

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

GRACE MATHIS, as the Personal)	
Representative of the Estate of))	
Ronald G. Mathis,)	
)	
Plaintiff,)	Case No: 4:19cv178
)	
v.)	Tallahassee, Florida
)	June 22, 2020
UNITED STATES OF AMERICA,)	
)	2:51 PM
Defendant.)	
)	

**TRANSCRIPT OF BENCH TRIAL
EXCERPT FINDINGS OF FACT BY THE COURT
BEFORE THE HONORABLE MARK E. WALKER
CHIEF UNITED STATES DISTRICT JUDGE
(Pages 1 through 14)**

APPEARANCES:

For the Plaintiff:	Hinkle & Foran, PA By: DONALD M. HINKLE Attorney at Law don@hinkleforan.com 3500 Financial Plaza, Suite 350 Tallahassee, Florida 32312
For the Government:	United States Attorney's Office By: PETER G. FISHER Assistant U.S. Attorney peter.fisher@usdoj.gov 111 North Adams Street Fourth Floor Tallahassee, Florida 32301
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*Proceedings reported by stenotype reporter.
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P R O C E E D I N G S

(Following is an excerpt of the bench trial held on the 22nd day of June, 2020.)

(Resumed at 2:51 PM.)

THE COURT: Mr. Hinkle, anything additional before I announce my verdict?

MR. HINKLE: No, sir.

THE COURT: Mr. Fisher?

MR. FISHER: No, sir. Thank you.

THE COURT: This Court, of course, has jurisdiction in this matter under the Federal Tort Claims Act. Without belaboring the point, this is, of course, a medical malpractice case. In this case the government has admitted liability; that is, stipulated to liability. The record fully supports that stipulation.

Mr. Mathis was a 72-year-old vet who went in for routine blood work, was drawn on December 29th, 2017, in anticipation of his annual physical which was scheduled for January 5th, 2018. When he reported for his annual physical, he was seen by Dr. Cooper-Dunn.

Dr. Cooper-Dunn acknowledges that while she discussed -- documented discussing the lab results with Mr. Mathis, she doesn't make any mention of his white blood cell count that would have been listed in the blood draw from December 29th, 2017. She testified that she clearly did not

1 notice that elevated white blood count, and she acknowledged
2 further she had never seen one that high; that she should have,
3 in fact, noticed it; and had she seen such a lab value, she
4 would have acted accordingly, and that it was an admitted error
5 that she failed to do so.

6 Other evidence before this Court reflects that there
7 were other doctors that would indicate that Dr. Cooper-Dunn was
8 negligent and that her failing to act violated the applicable
9 standard of care by failing to review the lab results and
10 recognizing the elevated white blood count.

11 Further, there was other evidence before this Court
12 that was not contradicted to suggest that this was a treatable
13 condition and that the recovery rate is high. Further, there's
14 other evidence about what should have been done and what the
15 standard of care would have been, all of which leads to the
16 conclusion that, in fact, there was negligence; namely, that
17 Dr. Cooper-Dunn deviated from the standard of care, and that
18 deviation, through other testimony, caused the damage in this
19 case; namely, the untimely death of Mr. Mathis specifically.

20 It was treatable. Had it been treated and treated
21 properly and had she reacted, then he should have survived. By
22 the time he ended back up in the hospital, it was too late.
23 And as the testimony made clear, within just a few days at the
24 hospital, he was sent home on hospice case.

25 In short, consistent with the stipulation, I find

1 that the defendant, based on it being responsible for the
2 actions and inactions of Dr. Cooper-Dunn, was negligent,
3 causing the injuries at issue; namely, the death and injuries
4 that flowed from the untimely death of Mr. Ronald G. Mathis.

5 The parties have stipulated to the noneconomic
6 damages. I accept that stipulation which includes a setoff,
7 and I award to the Estate of -- again, awarding the
8 noneconomic -- I'm sorry -- the economic damages to the Estate
9 by stipulation as well. And I will direct the clerk to enter
10 judgment as it relates to the economic damages in the amount of
11 \$325,961.76 in favor of the Estate of Ronald G. Mathis against
12 the United States of America. That, again, both the amount of
13 the award, which reflects the setoff that the parties
14 stipulated to, as well as that it's going to be awarded to the
15 Estate has all been done by stipulation.

