed that her Ob-Gyn failed to test a potentially cancerous mass seen on an ultrasound before operating to remove the mass, which resulted in unnecessary surgery because the mass was found to be an inflamed and diseased bladder. Defendant countered that the surgery. Defense verdict.
Hart v. Bartlett

Plaintiff, a woman in her 20's, suffered a stroke during a chiropractic manipulation and claimed that the chiropractor failed to inform her of the risks of the adjustment. The defendant chiropractor countered with a signed informed consent release. Defense verdict.
Sims v. Norton Healthcare et al.

In a rare monoamniotic pregnancy case, the plaintiff claimed that the fetal specialist and hospital nurses failed to promptly intervene – one twin was stillborn and the other was born with a severe brain injury. Defense verdict.
Infection Cases

1) Hatchett v. Menke et al.
2) Brewer v. Crozier
3) Alexander v. Jewish Hospital South
Hatchett v. Menke et al.
A teenage girl reported to the ER with hip pain after a soccer game and was diagnosed with a strain injury. Days later the teen died of MRSA. Plaintiff claimed the defendants failed to review a blood test that was positive for staph (not MRSA). Defense verdict.
Brewer v. Crozier

Following delivery of her baby, the plaintiff claims that an Ob-Gyn failed to diagnose a hip infection, which resulted in the development of sepsis and required plaintiff to have a complete hip replacement. Plaintiff argues that the defendant should have done further testing for the cause of the hip pain post-delivery to diagnose and treat the Group B strep infection. Defense verdict.
Alexander v. Jewish Hospital South
The plaintiff claimed that a hospital discharge nurse improperly discharged her given plaintiff's highly elevated heart rate. The plaintiff died the next day of a staph infection in her blood. Defense verdict.

FACTS

ARGUMENTS

JURY
Delayed Diagnosis Cases

1) Dalton v. Frederick
2) McDaniel v. Carrico et al.
Dalton v. Frederick

The plaintiff claimed that an Ob-Gyn failed to review a pathology report that indicated endometrial cancer. Some 18 months later, the plaintiff was diagnosed with endometrial cancer. The defendant argued that he was referred to treat endometriosis and had no reason to suspect cancer or review the pathology report. Defense verdict.
McDaniel v. Carrico et al.

The plaintiff presented to the ER with chest pain. Her family doctor and the gastroenterologist who consulted in her case failed to diagnose a cardiac issue and instead ordered a gallbladder study. Plaintiff had a heart attack and argued that the defendant physicians’ failed to timely diagnosis her emerging cardiac event. Defense verdict.
Causation Lacking

1) Arnold v. St. Mary and Elizabeth Hospital
2) Moore v. St. Mary and Elizabeth Hospital
3) Collins v. Dineen
Arnold v. St. Mary and Elizabeth Hospital

The plaintiff bled to death at a Louisville hospital after suffering a rectal bleed during a colonoscopy. Plaintiff claimed that the hospital nurses failed to monitor and assess his condition. Defense verdict.
Moore v. St. Mary and Elizabeth Hospital

The plaintiff was intubated after suffering respiratory failure. When she began pulling her endotracheal tube, hospital nurses sedated and restrained her. Plaintiff developed sores on her wrists and claimed that the hospital improperly used wrist restraints, which caused diminished hand and wrist function. Defense verdict.
Collins v. Dineen

The plaintiff’s radiologist diagnosed her with a 90% arterial blockage, which required her to undergo cardiac surgery. During the operation, plaintiff’s surgeon found little to no arterial blockage. Plaintiff argued that the radiologist's misread caused her to undergo an unnecessary and invasive cardiac surgery. Defense verdict.
No Liability – Same Outcome Regardless of Treatment

1) Carter v. Dhillon
2) Maynard v. Woods
Carter v. Dhillon

The plaintiff was taken to the ER after fainting in his home. The ER doctor found that he had suffered a stroke. Plaintiff claimed that the ER doctor’s failure to diagnose carbon dioxide poisoning caused him to suffer from a neurogenic bladder and paralysis of the leg. Defense verdict.

FACTS

ARGUMENTS

JURY
Maynard v. Woods

The plaintiff had surgery to remove a mass on her parotid gland. The plaintiff suffered facial paralysis post-surgery. Plaintiff claimed that the ENT physician erred by injuring a facial nerve during surgery, which caused her facial paralysis. Defense verdict.
No Liability – Treatment Within the Standard of Care

1) Casey v. Fuqua
2) Rose v. Cartwright
Casey v. Fuqua
The plaintiff’s longtime family doctor failed to tell the plaintiff he was diabetic. The plaintiff’s estate claimed that his death from a stroke was caused by failure to address high glucose levels and uncontrolled diabetes. Defense verdict.
**Rose v. Cartwright**

The plaintiff claimed that her surgeon failed to recognize a bleed while performing a hysterectomy, which caused the plaintiff to undergo emergency surgery to repair a perforated bowel. Defense verdict.
Ries v. Oliphant et al.

Plaintiff claimed that her baby was born with cerebral palsy caused by the defendants’ failure to treat the baby’s blood loss. The defendants argued that the baby’s blood loss occurred prior to plaintiff’s arrival at the hospital.

<table>
<thead>
<tr>
<th>Trial Court</th>
<th>Defense verdict</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court of Appeals</td>
<td>Reversed the verdict, finding that the Trial Court improperly admitted testimony from defendant’s expert because it was not scientifically reliable under Daubert</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>Reversed the Court of Appeals, finding no error in admitting the defendant’s expert testimony</td>
</tr>
</tbody>
</table>

FACTS

ARGUMENTS

JURY
In Kentucky

Loss of Parental Consortium Awards in Kentucky
- 44 child consortium awards in Kentucky
- 21 of 44 awards were $1 million or more
- Largest award was $3 million
- Young children (under 10) avg. $1.4 million (longer loss)
- Older children (11-16) avg. $1.1 million
- Young adults (17-18) avg. $200,000

National News

(1) Medication Errors Affect Half of All Surgeries
(2) Sources of Diagnostic Error: Report by Risk Management Foundation at Harvard
(3) Americans Likely to Get One Misdiagnosis in Their Lifetime
(4) Half of Pediatric Medical Mistakes Found Preventable
(5) Electronic Health Records Increasingly Cited in Medical Malpractice Cases
(6) Patient Records Doctors Mocking Him During A Colonoscopy -- Jury Awards $500,000
(7) $35.4 Million Verdict in Medical Malpractice Case for Failure to Notify (Brain Injury Database)