
3/14/08 - Judge CHARLES V. HARRINGTON - CV 2006-4553 - COLLINS (David W. Rees, a sole practitioner) v ROGERS, M.D. (Douglas W. Glasson [REDACTED] of Barassi, Curl & Abraham, P.L.C.) - PERSONAL INJURY - PREMISES LIABILITY - HOME CAREGIVER. Case being tried on comparative fault. Plntf, female, age 48, a home care provider, was hired to provide companionship, feeding, and cleaning care for Dfnt's elderly disabled husband. After working for one year, Plntf alleged that, as she was in the bathroom, cleaning Dfnt's husband, he fell on her. Plntf also alleged Dfnt refused to provide a gait belt, which could have been used to stabilize Dfnt's husband, when he began to fall. Plntf called Paul T. Kaylor, R.N., a nursing standards and practices expert, who testified it was appropriate for Plntf to clean Dfnt's husband standing at the vanity counter in the bathroom, instead of lying on the bed. It was Mr. Kaylor's opinion that Plntf should have been provided with a gait belt. Dfnt, female, age 54, an obstetrician and gynecologist, denied liability, advancing the defense that Plntf injured herself lifting. Dfnt argued Plntf was not injured at Dfnt's home, as Plntf did not report any incident or injury to Dfnt, upon Dfnt's arrival home at the end of the day. Dfnt also argued that gait belts were available for Plntf's use, and the absence of a gait belt was not a factor in any fall and/or injury incident. Dfnt called Rebecca J. Wilson, P.T., who testified regarding transfer techniques and the use of a gait belt. It was Ms. Wilson's opinion that Plntf was bending down, below Dfnt's husband,

and would not have been able to control him from that position. Plntf, who had prior micro lumbar disectomy surgery at L-4, L-5, and a prior lumbar disk herniation at L-3, L-4, alleged she sustained herniated lumbar disks at L-3, L-4, and L-4, L-5; with permanent foot drop. Plntf also alleged she is unable to perform her occupational duties. Plntf called Thomas B. Scully, M.D., a neurosurgeon, who performed Plntf's prior surgery, and also performed right-side microlumbar disectomies at L-3, L-4, and L-4, L-5, following Plntf's alleged fall at Dfnt's home. Dfnt Scully also testified Plntf's injuries were caused by the fall, based primarily on history provided by Plntf. Dfnt disputed the extent of Plntf's ongoing foot drop, and argued Plntf was not disabled, as Plntf was working as a taxicab driver. Dfnt called Colin R. Bamford, M.D., a neurologist, who testified regarding Plntf's preexistent degenerative disk disease and prior surgery. It was Dr. Bamford's opinion that Plntf probably had preexistent foot drop, due to longstanding injury at L-4, L-5. Dr. Bamford also testified that the ability to dorsiflex the foot is to a lesser degree enervated by nerves located at the L-5, S-1 level, which was not injured. Prayer: Just and reasonable compensatory damages; plus \$38,308.64 medical expenses. Dfnt made a \$100 pretrial offer of judgment (D Glasson). (Carrier: Unknown.) During closing arguments, Plntf's counsel asked jury to award Plntf \$300,000. Defense counsel argued liability. Four day trial. Jury out two hours. AWARDED PLNTF \$40,000 COMPENSATORY DAMAGES. UNANIMOUSLY. (Found Plntf to be ninety percent at fault, and Dfnt to be ten percent at fault; therefore, Plntf's award to be reduced to \$4,000.)