16 I'm not -- based on the stipulation of the liability
17 and the stipulation of that, I'm not sure that any further
18 findings need to be made, but let me pause here. Of course the
19 Department of Veterans Affairs, an agency of the United States
20 of America, and all care and treatment of Mr. Mathis and
21 specifically the care and treatment, or lack thereof by
22 Dr. Cooper-Dunn, is attributable to the United States of
23 America through the Department of Veterans Affairs.

24 Let me find out first from the plaintiff and then
25 from the defense, any clarification or do you believe we need

1 to put anything additional on the record as it relates to
2 liability or economic losses, Mr. Hinkle?

3 MR. HINKLE: No, sir.

4 THE COURT: Mr. Fisher.

5 MR. FISHER: No, Your Honor. Thank you.

6 THE COURT: The issue before -- and I explained
7 before that I'm loath to go into too much detail other than
8 what Dr. Cooper-Dunn acknowledged by virtue of the fact that I
9 would want to make a more full record and robust record if
10 others were going to rely upon it as it relates to other actors
11 in this case. But in as much as the parties stipulated, and
12 recognizing the potential mischief associated with me making
13 incomplete findings as to other participants, I'm going to
14 leave it at that. And, again, the parties have been afforded
15 an opportunity for me to clarify, and they've suggested that is
16 unnecessary.

17 The big issue for -- not the big issue, but the issue
18 that I have to resolve as the fact finder in this case is what
19 amount to award in noneconomic damages that would fairly
20 compensate Ms. Grace Mathis and the children of the decedent;
21 namely, [REDACTED] and [REDACTED] Mathis, for their -- again, for
22 noneconomic damages.

23 There is no exact formula, and I tried to remind
24 myself when I took a break before I went back of some of the
25 instructions that I alluded to earlier that I would tell a

1 jury: That a verdict should not be based on bias for or
2 prejudice against anyone; you shouldn't rule for somebody
3 because you feel sorry for them or against somebody because you
4 are angry with them. Mr. Fisher is absolutely right, this is
5 not an exercise in how bad was the negligence so that you
6 effectively award punitive damages based on the type of
7 negligence, and I am mindful of that, and, again, pause to go
8 back and reflect upon what I heard in ascertaining what a fair
9 amount would be in light of all the facts that were presented
10 to this Court to Ms. Mathis and the two children.

11 By stipulation the parties agreed, as reflected in
12 the pretrial stip and other documents, including the proposed
13 findings of fact and conclusions of law that were filed by both
14 parties, as well as the pretrial memorandum of the plaintiff,
15 as well as the pretrial stip, that there were three survivors;
16 again, [REDACTED] and [REDACTED] and, of
17 course, the widow, Ms. Grace Mathis.

18 I had the opportunity to hear from all three of those
19 who are eligible for potential award of noneconomic damages. I
20 made some comments to Mr. Fisher because I wanted to give the
21 government an opportunity to respond if they believed that I
22 was missing the mark in some way in terms of what I viewed or
23 what I heard.

24 Let me pause. Every case is unique. And I would not
25 begin to second guess what one of my colleagues or even, quite

1 frankly, a jury, a group of citizens of this community awarded
2 in other cases because every case is unique. Every decedent is
3 unique. Every survivor is unique. And facts matter, and the
4 facts matter in this case.

5 None of the three survivors, that is, statutory
6 survivors -- and I say that because, obviously, we had others
7 here that were survivors and suffered a great loss, but they
8 are not able to recover under Florida law. Specifically, of
9 course, I had Ms. Rachel Mathis who was here who is not
10 eligible under Florida law. And so I say "statutory survivors"
11 because those are the three individuals the law recognizes
12 having compensable claims.

13 I found all three of the witnesses' testimony to be
14 compelling. I found it to be compelling for different reasons.
15 First, I've literally sat through hundreds of trials as both a
16 state court judge and a federal judge, and I've heard all
17 manner of people exaggerate all manner of things, and it
18 matters not just what people say, but how they say it.

