A Life Lost too Young: Finding Justice for Ryan Conaway

BY BILL BIRD AND JENNIFER KURLE

Gail M. Connell, Individually and as Administratrix of the Estate of Ryan Conaway, Deceased, and Elmer Conaway, Individually v. Karen Denise Ott, M.D. and Anesthesia Associates of Savannah, P.A., State Court of Chatham County, Civil Action No. STCV 0704968

On Dec. 13, 2012, we obtained a $4.5-million-dollar verdict on behalf of our clients, Elmer Conaway and Gail Connell, for the wrongful death of their son, Ryan Conaway. Ryan died post-operatively at Candler Hospital in Savannah, Georgia on Dec. 7, 2005, as the result of anesthesiologist Karen Ott, M.D.'s failure to order adequate monitoring for Ryan, given the pain control she had prescribed, and his nurse's failure to monitor him within the standard of care and Candler Hospital's own policies and procedures. In pursuing the case, there was one thing we knew without hesitation: Ryan Conaway was an outstanding young man. But, that fact alone would be insufficient to persuade a jury to rule in our favor. Notwithstanding the usual challenges we face in medical malpractice cases, we also had to overcome an unfavorable autopsy and the uncertainty of an empty chair. Fortunately, the jury got it right and we were able to bring our clients the justice they had waited seven long years to receive.

Ryan Conaway

Ryan was 25 years old when he died. In his short life, Ryan made a positive impression on most everyone he met, including legendary College Hall of Fame football coach, Vince Dooley. While in college at UGA, Ryan worked for Coach Dooley in his magnificent five-acre garden in Athens, Ga. Coach Dooley testified that Ryan was one of the finest young people he had ever had the privilege of being associated with in his long career. Coach Dooley dedicated a portion of his garden to Ryan, memorializing it with a plaque:

In memory of Ryan Lance Conaway, July 26, 1980 – December 7, 2005, who labored with love in this garden for five years while attending the University of Georgia. He brought to

this garden the same special qualities that he brought to all that knew him: love, sensitivity, honor, devotion, a charming innocence, and an infectious smile. He made this garden a lot brighter and the memory of him and his spirit will always be present here.

Ryan left this kind of impression with most everyone he encountered. Though he had only been with his employer, Ferguson Enterprises, for a few months, Ryan was the first employee featured in the company's publication, *The Extra Mile: Inspiring Stories of Memorable Customer Service.*

No doubt, Ryan was truly something special. When it came to personalizing Ryan for the jury and helping them genuinely see him as a person, our job could not have been easier.

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Ryan's Death

Ryan was admitted to Candler Hospital in Savannah on Dec. 5, 2005, to undergo the second of three planned surgeries to treat ulcerative colitis. The surgery went as planned and Ryan was admitted to the general medical floor. Karen Denise Ott, M.D. was the anesthesiologist who attended Ryan's surgery and who placed his epidural PCA, a device used to administer Fentanyl and other pain medications directly into the epidural space.

Throughout the course of Ryan's post-operative care and in particular, on the night/morning of Dec. 6-7, 2005, Dr. Ott was unable to keep Ryan's pain at bay. She repeatedly increased his continuous epidural Fentanyl dosage without ordering continuous monitoring or, for that matter, any increase in monitoring to ensure that Ryan did not experience respiratory depression – a known and well-recognized complication of Fentanyl administration. In short, Dr. Ott put in place a pain management protocol that was a recipe for disaster.

Candler Hospital nurse Vanessa Brink, R.N. was Ryan's nurse on the night/morning of Dec. 6-7, 2005. That night, Nurse Brink failed to properly assess and monitor Ryan for signs and symptoms of respiratory distress. In fact, she failed to obtain a full set of vital signs for the entire nine-hour period preceding his death. When she finally did endeavor to obtain Ryan's vital signs, she found him unresponsive and without pulse or respirations. Ryan's caregivers performed CPR for almost an hour, but were unable to save him.

