

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

THOMAS NEELY,)
) No. 3:05-CV-304
Plaintiff,)
) Knoxville, TN
vs.) June 21, 2006
) 9:30 a.m.
FOX OF OAK RIDGE,)
)
Defendant.)

TRANSCRIPT OF JURY TRIAL (CONTINUED)
BEFORE THE HONORABLE H. BRUCE GUYTON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: Robert J. English, Esq.
Michael C. Inman, Esq.
Robert J. English & Associates
706 S. Gay Street
Knoxville, TN 37902

For the Defendant: Clint J. Woodfin, Esq.
Spicer, Flynn & Rudstrom, PLLC
800 S. Gay Street, Suite 1400
Knoxville, TN 37929

DANA HOLLOWAY, LCR #11, CCR #455
MILLER & MILLER COURT REPORTERS
Knoxville, Tennessee 37943
Phone (865) 675-1471 / Fax (865) 675-6398
E-mail: jmcccon3590@aol.com

1 that yesterday. That's kind of a local rule we have
2 here. I'm going to ask you to stop doing that. I
3 hate to do that because I know you're trying hard to
4 follow what is being said. But there are reasons why
5 we have that rule, and I'll go into that. When we are
6 all through here, I'll explain to you why that is.

7 THE JUROR: Okay.

8 THE COURT: All right, Mr. English.

9 REDIRECT EXAMINATION

10 BY MR. ENGLISH:

11 Q Mr. Neely, when you went out and measured at
12 my request, the height of the curb right next to where the man
13 was turning in, what type of a measuring device did you use?

14 A A little bitty ten-foot tape measure. A
15 little square tape measure that --

16 Q Is it a rigid tape measure, or one that folds
17 up, or --

18 A One that retracts inside into itself.

19 Q Is it rigid? Like if I held it out here three
20 feet, would it be rigid?

21 A Oh, yes.

22 Q Could you take that and hold it down and look
23 and see how high the curb was without bending down? Did you
24 bend down to measure the curb?

25 A No, I did not. I just leaned over.

1 Q Okay. And you measured it with that ten-foot
2 tape measure?

3 A Yes, I did.

4 Q Okay. And so whenever Mr. Woodfin asked you
5 if you bent over to do that, you did not bend over?

6 A No, sir.

7 Q Okay. Do you know whether you lost
8 consciousness when you were hit and your seat broke and your
9 car was totaled in this wreck, sir?

10 A No, I --

11 MR. WOODFIN: I object to the question, Your
12 Honor. There's no proof that the car was totaled.

13 MR. ENGLISH: The testimony yesterday was that
14 it was totaled, in his professional opinion --

15 THE COURT: Maybe you could re-ask the
16 question without that last word in it.

17 MR. ENGLISH: Very well.

18 BY MR. ENGLISH:

19 Q When you were hit in the rear and knocked
20 forward hard enough to break your seat back, do you know
21 whether or not you lost consciousness?

22 A No, I do not. It happened too quickly.

23 Q Okay. You still don't know how fast the guy
24 that hit you was going?

25 A No. I do not.

1 Q Okay. And did you go to the doctor, the
2 orthopedic doctor, the bone doctor... When you went to
3 Dr. Koenig, was he interested in talking to you about your
4 orthopedic problems, or about memory problems?

5 MR. WOODFIN: Objection to the question, Your
6 Honor. We don't have any statement from Dr. Koenig
7 about what he was interested in doing. And I don't
8 know if Mr. Neely can testify about what the doctor
9 was interested in doing.

10 MR. ENGLISH: Your Honor, we have his
11 testimony as to what he actually did. So it's
12 self-explanatory, I believe.

13 MR. WOODFIN: It's not self-explanatory to me.

14 THE COURT: Ask your question again.

15 BY MR. ENGLISH:

16 Q Okay. When you went to Dr. Koenig, did he
17 want to see you for orthopedic, or for memory problems?

18 A He wanted to check out my back.

19 THE COURT: Overruled. He can say what he
20 went to the doctor for.

21 Q Okay. Go ahead and answer, Tommy.

22 A He wanted to checkout, first, my back. And
23 then go to my neck. He had steps that he wanted to take care
24 of first. He did things in a very orderly fashion, checking
25 out me and the parts of my body that was hurt.