19 So, for example, it was not lost on me when
20 ██████ Mathis saw the first picture that Mr. Hinkle showed him of
21 he and his grandfather -- and he had otherwise been sullen --
22 he lit up like a Christmas tree. That type of reaction cannot
23 be feigned. It cannot be exaggerated. I've had all kinds of
24 people weep and wail in courtrooms in the past. That can be
25 exaggerated and faked. You don't fake that kind of spontaneous

1 reaction to seeing a picture. I found the same thing to be
2 true of [REDACTED] Mathis' testimony.

3 Again, in an understated way both of them explain
4 what this man meant to him -- meant to them and what they lost
5 as it relates to -- and I won't belabor the point other than to
6 say I found both of them to be very credible.

7 I would also pause to reiterate what I noted through
8 my questioning, that both of them, meaning [REDACTED] and [REDACTED],
9 face great challenges. They've lost their -- we are not here
10 to award damages for the loss of their mother -- I want to make
11 that plain -- or the fact that their father abandoned them.
12 But that does put things in context, which I cannot ignore in
13 determining what and how to value their loss.

14 You get the plaintiffs as you find them. And so here
15 we have plaintiffs who had -- that is, statutory survivors,
16 [REDACTED] and [REDACTED] [REDACTED], who had both had
17 their struggles, but because of the love and support of their
18 father and mother, Ronald and Grace Mathis, they were able to
19 do better and overcome.

20 And we heard about [REDACTED]'s initial struggles and how
21 he finally was able to, you know, accept the situation -- he
22 was going to be raised by somebody else -- and give some
23 control over for his sister to his grandparents, then parents.
24 Likewise, we heard how [REDACTED] was struggling in middle school
25 and had been -- through high school had done better and better.

1 That doesn't, though, suggest because they did well
2 with Grace and Ronald as their parents that they're in good
3 shape. We still have folks that have had a very tough
4 childhood, have faced all kinds of obstacles, and now find
5 themselves at a pivotal juncture in their life.

6 The fact that they lost their father, Ronald Mathis,
7 when they did matters to me in assigning a value. They lost
8 their father, the person that they look to for advice and
9 counsel, the person who -- I suspect if he was still alive,
10 ■■■■■ would likely be in some kind of school right now and would
11 not just be working at Publix. That's not a dig at
12 Ms. Grace Mathis. It's a suggestion that her husband, Ronald,
13 would be, as ■■■■■ suggested, giving him the boot to encourage
14 him.

15 So the loss at this juncture and given what they've
16 been through is critical. Both of them are fragile. There's a
17 difference between being like glass that a Coke bottle is made
18 out of versus crystal. Both of these individuals were more
19 akin to crystal than they were -- that is, fragile -- than Coke
20 glass. So I factor that in.

21 Turning to Ms. Grace Mathis -- and I should say the
22 parties by stipulation have -- the life expectancy of Ronald,
23 but for the negligence of the defendant, would have been nine
24 and a half years -- or the negligence attributable to the
25 defendant. So they lost not only nine plus years with their

1 father, the only father they've ever known, they lost it at a
2 critical juncture which could determine how well they do moving
3 forward.

4 As for Grace Mathis, not only did I find her
5 credible, I have not in my time on the state or federal bench,
6 quite frankly, had a witness that made more of an impact on me
7 in terms of their testimony being powerful -- powerful in an
8 understated way. Not everybody that comes before this Court
9 that loses somebody is in the same position.

10 Grace Mathis married a man basically after a blind
11 date and after only knowing him for six weeks. They were
12 married for over 50 years, and by all accounts it was a
13 wonderful marriage. No marriage is perfect. Ms. Mathis didn't
14 suggest it was. She didn't suggest that everything was easy.
15 In fact, she outlined challenges that they faced, including
16 raising, basically, a second family when they expected to
17 retire to Mexico Beach. She wasn't complaining about it, but
18 through that it was clear that they had challenges. She
19 testified that she had to essentially write off her biological
20 son in favor of her grandchildren who she then adopted.

21 The testimony made it clear that she didn't have an
22 easy life. The testimony made it clear that they didn't have a
23 perfect life or a perfect marriage. She didn't overstate
24 anything. She didn't exaggerate anything.

25 What she did make plain is that she endured those

1 challenges. She not only survived, but flourished with those
2 challenges because of the man that was at her side, her life
3 partner.

