

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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www.cco.state.oh.us

DARLENE LANE FERRARO, etc.

Plaintiff

v.

THE OHIO STATE UNIVERSITY MEDICAL CENTER

Defendant

Case No. 2011-10371

Judge Patrick M. McGrath

DECISION

{¶1} Plaintiff brought this action against defendant, The Ohio State University Medical Center (OSUMC), alleging wrongful death of Junior Lee Lane. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.¹

{¶2} This case arises out of a fatal automobile accident, which occurred at approximately 9:30 p.m. on September 10, 2009, on Interstate 71 (I-71) in Brook Park, Cuyahoga County, Ohio, involving a 1997 white Dodge Ram 1500 (pickup truck) driven by Gary Fury, with passengers Jesse Fury and Junior Lee Lane, and a 2004 silver Mercedes Benz C240 (Mercedes or silver car) driven by Rolf Barth, M.D. The roads were dry at the time of the accident, which occurred about an hour and a half after sunset. As an initial matter, at the commencement of the trial, the parties stipulated that Barth was engaged in the course and scope of his state employment at the time of this automobile accident.

¹Defendant's August 26, 2014 amended motion to mark the deposition transcript of Chad Meeks as Defendant's Exhibit L is GRANTED. The clerk is directed to mark the deposition transcript of Chad Meeks as Defendant's Exhibit L. Defendant's August 21, 2014 motion to mark the deposition transcript of Chad Meeks as an exhibit is DENIED as moot. Plaintiff's September 15, 2014 motion for leave to file a post-trial brief instantaner is GRANTED.

{¶3} Gary Fury testified by way of video deposition that he borrowed a tow dolly from Lane's niece with the intent to tow a corvette automobile. Gary Fury connected the tow dolly to the hitch of his pickup truck at the home of Lane's niece; however, he could not recall whether he connected the brake wires at that time. Gary Fury explained that in order to connect the tow dolly to the pickup truck, the hook is placed on the truck, the pin is pushed down, the bolt is secured, and the chains are attached. After arriving at his home, Gary Fury unsuccessfully attempted to load the corvette onto the tow dolly. According to Gary Fury, after pushing the corvette back into a garage, Lane unhooked the tow dolly and then reconnected the tow dolly to the truck. However, Jesse Fury testified that both Gary Fury and Lane hooked up the tow dolly to the pickup truck. Additionally, Gary Fury admitted in a previous deposition that he would never let anyone else hook up a trailer to his pickup truck. Gary Fury also admitted that he did not know whether the brake lights were connected at that time. Prior to leaving his home, Gary Fury failed to ensure that the tow dolly was properly attached and that the brake lights were functioning.

{¶4} Gary Fury, Jesse Fury, and Lane then proceeded toward I-71 in the pickup truck. Gary Fury asserted that they traveled about two miles toward I-71 from his home without any incident. Gary Fury then entered I-71 northbound at Snow Road. At that location, I-71 northbound consists of four lanes and Gary Fury eventually entered the second lane from the center partition. The lanes are numbered one through four. The first lane is closest to the center partition and the fourth lane is the furthest from the center partition. As he increased the speed of his pickup truck to 50 miles per hour (mph), Gary Fury asserted that the tow dolly somehow disconnected from the pickup truck and began swinging between the first and third lanes. Jesse Fury also testified that the tow dolly was swinging back and forth behind the pickup truck. Gary Fury described the traffic flow as heavy such that he was unable to change lanes to either the left or the right in an attempt to stop the pickup truck on the shoulder.

Rather, Gary Fury, who is familiar with the area and has previously driven on this freeway, chose to stop his pickup truck in lane two of I-71 northbound approximately 500-800 feet prior to the I-71 and Interstate 480 (I-480) split at which point lanes one and two of I-71 continue north and lanes three and four split to the right to I-480 west.

