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## Verdict Spotlight

by Christopher M. Mellino

One of the toughest challenges we face as Plaintiffs' attorneys is attaining full compensation for individuals in the absence of a significant economic loss. This applies particularly to people who are not employed, older people and people with a complex medical history.



Blake Dickson

Blake Dickson was able to overcome all of those issues and obtain a one million dollar verdict for his clients in a case involving the death of Mary Stevens, a 77 year old woman. Mary died from sepsis that resulted from two Stage 4 bed sores on her

buttocks that became infected from fecal matter getting into those wounds.

A jury of six women and two men returned a verdict for compensatory damages in the amount of \$440,000 to her 88 year old husband Jacob and her 5 adult daughters. The jury awarded \$100,000 for loss of consortium, \$125,000 for mental anguish, \$50,000 for pain, \$50,000 for suffering, \$110,000 for medical expenses and \$5,000 for funeral expenses.

The following day during phase two of the trial, which was the punitive phase, the same jury awarded \$560,000 in punitive damages. Both verdicts were against Beachwood Pointe Care Centre and its affiliated corporate entities. The jury also awarded attorney's fees. That amount will be determined by the trial judge, the Honorable Lillian Greene.

Mrs. Stevens had a long history of diabetes and peripheral vascular disease which caused her to be in end stage renal disease. She received dialysis three times a week. She also had had a stroke and was wheelchair bound. After being cared for by her daughter for a number of years the time had come for her and her husband to move into assisted living. They chose Beachwood Pointe Assisted Care Centre. However, it was soon obvious that the staff there was not that interested in caring for the residents. Although it was documented in her care plan that Mary was underweight the staff left her in her room at meal time. Her husband who had the benefit of a motorized wheelchair would ride to her rescue and tow her to the dining room using his belt.

During one of these attempts Mary's chair hit a door frame and tipped causing Mary to break her leg. At least 5 staff members observed this incident but yet did nothing to help her. Her broken leg was diagnosed two days later because the dialysis center sent her to the hospital. Because of the resulting immobility from the broken leg she developed the bedsores that caused her death.

During discovery Blake established a pattern of indifference and conscious disregard by asking all of the staff members he deposed about the federal and state regulations governing nursing homes. He got the staff to commit to the fact that they are required to follow these laws, that the laws are passed to protect the safety of the residents. Importantly he got them to admit they are aware that if they do not



*Mary and Jacob Stevens*

follow these regulations it is probable one of the residents can be seriously injured.

Once Blake had these admissions, Plaintiff had the requisite elements to establish a claim for punitive damages, a conscious indifference for the rights and safety of others that has a great probability of causing substantial harm. These were significant admissions because the conduct in this case was not outrageous or criminal – i.e., the type that one would ordinarily think would inflame the jury. The message is that when a nursing home has a pattern of disregarding its statutory duties that should be enough to impose punitive damages under Ohio law.

In the closing arguments of the punitive phase defense counsel merely reargued the merits of the case despite the fact that the same jury had rejected those same arguments the day before. Blake took that opportunity to argue on behalf

of all residents of nursing homes who didn't have a voice. He empowered the jury to send a message to other nursing home owners with similar practices to take notice and change the way they do business. The jury took him up on his challenge. This verdict should improve the quality of care in nursing homes throughout Ohio. Congratulations to Blake and his team.

The case is *Daniel P. Lang, as the Personal Representative of the Estate of Mary L. Stevens (deceased) v. Beachwood Pointe Care Center, et al.*, Cuyahoga County C.P. No. 803569. ■