

COUNTY AND COURT:

Alachua County Circuit Court

NAME OF CASE:

CHERYL McGAULEY, as Personal Representative of the Estate of
WALTER L. McGAULEY, SR.,

Plaintiff,

v.

DOCTORS RADIOLOGY GROUP OF GAINESVILLE, LLC and WILLIE F.
WILLIAMS, M.D.,

Defendants.

CASE DOCKET NO.: 01-2010-CA-005732

JUDGE: Monica Brasington

PLAINTIFF'S ATTORNEYS/TRIAL COUNSEL:

Robert F. Jordan
Jordan Law Firm, PLLC
Lake City, Florida

DEFENDANTS' ATTORNEYS/TRIAL COUNSEL:

Richard S. Womble
Meredith M. Stephens
Rissman, Barrett, Hurt,
Donahue, McLain, & Mangan, P.A.
Orlando, Florida

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

Walter McGauley was a 70-year old Caucasian male. Before his death on November 5, 2008, Mr. McGauley worked for the Hamilton County Sheriff's Office. Mr. McGauley's daughter, Cheryl McGauley, was the personal representative of the estate.

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

Dr. Williams performed a vertebroplasty at the T8 level of Mr. McCauley's spine on April 4, 2008.

CAUSE OF INJURY:

Plaintiff alleged that Dr. Williams negligently performed the vertebroplasty. Plaintiff contended the vertebroplasty was not indicated because Mr. McGauley had osteomyelitis and a burst fracture at the T8 level. Plaintiff also alleged that Dr. Williams used too much cement during the procedure, which caused a rupture at the adjacent vertebral body and, ultimately, paralysis in the lower extremities. Plaintiff claimed that Dr. Williams failed to obtain informed consent for the procedure.

NATURE OF INJURY:

Plaintiff alleged that Mr. McGauley was paralyzed as a result of the vertebroplasty. Plaintiff sought intangible damages between the April 4, 2008 surgery and Mr. McGauley's death seven months later from unrelated causes.

PLAINTIFF'S EXPERT WITNESSES:

Tommasina Papa-Rugino, M.D.
Toms River, NJ
Neurology

Dr. Papa-Rugino's opinion was that the vertebroplasty was the proximate cause of the collapse of T7 with the resulting paralysis. She had no opinions regarding standard of care. She believed there was cement and bone in the spinal canal.

Joseph A. Tonner, M.D.
Lake City, FL
Pulmonary Medicine

Dr. Tonner consulted Mr. McGauley in the hospital in March 2008. He testified that he was not qualified to say whether Mr. McGauley suffered from a burst or compression fracture. He indicated that the cause of Mr. McGauley's fracture was unknown.

J.J. Stork, M.D.
Gainesville, FL
Radiology

Dr. Stork explained that T7 was pushing into 25% of the spinal canal. He also described Mr. McGauley's injury as a "burst" fracture.

Jaime Castellanos-Vasquez, M.D.
Alachua, FL
Hospitalist

Dr. Castellanos evaluated Mr. McGauley on April 4, 2008, following the vertebroplasty. Dr. Castellanos did not make any findings of neurological compromise to Mr. McGauley's extremities.

Eric Scott, M.D.
Gainesville, FL
Neurosurgery

Dr. Scott stated that Dr. Williams acted within the standard of care. He explained that the vertebroplasty had been a high risk procedure and that the changes at T7 were an expected complication. He did state that if spinal surgery had been done instead of vertebroplasty, the patient would have likely not been paralyzed.

Michael Greene, M.D.
New York, NY
Radiology

Dr. Greene stated that there were bone fragments in T7 and T8 compressing the spinal canal. He testified that the degree of collapse of T8 was the same as the amount on an April 5, 2008 CT scan, performed after the vertebroplasty.

R. Patrick Jacob, M.D.
Gainesville, FL
Neurosurgery

Dr. Jacob testified that he felt his April 9, 2008 operation was necessary secondary to the effect of the vertebroplasty and the underlying lesion. He felt that Mr. McGauley may have sustained an adjacent segment fracture and that there was the possibility that a physician could describe the T7 vertebrae as a burst fracture.

Adam Ping, P.A.
Gainesville, FL 32605
P.A. at Doctor's Imaging Group

Mr. Ping's deposition was played via video. The focus of his deposition was the informed consent issue, which was later dropped from the case.

DEFENDANTS' EXPERT WITNESSES:

Larry Bush, M.D.
Atlantis, FL
Infectious Disease

Dr. Bush established that Mr. McGauley saw as many as 20 different physicians pre-vertebroplasty, none of whom suspected infection. Dr. Bush also established that, had a culture been done, it would have been negative for infection.

Marc D. Kaye, M.D.
Fort Lauderdale, FL
Radiology

Dr. Kaye testified that the amount of cement used by Dr. Williams during the procedure was within the standard of care. Pre-trial, Mr. Jordan successfully argued a motion in limine to exclude evidence of the amount of cement used by Dr. Kaye in his vertebroplasties. However, Mr. Jordan opened the door on this issue during cross, allowing Dr. Kaye to testify on re-direct that he has used up to 10 ml. of cement at the same level.

John H. Sampson, M.D.
Durham, NC 27710
Neurosurgery

Dr. Sampson reviewed the punch biopsy test results which were inconclusive and did not suggest a diagnosis of osteomyelitis. The vertebroplasty was not a cause of the adjacent level fracture or the cause of spinal reconstruction performed at Shands. There was no cement demonstrated on the scan coming out of the canal.

CHECK APPROPRIATE SPACE:

 X Defense Verdict

DATE OF VERDICT:

August 16, 2017

COMPARATIVE NEGLIGENCE:

N/A

JUDGMENT:

For Defendants, Willie F. Williams, M.D. and Doctors Radiology Group of Gainesville, LLC

DATE OF JUDGMENT:

August 28, 2017

DEFENDANTS' OFFER:

\$0

PLAINTIFF'S DEMAND:

Plaintiff asked for economic damages of \$420,000 and non-economic damages of \$1,000,000 - \$3,000,000.

ATTORNEY'S COMMENTS:

Before the vertebroplasty, Dr. Williams ordered a biopsy. The pathology report was inconsistent with osteomyelitis. All of Mr. McGauley's pre-surgery physicians believed that a tumor was the most likely cause of the deterioration of the vertebrae. Mr. McGauley's sedimentation rate before the vertebroplasty was not consistent with an infection.

The defense admitted, retrospectively, that osteomyelitis was present when Dr. Williams performed the procedure. However, it was only in retrospect that the physicians could have detected the osteomyelitis. The contention that Mr. McGauley was paralyzed from the vertebroplasty was contradicted by his post-vertebroplasty neurologic exam which showed positive reflexes and a normal sensory examination.

The defense emphasized that the amount of cement used during the procedure was necessary to fill Mr. McCauley's T8 vertebrae. Any less cement would have provided some pain relief but may have required additional surgery to add more cement.

On August 28, 2017, plaintiff filed a motion for new trial. Defendants filed their response and memorandum of law in opposition on September 6, 2017. Judge Brasington denied plaintiff's motion on September 7, 2017.

This case was nine years old. It proceeded to trial two years ago. A mistrial was declared during jury selection.

Date: October 4, 2017

Submitted By: Richard S. Womble
Meredith M. Stephens

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