{¶5} According to Gary Fury, Jesse Fury and Lane both alighted from the pickup truck in order to reconnect the tow dolly. Lane proceeded to the back, passenger side

of the pickup truck in between the pickup truck and the tow dolly, bent down and began attempting to reconnect the tow dolly to the pickup truck. Jesse Fury entered the third lane, proceeded south on I-71 about 10 feet past the tow dolly, removed his white t-shirt, and began waving his t-shirt in the air in an attempt to alert oncoming drivers of the hazard. Gary Fury asserted that both the brake lights and hazard lights of his pickup truck were illuminated. Gary Fury explained that the pickup truck had a four inch lift kit such that the body of the pickup truck was several inches higher than a normal pickup truck and that the empty tow dolly did not obstruct any of the pickup truck's rear taillights. Additionally, Gary Fury asserted that the taillights of the tow dolly were also illuminated. Gary Fury testified that multiple cars were able to slow down and continue around his stopped pickup truck. Gary Fury estimated that they had stopped on I-71 for no more than two minutes prior to the accident. According to Jesse Fury, 25-30 cars successfully navigated around the stopped pickup truck prior to the accident.

{¶6} Jesse Fury asserted that while other vehicles were slowing down as they approached the stopped pickup truck, he noticed a silver car that was not slowing down and was passing other cars as it approached. Jesse Fury yelled to Lane that a car was not slowing down and moved quickly to the right side of the road. Gary Fury testified that he noticed a quickly approaching car several hundred feet south or perhaps as far south as 1/8 to 1/4 of a mile. Gary Fury yelled at Lane informing him that the car was not slowing down. According to Gary Fury, Lane jumped over the tow dolly and trailer hitch toward lane one. The Mercedes then struck the tow dolly and pickup truck, killing Lane as he apparently attempted to move out of the way. Gary Fury asserted that the Mercedes did not slow down or brake prior to the accident. The impact of the accident pushed the pickup truck further north on I-71. Gary Fury testified that Lane was under the Mercedes after the collision.

{¶7} Anthony Angey testified by way of deposition that he was traveling on I-71 returning home from work. Angey testified that he was in lane two, traveling behind a silver car. Angey estimated that he had been following the silver car for several minutes, maintaining the same amount of distance between the two cars, at a speed of about 65-70 mph. Angey testified that he saw the Mercedes collide with the pickup truck. According to Angey, it did not appear that the Mercedes had swerved prior to the accident. Additionally, Angey testified that as the Mercedes collided with the pickup truck, the Mercedes "went airborne" such that he was able to see underneath

the Mercedes. Angey then maneuvered his vehicle around the accident and stopped his vehicle on the side of the road. Subsequently, Angey noticed that the silver car was on top of the decedent. After police arrived, Angey stated to the police that he saw someone in the roadway outside the pickup truck on I-71, although he was unable to recall whether he saw the pedestrian prior to the accident and whether the pedestrian was the decedent or Jesse Fury.

{¶8} Rolf Barth, M.D., an emeritus professor in the Department of Pathology at OSUMC, testified that he was traveling north in a Mercedes on I-71 in Brook Park, Ohio, to attend a conference at the Cleveland Clinic. Barth asserted that his headlights were on and properly functioning prior to the accident. As Barth traveled northbound on I-71, he had his windows rolled up and was listening to “loud” Russian martial music. Barth estimated that he had been traveling in lane two for approximately 15-20 minutes, maintaining a speed of about 65 mph. Barth asserted that he had been following a car for a number of minutes, maintaining about six car lengths between the two vehicles. Barth testified that his first memory of a problem was when he collided with the stopped vehicle. Barth does not recall what happened to the car he was following. Additionally, Barth does not recall seeing a stopped pickup truck or pedestrians in the roadway prior to the accident. After the accident, Barth exited his Mercedes, saw the decedent under the right, front passenger side of the Mercedes and called his wife to ask her to call the insurance company. Barth asserted that it was obvious that Lane had suffered an instantaneous death.

{¶9} Chad Meeks testified by way of deposition that he was driving south in the second lane from the left on I-71 in a full-size Chevy Silverado pickup truck when he noticed a stopped vehicle in the middle of I-71 northbound. Meeks described the traffic flow on I-71 northbound as unusually heavy with much of the traffic merging into other lanes to avoid the stopped vehicle. Meeks estimated that he saw 10-15 vehicles safely pass the stopped pickup truck. Meeks testified that he saw someone behind the truck bending down and another person slightly further south waiving a white shirt. Meeks testified that as he was about to pass the pickup truck, he saw a tractor-trailer approaching the stopped pickup truck. Meeks believed the tractor-trailer was in the same lane of travel as the pickup truck, but he admitted that it could have been in a different lane. Meeks testified that he heard the sound of car horns as the tractor-trailer passed the pickup truck. Meeks asserted that he subsequently saw a

