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Jury Says Doctor Should Have Noticed Brain Ailment Sooner

Gregory v. Klazmer \$1 Million Verdict

Date of Verdict:

April 17, 2008.

Court & Case No.:

C.P. Philadelphia No. 050804006.

Judge:

Patricia A. McNerney.

Type of Action:

Medical malpractice.

Injuries:

Mental and physical disability.

Plaintiff's Attorneys:

Thomas J. Duffy, Jr. and John Mirabella, Duffy & Keenan, Philadelphia.

Plaintiff's Experts:

Dr. Andrew Feigin, neurology, Manhasset, N.J., and Dr. Mack Lipkin, internal medicine, New York.

Defense Counsel:

Anna Bryan and Debra Weinrich, White & Williams, Philadelphia, for Dr. Abdul Malik; J. Michael Doyle, Post & Schell, Philadelphia, for Dr. Jay Klazmer; and Medford J. Brown III, Goldfein & Joseph, Philadelphia, for Frankford Hospital.

Defense Experts:

For Malik: Dr. Eliot H. Nieman, internal medicine, Philadelphia. For Klazmer: Dr. Todd L. Siegal, neuroradiology, Camden, N.J.; Dr. Michael Braffman, infectious disease, Philadelphia; and Dr. Randy Rosenberg, treating physician, Jenkintown, Pa. For Frankford Hospital: Dr. Michael Braffman, hematology, Philadelphia.

Comment:

A Philadelphia jury awarded \$1,066,444.47 to Russone Gregory, a 28-year-old father whose mental and physical health deteriorated after physicians missed symptoms indicating nervous system infection.

The verdict is against Dr. Jay Klazmer, the neurologist who saw Gregory at Frankford Hospital,



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Philadelphia, and against the hospital itself. The jury returned a defense verdict in the related suit against Dr. Abdul Malik, the attending physician at Frankford.

Of the award, \$439,861.47 is for Gregory's past medical expenses, which include over four months of hospital stay. The remaining \$624,583 is for non-economic losses. Gregory, who was living with his girlfriend and three young children at the time of his initial hospitalization, has spent the four years since discharge in Langhorne, Pa.'s Beechwood Rehabilitation Facility.

On behalf of her incapacitated son, Gregory's mother, Sandra Gregory filed suit in Aug. 2005 against Klazmer, Malik, and Frankford, as well the admitting physician at Frankford Hospital, and agents at Nazareth and Friends Hospitals in Philadelphia, where Gregory was admitted before his transfer to Frankford. All suits except those against Klazmer, Malik, and Frankford were dropped before the trial began in front of Philadelphia Common Pleas Judge Patricia A. McNerney on Apr. 7, 2008.

According to a pretrial memo prepared by Gregory's attorneys Thomas J. Duffy and John Mirabella, original demand was \$10 million.

Duffy, Mirabella, and defense counsel verify that no settlement offers were made.

After a 10-day trial including nearly two days of deliberation, the jury returned unanimous verdicts on April 17, 2008.

According to his attorneys, Gregory still suffers from mental impairment. Although he was unemployed at the time of hospitalization, he previously worked in retail. He now does piecework through Beechwood, which his attorneys describe as low-paying.

Gregory arrived at Frankford Hospital Nov. 4, 2003, according to Duffy and Mirabella's pretrial memo. He spent the three days previous first in Nazareth Hospital and then in Friends Hospital after waking up disoriented in the middle of the night on Oct. 31, 2003.

According to trial attorney Duffy, Klazmer saw Gregory the first two days he was admitted to Frankford. Malik was attending physician. The pretrial memo maintains that at time of admission, Gregory had elevated blood pressure and a fever, and was noticeably disoriented.

Duffy presented expert testimony arguing that at time of admission, Gregory was suffering from encephalitis, or swelling of the brain. Duffy holds that because Gregory exhibited tell-tale sign delirium early in his stay at Frankford, doctors should have performed diagnostic tests and promptly started him on Acyclovir to treat herpes-related encephalitis.

Instead, Gregory began taking Acyclovir 20 days into his hospitalization. He remained in Frankford Hospital until his Feb. 2004 transfer to the University of Pennsylvania Hospital psychiatric service. During his stay at Frankford he developed respiratory and circulatory complications, and experienced spikes in fever and white blood cell count.

Counsel for Malik and Frankford Hospital both maintain that herpes simplex virus was not the conclusive cause of Gregory's impairment, making delayed prescription of herpes-specific Acyclovir non-negligent behavior. Anna Bryan, counsel for Malik, additionally argued that, as attending physician, Dr. Malik behaved appropriately by looking to specialists to treat Gregory.

J. Michael Doyle, counsel for Klazmer, would not comment on theories of Klazmer's liability.

Both Klazmer and Frankford Hospital have filed motions for post-trial relief. According to Doyle, Klazmer's post-trial motions include a challenge to whether plaintiff's expert testimony was sufficient. Medford J. Brown, counsel for Frankford, said that Frankford's motions similar to Klazmer's.

Plaintiffs have filed post-trial motions for delay damages, which Duffy says could bring Gregory's total award to nearly \$1.2 million.

— Rachel Heron, for the Law Weekly

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