

Jury returns \$382K verdict against no-show defendant

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In his nearly 30 years of practice, Columbia lawyer John D. Kassel had never tried a case in which the defendant did not show up for court and called no experts. But that's exactly what happened during a wrongful death trial against a nursing home earlier this month.

The absence of a representative from the J.F. Hawkins nursing home likely weighed heavily on the minds of jurors, who on April 10 awarded \$382,000 to Kassel's client after the unusual trial in the Newberry County Court of Common Pleas.

It was a significant award in a conservative jurisdiction, especially considering that the home's insurance adjuster thought the case was worth a relatively modest \$60,000.

During his closing argument, Kassel said he pointed to the empty seat beside the nursing home's defense attorney, James E. Parham Jr. of Irmo, and told the jury, "Ladies and gentlemen, we showed up, the judge showed up, and you took time out of your lives to be here because you care. But where's the nursing home? Do they care?"

Parham did not respond to interview requests. A nursing home staffer referred questions to the county, which, she said, owned the home at the time of the incident behind the

VERDICT REPORT

WRONGFUL DEATH

Case name: *Plato Gray and Christine Boyd as personal representatives of the estate of Nellie Gray v. Springfield Place/J.F. Hawkins Nursing Home*

Case number: 2010-CP-36-195

Court: Newberry County Court of Common Pleas

Judge: G. Edward Weilmaker

Date of verdict: April 10, 2013

Amount: \$382,000

Highest offer: \$60,000

Attorneys for plaintiff: John D. Kassel and Theile B. McVey (Columbia)

Attorneys for defendants: James Parham (Columbia)

lawsuit. But a message for the county went unanswered.

Kassel represented the family of 84-year-old Nellie Gray, a resident of the nursing home who died from complications connected to a fall. He argued that Gray suffered a fractured hip and head injuries, which rendered her bedridden and caused her to contract a fatal case of pneumonia.

"Pneumonia is a very common road to death for elderly people who fall," he said.

The nursing home was negligent, Kassel asserted, because it had labeled Gray as a fall risk when she was admitted, but failed to keep her safe. In fact, Gray had taken an earlier spill before the more serious fall that led to her death, and the home still did not take additional precautions to protect her, Kassel said.

According to Kassel, two nurses from the home testified during the trial that Gray should have been re-evaluated after her first fall and

agreed that she would have benefited from additional safety measures. Her treating neurosurgeon also told jurors that the fall made her susceptible to pneumonia, resulting in her death.

Meanwhile, Kassel said Parham did not call a single expert to the stand, though he had hired a neurologist and neurosurgeon who during depositions said they believed Gray's pre-existing heart condition caused her to succumb to pneumonia.

But their diagnosis hinged on the assumption that Gray's heart was weak, and Kassel said he was able to prove that was not the case based on a measurement of the amount of blood being pushed out with each heartbeat. Gray's treating cardiologist also testified that her death was not related to her heart condition.

"They [the defense's experts] certainly were going to get beat up with that" had they testified, Kassel said.

Kassel had expected the trial to take about a week, but because of the unorthodox defense, it was over in three days. The jury reached a verdict in about two hours, awarding Gray's family \$232,000 for wrongful death and \$150,000 for a survival action.

"It was very strange that a defendant in a personal injury case doesn't put up a defense," Kassel said. "I've never had that happen where they don't put up an expert."

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