silver car quickly approaching the stopped pickup truck. Meeks testified that he heard loud braking and saw white smoke as the silver car collided with the stopped pickup truck. Meeks asserted that the white smoke occurred immediately prior to the silver car crashing into the pickup truck and that the back of the silver car vaulted into the air. Meeks then continued south on I-71 where he encountered a stopped police car and informed the police officer of the automobile accident. Subsequently, Meeks returned to drive by the accident scene and proceeded home. The next day Meeks contacted police regarding the accident, although at no point did he inform the police that he witnessed a tractor-trailer narrowly avoid the collision shortly before the accident.

{¶10} As a result of the accident, Sergeant Myron Sulminski and Patrolman Joseph Klemenc of the Brook Park Police Department were called into work to operate the total station equipment, which is used to measure various distances and document the location of evidence at the scene. Both Sulminski and Klemenc are trained in accident investigation. Sulminski and Klemenc arrived on scene about an hour after the accident. Sulminski and Klemenc both testified that the freeway lights were functioning properly and that the posted speed limit at the location of the accident is 60 mph. Sulminski described the scene of the accident as “well-lit” whereas Klemenc confirmed that it was a lit area of the freeway. Sulminski prepared a field sketch of the scene and a scale diagram using the data collected by the total station equipment. Sulminski explained that the accident occurred on I-71 northbound at a point where the freeway consists of four lanes of northbound traffic about 500-800 feet prior to a split in the freeway. The left two lanes continue northbound on I-71, while the right two lanes split off to I-480 west. Sulminski explained that after the accident both vehicles were located in lane two, with the Mercedes close to the white line separating lane one and lane two and the pickup truck pushed further north in lane two. Sulminski stated that the tow dolly was in lane three facing east at an angle. Sulminski noted a 25 foot 5 inch straight skid mark ending at the left front tire of the Mercedes. Additionally, Sulminski noted a 23 foot yaw mark, which both he and Klemenc attributed to the tow dolly. Sulminski explained that the left wheel of the tow dolly had been shredded and left in the roadway and that the left fender of the tow dolly was found in the right shoulder in the grass.

{¶11} Detective Emil Walentik of the Brook Park Police Department commenced an investigation of the accident the following day. According to Walentik, the area of

the accident is a well-lit area of the freeway. Walentik interviewed several witnesses, including Meeks, Angey, and Gary Fury. Additionally, Walentik and Klemenc went to the tow yard the day after the accident to gather additional data. Klemenc removed the intact taillight bulb and wiring harness from the trailer and removed both the rear taillight of the pickup truck and the front headlight from the Mercedes. The taillights were sent to the BCI lab for testing. Walentik reported that testing was unable to confirm whether the dolly taillights were functioning at the time of the accident.

{¶12} “To maintain a wrongful death action on a theory of negligence, a plaintiff must show (1) the existence of a duty owing to plaintiff’s decedent, (2) a breach of that duty, and (3) proximate causation between the breach of duty and the death.” *Littleton v. Good Samaritan Hosp. & Health Ctr.*, 39 Ohio St.3d 86, 92 (1988), citing *Bennison v. Stillpass Transit Co.*, 5 Ohio St.2d 122 (1966).

{¶13} “Where a legislative enactment imposes upon any person a specific duty for the protection of others, and his neglect to perform that duty proximately results in injury to such another, he is negligent per se or as a matter of law.” *Eisenhuth v. Moneyhon*, 161 Ohio St. 367 (1954), paragraph two of the Syllabus.

{¶14} R.C. 4511.21, provides: “(A) No person shall operate a motor vehicle * * * at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions and no person shall drive any motor vehicle * * * upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead.”

