



Volutza v. McBryan (C.P. Berks Cty., No. 2003-15721, Feb. 9, 2009)

A jury returned a \$4 million verdict in favor of the estate of a 37-year-old pharmacist who suffered a fatal heart attack at work after having undergone a medical evaluation three days earlier.

- Judge: Jeffrey L. Schmehl.
- Injuries: Death.
- Plaintiff's Attorneys: **Shanin Specter, Andrew S. Youman** and **Garabet "Gary" M. Zakeosian**, Kline & Specter, Philadelphia.
- Plaintiff's Experts: Ian Hood, autopsies, Gloucester County, N.J.; Josef Machac, diagnostic radiology, New York; Mark putnam, psychiatry, Reading.
- Defense Counsel: Edwin L. Stock; Roland & Schlegel, Reading; James P. Kilcoyne Jr., Kilcoyne & Nesbitt, Plymouth Meeting, Pa.; Kevin H. Wright, Keven H. Wright & Associates, Lansdale, Pa.; Michael M. Badowski, Margolis Edelstain, Harrisburg.
- Defence Experts: Richard Goldstein, diagnostic radiology, Abington, Pa.; Jack Flyer, cardiology, Chevy Chase, Md.; Mark Graham, internal medicine, Philadelphia; Jerome Granato, cariology, Pittsburg.

Comments

Plaintiff's decedent Gregory S. Volutza, 37, a pharmacist, was pronounced dead Jan. 24, 2003, at Reading Hospital and Medical Center.

Volutza, who was overweight, had high blood pressure and cholesterol, and a strong family history of heart disease, was working at Giant Food Store, in Cumru Township, on Jan. 20 when he experienced a lump in his throat, chest tightness, light headedness and jaw pain. He contacted his physician, internist Donald J. McBryan Jr. McBryan told Volutza to come in immediately.

Volutza had seen McBryan once before, after his former longtime doctor retired. After examining the patient, which included a negative EKG, McBryan decided that Volutza's symptoms likely weren't cardiac-related, but rather anxiety induced.

On Jan. 21, per McBryan's order, Volutza underwent evaluation at Reading Hospital, including an EKG exercise stress test conducted by cardiologist E. Berry Hey, confirmed that it showed a moderate defect in the left anterior descending the chamber. Winn then mailed the results to McBryan on Jan. 22. Volutza

took the next two days off from work and returned to the Giant pharmacy on Jan. 24, when, at some point during the work day, he suffered a heart attack and collapsed. He was pronounced dead 52 minutes later.

Volutza's estate, represented by his spouse Diane Volutza, sued Reading Hospital, McBryan, Hey, Winn and their respective practices for wrongful death and medical malpractice. The hospital defendant was dismissed at the end of the evidence on the corporate liability count.

Plaintiff's counsel claimed that McBryan failed to detect that Volutza suffered a heart attack and unstable angina on Jan. 20, which was evident in his symptoms of chest and jaw pain and lasted for an hour, asserted the plaintiff's pathology expert. Counsel asserted that McBryan should have immediately sent the decedent to the emergency room. Counsel further claimed that McBryan was negligent by relying solely on an EKG test, a negative result of which does not rule out the possibility of a heart attack.

Additionally, plaintiff's counsel questioned the internist's records; McBryan wrote a note in the right margin that Volutza's symptoms had ended before he came into the office, which was inconsistent with another note by McBryan that said his symptoms were resolving, indicating they had not ended before his visit.

The plaintiff's internist/cardiologist/radiologist expert testified that Hey, like McBryan, should have sent the decedent for emergency care when he examined him on Jan. 21. Winn's alleged negligence lay in his failure to immediately call McBryan with the cardiologist results rather than waiting the next day to mail them to him, the expert testified.

The defendants denied the allegations. The defense's internal medicine expert opined that McBryan met the standard of care by seeing Volutza promptly, administering an EKG (which was negative) and sending the patient for additional tests. Although McBryan did not diagnose angina, there would have been many physicians who would have missed the condition, expert's opinion claimed. This opinion was supported by cardiology expert Jerome Granato. However, on cross-examination, Granato conceded that Volutza had suffered a heart attack on Jan. 20.

Counsel for Hey argued that he was a very experienced cardiologist who reasonably would not have discovered that the decedent had unstable angina the day before and that he was therefore not suitable for a stress test. This argument was further supported by cardiology expert Jack Flyer.

The defense for Winn maintained that the radiologist read the film correctly and had no duty to call McBryan, since mailing the results was sufficient and in accordance with hospital policy for reporting of nuclear stress test results. Winn's radiology expert opined that mailing the results of the cardiologist was adequate.

Following his death, Volutza's wife and 6-year-old daughter underwent psychiatric treatment for depression and post-traumatic stress disorder and were treated with psychotherapy and medication.

Dianne Volutza talked about her relationship with her husband, how he was the love of her life and the glue that held his family together. She sought non-quantified amounts of loss of spousal aid, comfort and society and loss of parental guidance and tutelage on behalf of her daughter, Erin.

The jury found that McBryan was negligent and that his negligence caused Volutza's death, awarding his family and estate \$4 million. Jurors found no negligence against defendants Hey and Winn.

Dianne Volutza was awarded \$750,000 for loss of companionship and Erin Volutza was awarded \$750,000 for loss of parental guidance.

The estate of Gregory S. Volutza was awarded \$10,000 for past pain and suffering and \$2,490,000 for future lost earnings.

This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.