

Hot Water Set Too High, Burns Group-Home Resident.

Amount: \$480,632.75

Type: Verdict-Plaintiff

State: Texas

Venue: Harris County

Injury Type(s): burns-burns
pulmonary/respiratory-pneumonia

Case Type: Premises Liability -
Burn -

Case Name: Donna Payne as Guardian of Robert Wayne Payne v. Orlando Shepard, Mental Health and Retardation Authority of Harris County, Texas and Johnson Controls World Services, Inc.,

Date: October 23, 2002

Parties

Plaintiff(s): Robert Wayne Payne (Male, 24 Years)

Plaintiff Attorney(s): Scott J. Davenport; Glover, Miller, Lewis & Prebeg, P.C.; Houston, TX, for Robert Wayne Payne Michael P. Von Blon; Michael P. Von Blon & Associates; Houston, TX, for Robert Wayne Payne Kirsten A Davenport; Michael P. Von Blon & Associates; for Robert Wayne Payne

Plaintiff Expert(s): Jack Nuszen D.O.; Emergency Medicine; called by: Robert Wayne Payne Richard Pollock ; Neuropsychology; called by: Robert Wayne Payne

Defendant(s): Orlando Shepard,Johnson Controls World Services Inc,

Mental Health and Retardation Authority of Harris County

Defense Attorney(s): Mary K. Evans; Kruse & Luccia, L.L.P.; for Orlando Shepard, Johnson Controls World Services Inc, Mental Health and Retardation Authority of Harris County John W. Teague; Strasburger & Price, L.L.P.; Houston, TX, for Orlando Shepard, Johnson Controls World Services Inc, Mental Health and Retardation Authority of Harris County Bill Worthington; Strasburger & Price; for Orlando Shepard, Johnson Controls World Services Inc, Mental Health and Retardation Authority of Harris County

Defendent Expert(s): David Levy Pediatrics; for Orlando Shepard, Johnson Controls World Services Inc, Mental Health and Retardation Authority of Harris County Maria Quintero Psychiatry; for Orlando Shepard, Johnson Controls World Services Inc, Mental Health and Retardation Authority of Harris County Rajnikant Kushwaha Internal Medicine; for Orlando Shepard, Johnson Controls World Services Inc, Mental Health and Retardation Authority of Harris County

Insurer(s): Self Insured.

Facts:

The plaintiff, Robbie Payne, 24, is a severely mentally retarded individual who lived at a group home administered by the Mental Health and Retardation Association of Harris County (MHMRA). Although Orlando Shepard, a MHMRA employee, was supposed to be monitoring Payne, Payne wandered off by himself to the shower. Payne turned on the hot water and was burned over 11% of his body by the hot water. Payne was traumatized by the events and was unable to return to a group home setting, his guardian claimed.

The hot water thermostat had been checked three months before the accident and it was at a safe level, but when the accident occurred the thermostat had been moved to a 'high to very high' setting. The water heater closet had a broken lock.

Johnson Controls World Services was the off-site maintenance company for the group home.

Payne's guardian sued Shepard, MHMRA, and Johnson Controls on his behalf. MHMRA was sued on a premises liability theory and Johnson Controls was sued for negligence for failing to monitor the water temperature and not repairing the lock.

Johnson Controls claimed that the hot water heater was not part of their maintenance contract.

Both defendants argued that Payne was negligent.

The first jury panel, consisting of 3 women and 9 men, was struck by the plaintiff's attorney's on a Batson Challenge because the defendants had eight strikes combined and used all of them on female jurors. According to Michael Von Blon, one of the plaintiff's attorneys, the defendants did not use a strike on a male juror who they had attempted to dismiss for cause. The second jury had 8 women and 4 men.

The defense attorneys were unavailable for comment.

Injury:

Robbie Payne suffered first and second degree burns on his chest, face, groin, and arms and hands. Burns covered 11% of his body. The burns complicated an existing minor infection and he developed pneumonia. His total medical bills were 35,632.75. Additionally, Payne was traumatized by the events and was unable to return to a group home setting. He requires a home care nurse to work on developing trust of people again with the hope that he could return to a group home environment in the future. That course of treatment is expected to last five years and cost \$40,000 to \$50,000 pr year.

Result:

Following a 10 1/2 day trial, a unanimous jury awarded \$480,632.75 to Payne. It found that MHMRA and Shepard were 65% negligent and Johnson Controls was 35% negligent.

\$35,633 Personal Injury: Past Medical Cost\$40,000 Personal Injury: Past Pain And Suffering\$5,000 Personal Injury: Past Disfigurement\$75,000 Personal Injury: future mental anguish\$250,000 Personal Injury: future home nursing care\$75,000 Personal Injury: past mental anguish

Trial Information:

Judge: S. Grant Dorfman

Demand: \$300,000 to \$400,000

Offer: \$50,000 combined

Trial Length: 11 days

**Trial
Deliberations:** 0

Jury Vote: 12 - 0

**Jury
Composition:** 8 women 4 men