{¶15} “Violation of the statute [R.C. 4511.21] and a finding of negligence per se depends on whether there is evidence that the driver collided with an object which (1) was ahead of him in his path of travel, (2) was stationary or moving in the same direction as the driver, (3) did not suddenly appear in the driver’s path, and (4) was reasonably discernible.” *Junge v. Brothers*, 16 Ohio St.3d 1, 3 (1985), quoting *McFadden v. Elmer C. Breuer Trans. Co.*, 156 Ohio St. 430 (1952). Additionally, the common law of Ohio also imposes a duty of reasonable care upon motorists, which includes the responsibility to observe the environment in which one is driving. *Hubner v. Sigall*, 47 Ohio App.3d 15, 17 (10th Dist.1988). Moreover, “[w]hile it is true that generally one has a right to assume that other drivers will exercise due care and observe the law, this does not permit one to drive blindly down the highway. A driver is

always under a duty to exercise ordinary care under the circumstances.” *Orr v. Zeff*, 1st Dist. Hamilton No. C-790022, 1980 Ohio App. LEXIS 11874 (Mar. 26, 1980).

{¶16} There is no reasonable dispute that Lane was ahead of Barth in the same lane of travel; that Lane was stationary; and that Lane did not suddenly appear. However, defendant argues that Lane was not reasonably discernible. Plaintiff presented the expert testimony of accident reconstructionist James Crawford. Crawford holds a Master of Science degree in aeronautical engineering. Crawford previously worked in the Coast Guard for 29 years performing accident investigations and reconstructions and currently works for a private company that performs accident reconstructions. Additionally, Crawford teaches traffic crash reconstruction for the Ohio Peace Officer Training Academy for police officers in Ohio and is certified by a national accident reconstruction accreditation organization. Crawford is also formally trained to analyze lighting conditions that exist at the time of an accident and to perform bulb analysis to determine whether a given bulb was illuminated at the time of the accident.

{¶17} Crawford explained that he reviewed the police report of the accident, which included witness statements, photos, and measurements from the scene. Crawford also collected weather data and vehicle data for both vehicles involved in the accident. Additionally, Crawford performed a nighttime site visit in similar conditions to the night of the accident where he obtained lighting data using a light meter. Crawford described the location of the accident as a well-lit urban freeway with light measurements of .4 to .6 foot candles. According to Crawford, the lighting from street lights is within the standards for lighting on urban freeways in Ohio.

{¶18} Crawford testified that the impact of the accident was slightly offset, meaning the right front of the Mercedes made contact with the left end of the pickup truck. Additionally, Crawford asserted that the principal direction of force was straight, meaning that the Mercedes did not strike the pickup truck from an angle. Crawford based such an opinion on the damage that both the Mercedes and pickup truck sustained, and more specifically, the lack of extrusion damage, which he asserted would occur if the accident occurred at an angle. Moreover, Crawford testified that the straight skid mark left by the Mercedes is also consistent with a straight impact. Finally, Crawford testified that the damage to the tow dolly is also consistent with a

straight impact. Therefore, Crawford opined that Barth was not swerving at the time of the accident.

{¶19} Crawford asserted that the taillights are required to be visible at a distance of up to 500 feet. However, Crawford testified that the taillights of the pickup truck would have been visible for 1/4 of a mile. Crawford explained that he has previously gathered data regarding taillight visibility by using a police radar gun to measure the distance between the rear taillights as the vehicles drive away and the individual holding the radar gun. Crawford asserted that flashing hazard lights also increase the conspicuity, which he defined as the ability of objects to draw attention to themselves.

{¶20} Regarding the taillights of the tow dolly, Crawford performed an inspection to determine whether the lights were operational at the time of the accident. Crawford explained that one of the taillights was damaged during the accident whereas the other taillight was not. Regarding the taillight that was not damaged, Crawford testified that he was unable to determine whether the taillight was illuminated at the time of the accident. Crawford explained that an illuminated taillight heats up the tungsten filament inside the glass envelope such that the tungsten becomes soft. According to Crawford, when an accident occurs with an illuminated taillight, the jolt of the accident will cause the filament to separate and appear like an extended slinky. After performing an analysis, Crawford confirmed that the taillight of the tow dolly that was damaged was illuminated at the time of the accident. Crawford based such an opinion upon physical evidence he collected during his inspection. Crawford testified that the supporting posts of the tungsten in the taillight were discolored, which is consistent with the taillights being illuminated at the time of an accident. Additionally, Crawford asserted that the filament was stretched like a slinky, which he explained is consistent with the taillight being illuminated at the time of an accident.

