

Missouri Lawyers

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WEEKLY

■ \$317,000 VERDICT

Jury mostly sides with woman after fall from doctor's treadmill

MEDICAL MALPRACTICE

■ **Allocation of Fault:** 80 percent to Jefferson City Medical Group and 20 percent to plaintiff Julia Albright. Net judgment of \$253,600

■ **Venue:** Cole County Circuit Court

■ **Case Number/Date:** 12AC-CC00292/April 23, 2015

■ **Judge:** Daniel H. Green

■ **Plaintiff's Expert:** Lori Hughes, Little Rock, Arkansas (Advanced Care Practical Nurse)

■ **Defendant's Expert:** Jane Gallagher-Dozier, Jefferson City (Advanced Care Practical Nurse)

■ **Last Pretrial Demand:** \$115,000

■ **Last Pretrial Offer:** \$30,000

■ **Caption:** Julia Albright v. Jefferson City Medical Group PC

■ **Plaintiff's Attorney:** Kenneth K. Vuylsteke, Fox & Vuylsteke, Webster Groves

■ **Defendant's Attorney:** Scott Pool, Gibbs Pool and Turner, Jefferson City

BY LAWRENCE VIELE DAVIDSON

Special to Missouri Lawyers Media

A Cole County jury awarded a woman \$317,000 for injuries sustained during a cardiovascular treadmill test but they decided she played a part in the 2009 incident.

Julia Albright, 71, was 5 feet 3 inches, had a bad hip, weighed 230 pounds, and was not a good candidate for a treadmill test, her doctor determined. He ordered a cardiovascular chemical stress test for a Dec. 18, 2009, appointment, her lawyer Kenneth K. Vuylsteke said. At the appointment, she overruled her doctor and insisted on using the treadmill, Vuylsteke said. The nursing staff allowed it and as the treadmill started, she fell and tore both rotator cuffs.

The April verdict showed that jurors were "intelligent and they have a heart and they showed it," said Vuylsteke, of Fox & Vuylsteke in Webster Groves.



Kenneth K. Vuylsteke

Jurors held Albright 20 percent responsible for her treadmill accident, bringing her share of the verdict down to \$253,600. The defendant, Jefferson City Medical Group, is attempting to undo the verdict entirely and lawyers will argue July 28 to set aside the verdict and have a new trial, Vuylsteke said.

The medical staff at the testing appointment not only allowed Albright to get on the treadmill but also failed to position her hands properly and warn her the treadmill was starting, the petition said. She had her hands on the side rails instead of the safer position of the front bars. The medical staff turned on the machine by remote control without telling Albright and she fell, the petition said.

Her injuries are "permanent and progressive," the petition said. Vuylsteke asked the jury for \$17,000 in expenses, \$150,000 for past pain and suffering and whatever the jury thought was fair for the rest of her life expectancy of about nine years, he said.

The defense seeks to erase the jury's generosity.

Albright's injuries were "due to preexisting and/or intervening medical conditions," the defense response to the petition said.

Lead defense attorney Scott Pool of Gibbs Pool and Turner in Jefferson City did not comment on the verdict or the reasons for seeking a new trial. In the motion to set aside the jury verdict, the defense argued there was not enough substantial ev-

idence to prove there was wrongdoing on the part of the defendants and the plaintiff caused her injuries.

The plaintiff's expert, a nurse, testified that Albright should not have taken a treadmill test. That conclusion was an opinion, the motion said. Missouri law requires an objective explanation of the standard of care and the witness never provided the information, the motion says.

Her failure to take a step on the treadmill that was set at a speed slower than a slow walk caused her fall and injuries and not alleged wrongdoing by the staff. No "nexus between the two" was established at trial.

The defense says in its motion for a new trial that the jury instructions were faulty and the evidence did not support the conviction. Though the defense argued earlier in the case that the injuries at issue are the plaintiff's fault, the jury should not have considered comparative fault and allowing the jurors to consider the question prejudiced them, the motion says.

No evidence of comparative fault was offered, the defense says in the motion.

The question allowed the jury "to focus on the issue of the plaintiff's negligence" and allow an award of damages "to the plaintiff whether the defendant was negligent or not."

Vuylsteke, immediate past president of the Missouri Association of Trial Lawyers, dismissed the defense arguments to void the verdict and have a new trial as a desire to "send a message that you don't have the audacity to bring a medical malpractice case," in Cole County.

"The whole thing is sad," he said of his client's situation. "This is one of the most meritorious cases I've tried."