
Pima County Superior Court Jury Trials

THE TRIAL REPORTER of Southern Arizona

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11/1/12 - Judge CARMINE CORNELIO - CV 2011-2753 - BERTLING (Leighton H. Rockafellow, Sr., and Leighton H. Rockafellow, Jr., of Rockafellow Law Firm) v FOLEY (Douglas W. Glasson of The Curl Law Firm) - PERSONAL INJURY - PREMISES LIABILITY - TRIP AND FALL. Plntf, in her early sixties, a home health aide, alleged Dfnt had placed a sixteen-inch wide by eighteen-inch high ceramic flowerpot, with stand, in a forty-inch wide hallway at Dfnt's residence. Plntf also alleged that, as she walked down the hallway, she tripped and fell over the foot of the flowerpot stand and struck the back of her head. Plntf called Donald M. Snover, C.S.P., a safety expert, who was of the opinion that the plant stand and flowerpot created a dangerous condition, and should not have been in the hallway of a residence. It was also Mr. Snover's opinion that Dfnt should have warned Plntf of the condition. Additionally, it was Mr. Snover's opinion that Plntf was not comparatively negligent. Dfnt, female, age 60, a disabled psychiatrist, denied liability, advancing the defense that the condition was open and obvious. Dfnt alleged Plntf was aware that the flowerpot and plant stand were in the hallway, and had previously commented on the flowerpot. Dfnt argued Plntf was comparatively at fault, in that she was walking backward and talking to Dfnt at the time she fell, causing her own injuries. Plntf alleged she sustained a closed head injury; a five-inch centimeter scalp laceration, which required sutures; plus a cervical strain and sprain. Plntf also alleged she now has residual permanent migraine headaches. Plntf called her treating physician, John S. LaWall, M.D., a neurologist, specializing in headaches, who testified that migraine headaches are caused by genetic factors. Dr. LaWall also testified that the migraine condition persists throughout a

patient's life, and can be a waxing and waning condition. Additionally, Dr. LaWall testified that Plntf had been previously treated for medication rebound headaches, and her prior headaches, in part, were related to over-medication. Dfnt alleged Plntf's complaints were related to her preexistent migraine condition. In the alternate, Dfnt argued that, at most, Plntf's migraine headache condition was temporarily aggravated by the fall. Dfnt called Frederick T. Strobl, M.D., a neurologist, of Minneapolis, Minnesota, who performed an independent medical examination. It was Dr. Strobl's opinion that Plntf's heavy caffeine use contributed to her headaches, and they were a recurrence of her preexistent headaches, which were likely to recur throughout her life. Prayer: Just and reasonable compensatory damages; \$25,000 past medical expenses; plus \$24,000 (per P) or \$48,320 (per D) future medical expenses. Plntf's spouse made a \$25,000 claim for loss of consortium. Plntf made a pretrial demand of \$75,000 (per P) or Plntf made a \$100,000 offer of judgment (per D) - Dfnt offered \$1,000 (per P) or Dfnt made a \$500 offer of judgment (per D) (P Rockafellow, Sr. & D). (Carrier: State Farm Insurance.) Three day trial. Jury out one-plus hours. FOUND FOR DFNT. 7 - 1.