{¶21} As a result, Crawford concluded that the taillights and the hazard lights from the pickup truck, and the taillights from the tow dolly should have been visible from a distance of at least 500 feet and perhaps up to 1/4 of a mile. Finally, Crawford testified that the halogen headlights of the Mercedes would have provided illumination up to at least 430 feet ahead. Accordingly, Crawford concluded that the pickup truck, tow dolly, and decedent were discernable objects.

{¶22} By contrast, defendant presented the expert testimony of Timothy Tuttle, a traffic crash reconstructionist. Tuttle testified that he has completed a three week

course in accident reconstruction and is a former Ohio State Highway Patrol officer, where he received training and experience performing accident reconstructions. Tuttle, however, does not hold a formal degree in engineering and is not currently certificated by a national accreditation organization in accident reconstruction.

{¶23} Tuttle reviewed the police report, which included measurements and photos from the accident, and performed a site visit. Tuttle also reviewed the deposition transcripts of several witnesses including Gary Fury, Barth, Angey, Meeks and the responding officers. Tuttle also collected data regarding the specifications of the vehicles and tow dolly and data relating to the visibility and lighting at the time of the accident.

{¶24} Regarding visibility analysis, Tuttle explained that he went to the scene of the accident and used a luminous meter to measure the amount of light present and the amount of light that would reflect off of various objects in order to calculate at what point Barth should have been able to identify the objects in the roadway. Based upon his measurements, Tuttle determined that the pickup truck and decedent would not have been visible to Barth until he was 150 feet from the objects. Tuttle explained that in similar nighttime conditions, a driver would need to be within 150 feet of an object to identify the object such that the driver would be able to decide what actions are appropriate. Tuttle asserted that such a calculation accounted for the existing light from the utility poles and the headlights for the Mercedes. According to Tuttle, in a nighttime setting at a distance of 450 feet, a driver would not be able to identify whether an object was stopped or moving. Additionally, Tuttle did not believe hazard lights or brake lights would have made the objects more visible. However, Tuttle acknowledged that the Mercedes's headlights illuminate much farther than 150 feet and that the pickup truck taillights were retroreflective, which would have returned any light from the Mercedes's headlights. However, as a result of his calculations, Tuttle concluded that a driver traveling at 60 mph would have only 1.7 seconds to react prior to impacting the objects. As a result, Tuttle believed that the accident was unavoidable. Accordingly, Tuttle concluded that the pickup truck and decedent were not reasonably discernable.

{¶25} Additionally, Tuttle testified that Gary Fury should have moved his pickup truck to the side of road rather than stop the pickup truck in the middle of the freeway. Tuttle also asserted that the tow dolly and the pickup truck were not compatible inasmuch as the pintle hitch was closed on the ball when it should have been open.

Finally, Tuttle testified that Lane's decision to exit the pickup truck to reattach the tow dolly put him in extreme danger. Therefore, Tuttle concluded that the actions of both Gary Fury and Lane proximately caused the accident and Lane's death.

{¶26} Upon review of the evidence, the court concludes that the stopped pickup truck and decedent were reasonably discernable objects. Each of the police officers who were involved with the accident investigation confirmed that the area where the accident occurred is a well-lit urban freeway. Indeed, both Sulminski and Walentik described the area of the accident as well-lit, whereas Klemenc described the area as lit. Additionally, the court finds that the taillights of both the pickup truck and the tow dolly were operational at the time of the accident. Furthermore, Gary Fury engaged his hazard lights and Barth's headlights were operational at the time of the accident. The court finds Crawford's testimony regarding the point at which Barth should have been able to see the objects to be persuasive. Indeed, it appears from Barth's own testimony that he was not paying attention to the roadway in front of him inasmuch as Barth is unable to explain the disappearance of the car directly in front of him and is unable to recall seeing the stopped pickup truck or the decedent prior to impact. Moreover, by Barth's own admission he was exceeding the posted speed limit. Finally, the court is not persuaded by the testimony of Tuttle that the pickup truck and decedent would not have been discernable to Barth until he was 150 feet from the objects. Indeed, as acknowledged by Tuttle, such objects could have been seen at a much greater distance. Tuttle's testimony does not explain how other vehicles, including the one driven by Angey, avoided a collision.

