

PROFESSIONAL LIABILITY

Abigail Miller v. Shawn Hearing d/b/a Therapeutic Touch Healing Center and Shawn Hearing, individually

Defense Verdict



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Plaintiff Counsel: Trelles & Bichler, LLC (Yvette M. Trelles)

Six-Day Jury Trial (St. Lucie County); Plaintiff requested approx. \$500,000 in damages — the Jury returned a complete Defense Verdict

On May 15, 2023, Partners Scott Kirschbaum, Esq., and Elizabeth Jimenez, Esq., obtained a complete defense verdict after a six-day jury trial in a professional liability matter styled *Abigail Miller v. Shawn Hearing d/b/a Therapeutic Touch Healing Center and Shawn Hearing, individually*. The lawsuit arose out of a claim by the Plaintiff, a then 24-year-old woman who was studying to be a massage therapist herself, wherein she claimed that Defendant, a licensed massage therapist in Ft. Pierce, performed a massage on her and injured her neck and shoulder by jamming his knee into her neck and shoulder. The Defendant massage therapist denied having performed a massage on the Plaintiff and insisted that he performed the massage on another willing patient as demonstration for the Plaintiff to learn massage techniques per her request to learn.

As an aside, the Defendant and the Plaintiff had known each other for years, and in fact, the Plaintiff resided in the Defendant's home with her sister after Plaintiff's mother died. The jury was permitted to know those limited facts about the prior relationship.

The Defendant massage therapist admitted that even if he had performed a massage on the Plaintiff, he would never have used his knee on the patient's body. His standard of care massage therapist expert, Nancy Porambo, LMT, also testified that the use of a knee during a massage would be below the standard of care and it did not make sense that the Plaintiff would be so injured during such a massage but not seek immediate medical attention. Notwithstanding, after refusing conservative treatment from one doctor, the Plaintiff then came under the care of orthopedic surgeon, Dr. Thomas Roush. Dr. Roush, after believing the interpretations of an MRI finding disc herniations and bulges at the C3-4, C4-5, C5-6, C6-7, put the Plaintiff through several procedure, most of which had been unsuccessful by his own admission. They included epidural injections, complete disc replacements, and rhizotomy to the tune of nearly \$306,000.00 in medical costs. The jury was not pleased with the charges from Dr. Roush, who also had a blended medical bill containing his medical charges for the Plaintiff as well as his "legal" charges as a retained expert in the case.

Dr. Roush had also provided a life care plan for the Plaintiff that exceeded \$400,000.00 of future care. He ultimately opined that the Plaintiff had recovered completely and had to retreat from many of his opinions about future medical needs and reverse himself in front of the jury.

The defense's medical experts, Dr. Michael Zeide (orthopedic surgery) and Dr. Gordon Sze (diagnostic radiologist), both opined that the imaging showed no evidence of herniation anywhere on the Plaintiff's cervical spine. Dr. Sze said that the imaging showed a minor bulge at the C5-6 level, which was not worthy of surgery. Dr. Zeide also opined that the surgeries and procedures were medically unnecessary and that the Plaintiff would have benefited from conservative treatment such as physical therapy, which had never been ordered by Dr. Roush. Dr. Zeide also opined that the Plaintiff suffered from a pre-existing and undiagnosed scoliosis. There was no evidence of mediated facet pain syndrome and this was proven by Dr. Zeide by the medical evidence and the Plaintiff's presentation of symptoms.


Over the course of six days, the jury listened to 12 witnesses including several before and after witnesses who were mainly family and friends of the Plaintiff to testify about how she was changed by the alleged incident. This also included the testimony of the four expert witnesses as stated above. The defense imported the theme of no good deed goes unpunished in voir dire, opening statement and closing argument.

The Plaintiff asked the jury for an award of damages of approximately \$500,000.00 and left the element of future pain and suffering up to the jurors' common sense and own devices. While the case presented a tricky "he said, she said" scenario, after deliberating for about seventy-five minutes, the jury apparently believed the testimony of the Defendant massage therapist over that of the Plaintiff and rendered a complete defense verdict in his favor.

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