

# The Tennessee Jury Verdict Reporter

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October 2013

Statewide Jury Verdict Coverage

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## Civil Jury Verdicts

Timely coverage of civil jury verdicts in Tennessee including court, division, presiding judge, parties, case number, attorneys and results.

**Medical Negligence - Following a routine pre-natal visit in the morning, a high risk expectant mother was sent by wheelchair for an urgent delivery – the attending approved a resident's plan to wait until the afternoon – the baby was not delivered until six hours after admission and 79 minutes beyond the plan – the child suffered severe and permanent brain jury - a Memphis jury awarded the child nearly \$33.6 million**

*Long v. Lipscomb, et al, 3764-07*

Plaintiff: Stephen C. Offut,  
Baltimore, MD

Defense: Darrell E. Baker, Jr.,  
Deborah Whitt and M. Jason Martin,  
*Baker & Whitt*, Memphis

Verdict: \$33,591,900 to plaintiff  
Court: Shelby

Judge: Robert L. Childers  
Date: 7-15-13

On 4-28-05 at 10:30 am, Nichole Carter arrived at the UT Medical Group clinic for her regular prenatal visit. She was 39 weeks into her pregnancy. It was soon learned that her child was in grave danger. She told the doctor that she had noticed decreased fetal movement that day.

The doctor attempted to create movement of the fetus by using

acoustic stimulation. This is done by turning on a wand, a so-called "acoustic stimulator", that vibrates and produces a loud humming sound. The wand is placed against the mother's belly for a few seconds and the noise and vibration will wake up virtually any sleeping fetus.

This was done while watching the baby on an ultrasound. There was no response. They then applied the fetal heart monitor to measure the baby's heart rate. While the heart rate was in the normal range, there was no variability or accelerations and this was determined to be very non-reassuring.

The doctor then attempted again to stimulate the baby with acoustic stimulation – no response. The testing was then stopped and the mother was sent by wheelchair over to the hospital next door "for delivery".

A note was created explaining these alarming findings and the note presumably accompanied her to the hospital. There she waited to be admitted. At 11:19 she was admitted. At 11:45 her baby was finally hooked back up to the Fetal Heart Monitor (FHM). It was still non-reassuring. At trial, even the defense would later admit that there was an "Urgent" need to deliver this baby by cesarean section at the time of admission.

Sometime between 12 noon and 12:30 pm a 2nd year resident went to evaluate Carter and the baby. At 12:32 this junior resident spoke with the attending obstetrician – Dr. Gary Lipscomb (employed by UT Medical Group) who then created a "plan of care" without ever seeing his patient. The plan was to call this an "elective" cesarean section (lowest priority) and wait because Carter had eaten breakfast earlier that morning.

The plaintiff's Maternal Fetal Medicine expert (Joseph Brunner, Vanderbilt) indicated there should not have been any waiting and the baby should have been delivered within the hour. The baby was in danger and while the normal heart rate indicated no injury had yet happened, it was only a matter of time before the inevitable would occur.

Instead, a "deadline" was set for 3:30pm. That deadline came and went. Lipscomb never saw his patient. An hour after the deadline the foreseeable happened – the baby's heart rate crashed. A resident recognized the emergency and called a crash cesarean section.

The second-year resident rushed mother and baby to the OR and performed the operation. Sometime during the operation Lipscomb did appear in the OR and reports he watched some of the operation.

Lipscomb watched enough to allow him to later bill for the delivery on behalf of UT Medical Group. At 4:49 in the afternoon, 79 minutes after the first deadline, a baby boy was born. His name is Jordan.

However, in those 15-20 minutes it took to deliver him after his heart crashed, Jordan sustained catastrophic brain damage due to lack of oxygen to the brain. Jordan, who was eight at the time of trial, suffered perinatal asphyxia and hypoxic ischemic encephalopathy, causing severe brain damage and resultant cerebral palsy. The child's cerebral palsy manifested as spastic quadriplegia, restricting his ability to use his arms and legs and an inability to control bodily functions of bowel and bladder. He has had feeding problems and for

years was on a feeding tube. Jordan also has significant cognitive and developmental delays. Over the course of his 70 year life expectancy, he will require constant care and attention.

Suit was filed against Lipscomb, as well as UT Medical Group as his employer on a theory of respondeat superior. Plaintiff alleged that delays in performing an urgently needed cesarean caused Jordan's injuries.

It was argued that if Jordan had been delivered even 15 to 20 minutes earlier, his injuries would have been avoided. The plaintiff's experts, besides Brunner, were Dr. Garret Burris, Pediatric Neurology, Ellen Barker, Life Care Plan and Patricia Pacey, Economist.

The defense denied negligence and contested causation. However, Lipscomb did concede at trial that the injury could have been avoided if Jordan had been delivered 15-20 minutes sooner.

The case was heard over four days in Memphis, with a jury consisting of ten women and two men. They deliberated for 7 hours over the course of two days. The jury unanimously found that Lipscomb violated the standard of care and that Jordan was injured as a result. Moving to damages the jury awarded \$8,000,000 for each of three categories, (1) future medical expenses, (2) physical pain and mental suffering, and (3) permanent injury. They also awarded \$6,500,000 for loss of enjoyment of life and \$3,091,900 for loss of earning capacity. The total verdict for the plaintiff totaled \$33,591,900. A consistent judgment was entered.