

CASE INFORMATION SHEET
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COUNTY AND COURT:

Orange County, Circuit Court

NAME OF CASE:

ERIK WHYNOT and SANCHA WHYNOT, individually, and as parents and natural guardians of BRENNAN WHYNOT, a minor

Plaintiffs,
v.

PUBLIX SUPER MARKETS, INC.

Defendant.

CASE DOCKET NO.: 2013-CA-007898-0 **JUDGE:** Renee Roche

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:

Kenneth J. McKenna, Esquire
Daniel E. Smith II, Esquire
Dellecker, Wilson, King, McKenna,
Ruffier & SOS
719 Vassar Street
Orlando, Florida 32804

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:

Jennings L. Hurt III, Esquire
Richard S. Womble, Esquire
Sean M. Crocker, Esquire
Rissman, Barrett, Hurt,
Donahue, McLain and Mangan, P.A.
201 East Pine Street
15th Floor
Orlando, Florida 32801

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

At the time of the subject accident, Brennan Whynot was a 1 year, 9 month old child.

FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:

N/A

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

June 21, 2009, at approximately 9:45 AM, at the Publix Super Market located at 2873 South Orange Avenue, Orlando, Florida 32806.

CAUSE OF INJURY:

Brennan Whynot was allegedly injured as a result of a slip and fall on June 21, 2009.

NATURE OF INJURY:

Sancha Whynot took her two sons, Jacob (3 years, 4 months old) and Brennan (1 year, 9 months), to a Publix at Orange Avenue and Michigan Street in Orlando on the morning of June 21, 2009. Ms. Whynot selected a race car grocery cart and put her sons in the seats. The cart had two play steering wheels and seatbelts for each child.

Store camera images caught the Whynots shopping and at various times demonstrated that Brennan Whynot was unbelted standing in the seat of the cart.

Several minutes later, in an area of the store in which cameras were not located, the first of two incidents occurred. According to Ms. Whynot, she had stepped away from the cart to pick up a product when she heard a gasp and a thud. She did not see the fall. When she turned around she saw Brennan on the floor.

An assistant store manager presented to the scene to assist Ms. Whynot who was holding Brennan. Ms. Whynot told the assistant store manager that she was pulling the cart, turned the cart and Brennan fell out of the cart.

A produce manager brought a bag of ice to the scene and offered it to Ms. Whynot. Ms. Whynot took the bag of ice, and applied it to the back of Brennan's head, further irritating Brennan.

Someone, either Ms. Whynot or the produce manager (there was conflicting testimony on this point), gave the bag of ice to Jacob Whynot who promptly ripped it open. All of the ice spilled out into the grocery cart through the grate at the bottom of the cart to the floor.

The assistant store manager then asked Ms. Whynot to follow her to the front of the store using a path to avoid the ice. Specifically, as the assistant store manager began to walk from the scene, she pulled the cart backwards away from the ice, and then pushed the cart down a pathway away from the water and ice.

Ms. Whynot then walked through the area where the ice was located, slipped and fell, and lost control of Brennan who fell and struck his head again.

Following the accident, Brennan Whynot received occupational and speech therapy as well as neurological testing and evaluation.

PLAINTIFF'S EXPERT WITNESSES:

Dr. Chi Tran, Orlando, Florida
Ophthalmologist

Dr. Tran was Brennan's ophthalmologist. Dr. Tran indicated that Brennan had tracking issues with regard to his vision.

Dr. Tran concluded that Brennan's tracking condition was more likely than not causally related to an acquired injury versus developmental delay.

Dr. Ronald Davis, Orlando, Florida
Pediatric Neurologist

Dr. Davis was Brennan's treating pediatric neurologist. Dr. Davis concluded that Brennan suffered a traumatic brain injury as a result of the subject falls. He could not apportion the brain damage between the first or second fall.

Dr. Patrick Gorman, Orlando, Florida
Pediatric Neuropsychologist

Dr. Gorman performed various testing of Brennan and he concluded that Brennan had symptoms significantly consistent with a traumatic brain injury and not developmental delay or ADHD.

Harold Bialsky, D.C.

Mr. Bialsky performed a life care plan and vocational assessment of Brennan Whynot. Mr. Bialsky testified regarding Brennan's future needs for education, tutoring, psychological counseling, therapy, etc.

Mr. Bialsky concluded lifetime costs for these services to be between \$293,040 to \$385,320. Mr. Bialsky felt that Brennan would not be able to obtain more than a high school level of education.

To that end, Mr. Bialsky concluded that Brennan's loss of earnings had he been able to obtain a Bachelor's degree was \$1,367,803; Brennan's loss of future earnings had he been able to obtain a Professional degree was \$3,377,584.

Fred A. Raffa, Ph.D.

Dr. Raffa, Plaintiffs' expert economist, performed an economic loss analysis in this matter. He testified that the present value of Brennan's life care plan totaled \$334,578.

Further, he testified that the present value of Brennan's loss of earnings capacity was between \$1,401,306 and \$2,914,160.

DEFENDANT'S EXPERT WITNESSES:

Dr. Michael Duchowny, Miami, Florida
Pediatric Neurologist

Dr. Duchowny concluded that Brennan Whynot did not have symptoms consistent with a traumatic brain injury. Rather, Brennan's symptoms were consistent with developmental delay that would have developed in utero and would have been congenital.

Dr. Robert Zimmerman, Philadelphia, Pennsylvania
Pediatric Neuroradiologist

Dr. Zimmerman is a pediatric neuroradiologist at the Children's Hospital of Philadelphia and reviewed the radiographic testing that Brennan Whynot underwent in this matter. Dr. Zimmerman concluded that there was no radiological evidence present on any of the diagnostic testing that indicated that Brennan suffered a traumatic brain injury.

Dr. Michael Schoenberg, Tampa, Florida
Pediatric Neuropsychologist

Dr. Schoenberg performed extensive testing of Brennan Whynot and came to the conclusion that Brennan's symptoms were more consistent with ADHD versus any sort of acquired traumatic brain injury.

CHECK APPROPRIATE SPACE: X Verdict

DATE OF VERDICT:

October 9, 2018

VERDICT AMOUNT:

\$2,166 in past economic damages; \$20,000 in past pain and suffering; \$0 for future medical expenses; \$0 for loss of earning capacity and \$0 for future pain and suffering.

COMPARATIVE NEGLIGENCE:

70% against Sancha Whynot, Brennan's mother.

NET VERDICT:

\$6,649.80

JUDGMENT:

Not yet entered.

DEFENDANT'S OFFER:

Defendant filed a proposal for settlement in the amount of \$100,003.

PLAINTIFF'S DEMAND:

Plaintiff requested the jury award up to \$13,314,202.90 in damages.

ATTORNEY'S COMMENTS:

The uncontested past medical bills totaled \$65,464.86. The jury only awarded \$2,166 in past economic damages, which directly correlated to the cost of the initial emergency room visit, the CT scan performed at the emergency room and one visit with Brennan Whynot's pediatrician.

Given that decision regarding past medical expenses, the jury clearly rejected Plaintiffs' claim of traumatic brain injury. This conclusion is supported by the jury only awarding \$20,000 for past pain and suffering presumably for Brennan striking his head on the floor.

The jury also awarded zero for future medical expenses, future loss of earning capacity and future pain and suffering. These findings by the jury clearly support the fact that the jury decided Brennan had not sustained a traumatic brain injury.

Defendant should be entitled to attorney's fees and costs based on the proposal for settlement.

Submitted By: Jennings L. Hurt III **Date:** February 26, 2019
Richard S. Womble
Sean M. Crocker

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