1 Q Okay. Did Mr. Woodfin ever ask for you to be
2 seen by a doctor of his choice, an independent medical doctor?

3 A No.

4 Q Have you taken your methadone today for pain,
5 Tommy?

6 A Yes, I have.

7 Q Why did you not take it yesterday?

8 A At your request.

9 Q At my request?

10 A Yes, sir.

11 Q So you would be clear-headed?

12 A Yes, sir.

13 Q Are you clear-headed today?

14 A Somewhat, sir.

15 Q When you applied for jobs at Kroger and
16 Walmart, did you tell them the truth about your physical
17 condition after this wreck?

18 A Yes. In each one of the applications, they
19 list different boxes on the computer. And the age that we live
20 in, the computer age, everything is done on a computer now.
21 It's very seldom you hand write anything. Especially at these
22 big places of business. And there's boxes that you have to
23 fill out different things like that in.

24 Q Did your wife have a booth at the flea market
25 before this wreck?

1 A No, she did not.

2 Q Okay. And the rental property that he was
3 asking you about, how much did that bring in to you and your
4 wife?

5 A It brings in three hundred dollars a month.
6 Without that, we would probably would have had that property
7 taken away from us.

8 Q Okay. You were at Ridge View whenever this
9 wreck happened. That's where you were driving to on the day of
10 the wreck?

11 A Yes, sir.

12 Q Did you attempt to go back there with the
13 restrictions that Dr. Koenig had placed on you?

14 A I gave the restrictions to my immediate
15 supervisor.

16 Q Don't say what he said, please.

17 A Uh-huh (affirmative).

18 Q Okay.

19 A And with the restrictions.

20 Q Were you allowed to go back to work?

21 A No.

22 Q You're not claiming that your knees were hurt
23 in this wreck?

24 A No. I claim no obligation to my knee for this
25 wreck.

1 Q And when Mr. Woodfin said you filed suit for
2 workers' comp against the Scott County Hospital for your knee
3 injury, you didn't actually file suit for that. His law firm
4 filed suit for that on behalf of the hospital, didn't it?

5 MR. WOODFIN: Objection, Your Honor. I have
6 no involvement in that case. And I don't know where
7 that's coming from.

8 MR. ENGLISH: But his law firm did, Your
9 Honor.

10 MR. WOODFIN: I don't know that to be true.

11 MR. ENGLISH: And he knew it.

12 MR. WOODFIN: I don't know that to be true,
13 Your Honor.

14 THE COURT: What is the relevance of that now?

15 MR. ENGLISH: Well, Your Honor, he made a
16 statement. He said that this man filed suit in the
17 worker's comp case. He didn't. His own law firm
18 filed suit on behalf of the Scott County Hospital to
19 settle the workers' comp case. And he made a
20 misstatement to him and to the jury and to the Court.

21 MR. WOODFIN: I think that would require some
22 proof, Your Honor. I don't know that to be the case.

23 THE COURT: I think we established that he had
24 a work-related injury claim that was settled.

25 MR. ENGLISH: Your Honor, it was settled

1 across the street. If you would like, I can get the
2 copy of the documents.

3 THE COURT: No. What I'm saying is I don't
4 think there's any dispute that the man had a
5 work-related injury claim that was settled --

6 MR. ENGLISH: I'll not belabor the point, Your
7 Honor.

8 THE COURT: If he didn't file it, that's fine.

9 MR. ENGLISH: Pardon?

10 THE COURT: If he didn't file it, that's fine.

11 BY MR. ENGLISH:

12 Q When your wife started this flea market booth
13 and you started selling things out of your house, what sort of
14 items did you sell out of your house in order to exist?

15 A We sold a lot of different things. We had a
16 real nice collection of ceramics, indian artifacts, a whole
17 bunch of different items. We sold off practically everything
18 that we had.

19 I'm also two years now behind in my taxes, and
20 making monthly restitution to the State of Kentucky for
21 delinquent taxes on our property.

22 Q Okay.

23 A We're also one month behind in our water bill,
24 and one month behind in our electric bill.

25 MR. ENGLISH: Okay. Thank you. That's all.