
10/29/04 - Judge CHARLES S. SABALOS -
CV 2002-4781 - STUPECK (Michael Edmund
Larkin, a sole practitioner) v RICHMOND
(David L. Curl of Barassi & Curl, P.L.C.) -
PERSONAL INJURY - RESIDENCE/AUTO
MISHAP. *Prologue: Dfnt, male, age 17, a
high school student, had spend the night at his
grandparents' home. After Dfnt got a haircut
the following day, he began to leave, stopped,
then slumped over as if he had dropped some-
thing. When one of the barbers went to Dfnt,*

Dfnt straightened and advised barber he was all right. Dfnt stayed at the barbershop for thirty to forty minutes, then left. Dfnt called his mother later that day, and drove to meet his family and some friends at Park Place Shopping Center. The group shopped, then decided to go to Tucson Mall. Dfnt followed his mother's friend's van, with his passengers, his younger brother and sister, plus two family friends. As Dfnt travelled westbound on Fort Lowell Road, he lost consciousness and had a seizure. Dfnt's vehicle crossed oncoming lanes of travel, then crossed over, where he struck a residence, crashed through a wall, and struck Plntfs, who were seated at their kitchen table. Plntfs, husband and wife, alleged Dfnt experienced a seizure at the barbershop, and was reckless when he operated the vehicle. Plntfs also alleged Dfnt had many opportunities to avoid the incident, but chose to ignore them. Plntfs called the two investigating police officers. Plntfs also called John S. LaWall, M.D., a neurologist, who testified that Dfnt had a seizure, probably from a hemangioma, while at the barbershop. Dr. LaWall also testified that, had Dfnt sought emergency treatment, he would have been given a CT scan, and probably an MRI, which would have revealed the hemangioma. However, on cross, Dr. LaWall admitted that a person who suffers a seizure does not necessarily perceive the seizure, and finds out what happened from witnesses. Dr. LaWall agreed that none of the witnesses at the barbershop thought Dfnt had had a seizure. Dr. LaWall also agreed that the emergency physicians were dependent on the patient, and, if Dfnt advised he had fainted because he had not eaten, and now was fine, it was not likely they would have ordered an MRI. Additionally, Dr. LaWall agreed there was no evidence that Dfnt had previous seizures, and it would have been appropriate for him to wait until the following week to see his primary care physician, under any circumstances. Two barbers testified they did not think Dfnt had suffered a seizure, and a paramedic in the

barbershop examined Dfnt. One barber believed Dfnt had passed out as a result of the heat. Dfnt denied liability, advancing the defense that he was unaware that he had suffered a seizure. Dfnt called Dfnt's school psychologist, who testified he was familiar with Dfnt, and Dfnt's school record did not contain any notation regarding seizures or fainting spells. Dfnt also called Thomas F. Norton, M.D., a neurosurgeon, who performed surgery on Dfnt's hemangioma. Dr. Norton testified that patients can have cavernous hemangiomas without being aware of them. It was Dr. Norton's opinion that Dfnt's hemangioma had been bleeding between one week and one month, and there was no way for Dfnt to know he had the condition. Dr. Norton testified that, while it might have been appropriate for Dfnt to see a physician on the day of the incident, it was also appropriate to wait until the following week to discuss it with his primary care physician. Dr. Norton also testified that, even if Dfnt had seen an emergency medicine specialist, it was unlikely he would have received a CT scan or an MRI, based on the one incident at the barbershop. Additionally, Dfnt called Robert S. Hom, M.D., who had been Dfnt's pediatrician for six years. Dr. Hom testified there was no indication that Dfnt had seizures or fainting spells prior to the instant accident. Plntfs alleged they sustained severe soft tissue injuries. Plntf wife alleged that, as a result of her injuries, she has difficulty walking, which is ongoing, and her left leg is one-half inch larger than her right leg, due to swelling. Plntf wife also alleged she is only seventy percent of her pre-accident self. Plntfs called Julie Goodwin, a licensed massage therapist, who testified Plntfs required deep tissue massages, to break up muscles that had become "glued together". Ms. Goodwin admitted she began treating Plntf husband one year post-accident, and released him, with no need for future treatment. Plntfs also called John R. Keifer, D.C., who testified Plntf wife's medical complaints prior to the instant accident were

different than her complaints post-accident. It was Dr. Keifer's opinion Plntf wife's treatment was causally related. It was also Dr. Keifer's opinion Plntf wife will require future treatment. However, on cross, Dr. Keifer admitted Plntf wife had previous treatment for lumbar spinal complaints, plus tingling in both hands, both legs; shoulders, and knees. Dr. Keifer also admitted Plntf husband first complained of significant pain one year after the instant accident. Plntf wife used the videotape deposition of Michael A. Lavor, M.D., a general surgeon, who was of the opinion Plntf wife probably had a torn muscle in her calf, but it should not cause her any difficulties, other than periodic swelling, and she should wear support hose. Plntfs called Robert D. Wallace, P.T.,

who testified all of his care and treatment was reasonable and causally related. Dfnt argued Plntfs' medical treatment and expenses were excessive. Dfnt also argued Plntfs travelled to Pennsylvania every Christmas, and drove seven-thousand miles during the summer. Additionally, Dfnt argued Plntf wife had treated with a chiropractor for twenty to thirty years, and rarely reported pain in excess of the pain she had prior to the instant accident. Plntf husband's Prayer: Just and reasonable compensatory damages; \$10,000 medical expenses; plus an unspecified amount in lost wages for five weeks. Plntf wife's Prayer: Just and reasonable compensatory damages; \$22,000 medical expenses; plus an unspecified amount in lost wages for five weeks. Dfnt made a \$15,000 pretrial offer of

settlement to Plntf husband, and a \$20,000 pretrial offer of settlement to Plntf wife (D). (Carrier: Unknown.) During closing arguments, Plntfs' counsel asked jury to award Plntf husband \$60,000, and award Plntf wife \$100,000. Defense counsel argued liability, and also argued the paramedic at the barbershop had checked Dfnt at the scene. Additionally, defense counsel argued it was unlikely Dfnt would have received an MRI, which would have been necessary to find the hemangioma, if he had sought immediate medical treatment. Five day trial. By stipulation, nine jurors deliberated. Jury out thirty minutes. FOUND FOR DFNT. UNANIMOUSLY. (Post-trial, Court awarded Dfnt \$1,487 in costs.)