We filed suit against Dr. Ott, her practice group, Candler Hospital, and Nurse Brink, contending that Dr. Ott negligently failed to order appropriate monitoring for Ryan, given the cumulative increases she made in his continuous epidural Fentanyl infusion. We argued that as the Fentanyl continuous dosage increased, Ryan should have **at a minimum** been placed on continuous pulse oximetry, to monitor him for signs of respiratory depression. We learned through discovery that Candler Hospital had the ability to place Ryan on continuous pulse oximetry, a continuous heart monitor, and even capnography, which monitors the carbon dioxide level in a patient's blood. And while Dr. Ott repeatedly increased Ryan's continuous Fentanyl dose, she failed to take advantage of these monitoring devices that, if employed, would more likely than not have saved Ryan's life. With respect to Nurse Brink, we contended that she had a duty to vigilantly and adequately monitor Ryan, but failed to do so, as evidenced by her over nine-hour failure to obtain a full set of vital signs. Candler Hospital, as Nurse Brink's employer, was brought in on the basis of vicarious liability.

Dr. Ott and her practice group were defended by Hall, Booth, Smith attorneys Michael Frick and Beth Boone. Nurse Brink and Candler Hospital were defended by Wiley Wasden and Nicole Smith, from Brennan and Wasden, LLP. There were few at Bird Law Group who did not have some involvement in the case, but the trial itself was handled by Bill Bird of Bird Law Group and John Crongeyer of the Crongeyer Law Firm.

The Defenses

Of course we faced the typical mantra – all care provided was within the standard of care and even if the healthcare providers violated the standard of care, no act or omission on their part caused or contributed to Ryan's death. But we also faced an autopsy that explicitly ruled out respiratory depression due to narcotics as the cause of death. The case was defended principally on these autopsy results.

The autopsy, which was performed at Candler Hospital, identified Ryan's cause of death as a "sudden, unexplained death with no anatomic cause identified, most consistent with cardiac arrhythmia of unknown etiology." Moreover, toxicology results reflected that Ryan's Morphine, Fentanyl, and Bupivacaine blood levels were all felt to be "within therapeutic range." Commenting on the blood levels, the pathologist noted:

The results of the drug testing would indicate that the patient's blood levels at the time of his cardiopulmonary arrest were in the therapeutic range for Fentanyl and Bupivacaine which were administered through his epidural catheter. The free Morphine levels were in fact quite low for therapeutic range. Therefore, it is felt that none of these drugs produced any sort of respiratory depression which would have accounted for the patient's demise.

While the autopsy itself would seem to create a real causation dilemma for us, we learned in our initial case investigation that the blood levels themselves were not the full story. Because the drugs were being delivered directly into the epidural space – and thus, directly to the central nervous system – the blood levels were an inaccurate indicator of the amount of drug actually affecting Ryan's central nervous system.

Speaking to the issue of causation, we called DeKalb County Medical Examiner, Gerald Gowitt, M.D., who testified that the Candler Hospital autopsy was "inconclusive." While Dr. Gowitt did not openly disagree with the hospital pathologist, he did discount the significance of the toxicology levels being "within therapeutic range," noting that any patient can experience adverse side effects, even at therapeutic levels. Indeed, this was a primary theme of our case and no one, not even Dr. Ott or her experts, disagreed with this premise.

Moreover, Dr. Gowitt concluded that, because Ryan was receiving Fentanyl by epidural catheter directly into his central nervous system, the concentration in his central nervous system was higher than what the blood toxicology levels reflected. In short, Dr. Gowitt concluded that the combined cumulative effect of Fentanyl and Bupivocaine reached a level in Ryan's blood and central nervous system where they caused respiratory depression and ultimately, a fatal heart rhythm disturbance.

Dr. Ott failed to call the hospital pathologist who performed the autopsy to rebut Dr. Gowitt's testimony. Instead, Dr. Ott brought well-known and well-traveled defense expert Stephen Factor, M.D., who testified that Ryan died from complications due to myocarditis, despite the fact that he had never before received a diagnosis of myocarditis and neither Dr. Gowitt nor the hospital pathologist found evidence of myocarditis on autopsy.

Apportionment Concerns

As the trial date approached, we issued a global demand for settlement to all the defendants. Dr. Ott and her practice group expressly refused to even entertain a possible settlement, but we continued discussions with Candler Hospital and Nurse Brink. While it was clear that a settlement with the hospital would certainly help to offset a certain degree of risk for our clients, the prospect of an empty chair under the apportionment statute, O.C.G.A. § 51-12-33, gave us great pause. Ultimately, after candid discussions with our clients exploring the risks and benefits, we agreed to enter into a settlement with the hospital and take our chances with the empty chair.