4 There is no doubt from her testimony that while she
5 will take great joy from her children -- including her children
6 that are just now leaving home, but -- her daughter Rachel and
7 her other adult daughter -- but that's different than what she
8 has to look forward to for the next 10 years. She had to look
9 forward to a retirement with her life partner of more than
10 52 years, but for the negligence of the defendant.

11 Now, and as you'd expect them to do, [REDACTED] and [REDACTED]
12 are going to go out on their own. That doesn't mean that they
13 are going to abandon their mother. It doesn't mean they are
14 not going to see her. It doesn't mean that Rachel is not going
15 to come over and help her and see her and go out with her. But
16 the fact of the matter is, what should have been her time for
17 retirement, her time to enjoy and say good-bye to her husband
18 on her terms, instead she has to watch Jeopardy by herself, she
19 has to go to bed alone; she has to garden by herself.

20 It doesn't mean she won't have family members around.
21 What it means is what should have been her 10 years with her
22 husband were taken away from her. And it's not easy to
23 quantify such a loss, but I will note that that loss is
24 significant. It is a loss that is different in kind from the
25 loss described in many of the cases that have been before this

1 Court or in many of those that have been cited by the parties.
2 And I find that a substantial verdict is required to reflect
3 such a loss.

4 I have -- again, understand it has to be a fair value
5 based on all the facts before the Court, and I find that the
6 appropriate amounts to reflect the loss of Ms. Grace Mathis and
7 her children, [REDACTED] and [REDACTED], are as follows:

8 In favor of the Estate of Ronald G. Mathis against
9 the United States of America for, as I said before, economic
10 losses in the amount of \$325,961.76, by stipulation.

11 In favor of Grace Mathis against the United States
12 for -- because it was the Estate for economic -- for
13 noneconomic losses in the amount of \$2,900,000.

14 In favor of [REDACTED] against the
15 United States for noneconomic damages in the amount of
16 \$750,000.

17 In favor of [REDACTED] against the United
18 States of America in the amount of \$750,000.

19 And I reserve jurisdiction for the taxation of costs
20 in favor of the Estate.

21 The total award is \$4,725,961.76. I believe I've
22 done the math right.

23 Mr. Fisher, does the government require any
24 clarification?

25 MR. FISHER: No, Your Honor. Thank you.

1 THE COURT: Mr. Hinkle?

2 MR. HINKLE: No, Your Honor.

3 THE COURT: I thank counsel for their hard work in
4 this case. It's not an easy case. Your task was not easy for
5 either side. I appreciate your hard work and professionalism.

6 I, either by the close of business today or no later
7 than tomorrow morning, will enter a written order directing the
8 clerk to enter judgment. I'm going to say -- for the reasons
9 stated on the record, I'm not going to belabor the point. I
10 don't think any further findings are necessary.

11 Quite frankly, I don't think I had to explain myself.
12 I don't think a jury has to explain their findings as to
13 noneconomic damages, but I did want to put some meat on the
14 bones, so to speak.

15 Ms. Mathis, good luck to you. There is not any
16 amount I could award that would compensate you fully for what
17 you lost. I'm quite confident that if you had the choice of
18 having your husband here with you versus that award, you would
19 say, Judge, I pass. You can keep the check -- or in this case,
20 the government can keep the check, because I'm not the one
21 writing it.

22 But I wish you the best, and I hope you take some
23 comfort in what you heard your daughter, Rachel, your daughter,
24 ██████, and your son ██████ say about your husband today.

25 Good luck to you.

1 MS. GRACE MATHIS: Thank you, sir.

2 THE COURT: Court is in recess.

3 (Proceedings concluded at 3:13 PM on Monday, June 22,
4 2020.)

5 * * * * *

6 I certify that the foregoing is a correct *EXCERPT*
7 transcript from the record of proceedings in the above-entitled
8 matter. Any redaction of personal data identifiers pursuant to
9 the Judicial Conference Policy on Privacy is noted within the
10 transcript.

10 /s/ Megan A. Hague

6/25/2020

11 Megan A. Hague, RPR, FCRR, CSR
12 Official U.S. Court Reporter

Date

13 I N D E X

14 OTHER RECORD MADE

PAGE

15 Verdict By the Court

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