{¶27} Defendant argues that the court must examine whether the decedent was reasonably discernable irrespective of whether the pickup truck and tow dolly were discernable. Such an argument, however, ignores the reality that the decedent was physically working on both the pickup truck and tow dolly at the time of the accident. This is not a situation of an isolated pedestrian in the roadway. Finally, defendant argues that Barth's visibility was shortened by a tractor-trailer that narrowly avoided a collision with the pickup truck. However, Meeks was the only witness to recall a tractor-trailer and he was uncertain as to its lane of travel. Additionally, neither Barth nor Angey testified that a tractor-trailer narrowly missed the pickup truck shortly before the accident. Therefore, the court is not persuaded that a tractor-trailer was proven to have obstructed Barth's view. Moreover, the presence or absence of a tractor-trailer

does not alter Barth's duty to maintain an assured clear distance ahead of any discernable objects, including a tractor-trailer. In short, the court finds that Barth violated R.C. 4511.21(A).

{¶28} A finding of negligence per se "does not mean that (such) negligence was the sole proximate cause, or even a proximate cause, of the collision that resulted in [Lane's] death." *Smiddy v. Wedding Party, Inc.*, 30 Ohio St.3d 35, 40 (1987). Similarly, if the court finds that the negligence per se and the negligence of another party were proximate causes of that event, "the issue of comparative negligence is for the [trier of fact]." *Id.*

{¶29} The court further finds that Barth's failure to maintain an assured clear distance ahead and his operation of his vehicle in excess of the speed limit proximately caused the accident. However, the court also finds that Gary Fury's operation of the pickup truck and tow dolly created an unsafe condition inasmuch as Gary Fury failed to ensure that the tow dolly was properly attached and failed to ensure the tow dolly's rear taillights and brakes were operational. R.C. 4513.02(A). The court finds that such failures also proximately caused the accident.² Additionally, Gary Fury was familiar with the freeway and his decision to stop his vehicle in lane two of a busy interstate highway rather than proceeding to either shoulder or 500-800 feet ahead to the split in I-71 where he could safely access the shoulder proximately caused the accident. R.C. 4511.22(A).³ Finally, the court finds that the decedent's own negligence in exiting the pickup truck and attempting to reconnect the tow dolly while the pickup truck was parked on I-71 rather than summoning emergency assistance was a proximate cause of the accident and his death. R.C. 4511.051(A).⁴

{¶30} R.C. 2307.23(A) provides, in part, that "[i]n determining the percentage of tortious conduct attributable to a party in a tort action * * * the court in a nonjury action shall make findings of fact * * * that shall specify all of the following:

²Defendant did not raise the affirmative defense of comparative fault in its answer; however, the court finds that the issue of comparative fault was tried by implied consent of the parties. Civ.R. 15(B).

³R.C. 4511.22(A) provides in relevant part, "[n]o person shall stop or operate a vehicle * * * at such an unreasonably slow speed as to impede or block the normal and reasonable movement of traffic, except when stopping or reduced speed is necessary for safe operation or to comply with law."

⁴R.C. 4511.051(A) provides in relevant part, "[n]o person * * * shall: (1) As a pedestrian, occupy any space within the limits of the right-of-way of a freeway * * *."

{¶31} “(1) The percentage of tortious conduct that proximately caused * * * the wrongful death that is attributable to the plaintiff and to each party to the tort action from whom the plaintiff seeks recovery in this action;

{¶32} “(2) The percentage of tortious conduct that proximately caused * * * the wrongful death that is attributable to each person from whom the plaintiff does not seek recovery in this action.”

{¶33} Based upon the foregoing, the court finds that plaintiff has proven her claim of negligence. However, pursuant to R.C. 2307.23(A), the court determines the percentage of fault as follows. The court finds that Gary Fury is one-third negligent, defendant is one-third negligent, and the decedent is one-third negligent.

PATRICK M. MCGRATH
Judge

Court of Claims of Ohio

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THE OHIO STATE UNIVERSITY MEDICAL CENTER

Defendant

Case No. 2011-10371

Judge Patrick M. McGrath

JUDGMENT ENTRY

{¶34} This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff, with a one-third reduction to account for Gary Fury's negligence and a one-third reduction to account for the decedent's contributory negligence. A case management conference is set for *January 7, 2015, at 11:30 a.m.*, to discuss further proceedings. The court shall initiate the conference via telephone.

PATRICK M. MCGRATH
Judge

cc:

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