At trial, our anesthesiology expert, Stephen Hirshorn, M.D., testified that Dr. Ott was negligent in failing to order continuous monitoring for Ryan, once she had increased the continuous Fentanyl dose to 50 micrograms per hour. Dr. Hirshorn also testified that Nurse Brink negligently failed to monitor Ryan in accordance with the standard of care and Candler Hospital's own policies and procedures.

Dr. Ott also blamed Nurse Brink for failing to obtain vital signs for Ryan in

accordance with the standard of care, but we were able to impeach her on these claims. In every medical malpractice case, we ask the defendants in written discovery whether they contend that another healthcare provider was negligent or in any way caused or contributed to our client's injuries. Dr. Ott responded – as most defendants do – that she had no criticisms of others at the time of her response, but she reserved the right to supplement. She never supplemented her response and we were able to impeach her on these seemingly new claims asserted against Nurse Brink at trial. We believe her failure to supplement her discovery response and our ability to use the discovery as impeachment seriously impacted the credibility of her non-party apportionment claims.

We were also well aware that to overcome the empty chair, the jury had to understand that the defendants had the burden to prove any non-party liability. Dr. Ott proposed the following jury charge:

> *Where an action is brought against more than one person for injury to person, the trier of fact shall apportion its award of damages among the persons who are liable according to the percentage of fault of each person.*

Obviously, this proposed charge was inadequate, most notably because it failed to address who bears the burden of proof. Citing *McReynolds v. Krebs*, 307 Ga. App. 330, 705. S.E.2d 214 (2010), *affirmed* 290 Ga. 850, 725 S.E.2d 584 (2012), we asked for the following charge, which the court gave almost verbatim:

> *The defendants in this case have taken the position that Vanessa Brink, R.N., or other employees of Candler Hospital who are not parties to this lawsuit are wholly or partially at fault for causing Ryan Conaway's death. As a result, Dr. Ott and Anesthesia Associates of Savannah, P.A. have the burden of proof with respect to establishing the liability on the part of Vanessa Brink, R.N., or other employees of Candler Hospital, which means that Dr. Ott and Anesthesia Associates of Savannah, P.A. are required to prove by a preponderance of the evidence that Vanessa Brink, R.N. or other employees of Candler Hospital were wholly or partially at fault for causing Ryan Conaway's death.*
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> *If you find that Dr. Ott and Anesthesia Associates of Savannah have failed to present sufficient evidence to meet that burden, then no fault should be assigned to Vanessa Brink, R.N. or other employees of Candler Hospital.*

Knowing the contents of the charge, we were able to specifically address in closing argument the extent of Dr. Ott's burden regarding the non-parties and her failure to meet that burden.

Ironically, Nurse Brink was not called to testify by either side. We made the decision not to call her in our case-in-chief because we wanted to have her on cross-examination. While we cannot speak to the reasons why Dr. Ott did not call Nurse Brink to testify in her case, we believe it worked to our advantage with respect to apportionment. In closing, we asked the jury to carefully consider why Dr. Ott – knowing that she had the burden to prove Nurse Brink's liability – failed to call her to the witness stand to confront the claims Dr. Ott had made against her.

The Verdict

The jury was out for less than four hours and returned with a verdict in the amount of $4,447,963.00 for the full value of Ryan's life and $100,000.00 for the conscious pain and suffering Ryan experienced prior to his death. In this case, our concerns regarding the empty chair were unfounded. The jury apportioned 20 percent liability to non-parties Vanessa Brink, R.N. and Candler Hospital and the remaining 80 percent to Dr. Ott and her practice group. Whether this outcome reflects a general trend toward how juries will treat non-parties in apportionment cases remains to be determined. Nevertheless, the fact is that the jury's verdict very accurately reflected our internal assessment as to the true culpability of Dr. Ott and the non-party defendants.

Conclusion

This was a typical medical malpractice case, fraught with all the difficulties we as plaintiff's attorneys encounter in seeking justice for our clients. Beyond those challenges, however, we encountered an autopsy that, on its face, unquestionably destroyed causation. Moreover, we had serious concerns regarding the impact of the apportionment statute on our claims against a non-settling defendant. While we certainly could have walked away from the case against Dr. Ott once a settlement was reached against the hospital, we decided to take our chances with a jury and were rewarded with a fantastic verdict for the family of an exceptional young man. ●