

FEDERAL COURT

VERDICT: \$700,000, alleged positional asphyxia death of infant who had been placed on pillows.

A Billings jury found that Scott Anderson was negligent and a cause of the death of McKinzie Shields and awarded her father/PR Thomas Rackley \$300,000 for his grief, sorrow, and emotional anguish and \$300,000 for loss of society, comfort, and companionship, and \$100,000 to her estate for her conscious pain & suffering prior to death. It awarded \$0 for lost earning capacity.

According to Plaintiff: McKinzie, 7 ½ months, traveled to Montana with her mother Jennifer Shields from their home in California to visit Jennifer's family near Roy. Rackley, also of California, and Jennifer were not married and had a troubled relationship. Jennifer became involved with Anderson and was at his home near Lavina the evening of 2/16/03. Late that evening Anderson and Jennifer, on a bed in Anderson's bedroom with McKinzie, began watching a movie when the phone rang. McKinzie was restless and Jennifer was having difficulty getting her to sleep. Anderson left the bedroom to answer the phone and returned and gave the phone to Jennifer because her aunt was calling. At or near the same time that he handed Jennifer the phone Anderson prepared formula for McKinzie who had begun crying. Jennifer left the bedroom to take the call and, while she was out of the room Anderson gave the bottle to McKinzie and moved her from the bed onto a stack of pillows on the floor. Anderson contended that he left the bedroom at that time and immediately went into the kitchen and joined in the conversation between Jennifer and her aunt. Rackley contended, based on statements that Anderson made to officers following McKinzie's death, that he remained in the bedroom for a time during which he brushed his teeth and returned and found McKinzie not breathing. He also contended that Anderson became nervous upon finding McKinzie not breathing and when he was unable to locate a pulse, turned out the light and left the room and did not inform Jennifer of McKinzie's peril or call 911. He contended that McKinzie died of positional asphyxia and that Anderson was negligent in placing her on the pillows and failing to rescue or otherwise summon aid upon discovering her peril. He also contended that leaving McKinzie without attempting to save her could have been motivated by an incident 6 months earlier where he believed that God spoke to him, following which he told a deputy sheriff that God told him that in order to be saved he had to sacrifice a pure soul. Rackley requested that the jury find that Anderson acted with malice. Anderson denied that he remained in the bedroom after giving McKinzie the bottle. He contended that at no point was he aware that she was in peril, she was healthy and eating normally when he left the room, and she did not die of positional asphyxia, but of SIDS or some other unknown natural cause. He also denied that he acted with malice, contending that he never found McKinzie in peril and he was so preoccupied with an incident the day before at Jennifer's parents' home that he could not form the mental state to act maliciously. Jennifer's mother believed that a white substance in a balloon was heroin, and invited police to search her home while Jennifer and Anderson were there. Jennifer and Anderson denied any knowledge of the contents of the balloon, but consented to a search of their belongings. No narcotics were found and the substance in the balloon turned out to be non-narcotic. Judge Cebull permitted this evidence as part of Anderson's defense to Rackley's malice claim, but excluded any evidence of Jennifer's and Anderson's past use of meth, marijuana, cocaine, and heroin.

According to Defendant: At 12:54 a.m. 2/17/03, McKinzie Shields was pronounced dead at the Roundup hospital. The evening of 2/16 she and her mother Jennifer had spent the evening at Anderson's home. Jennifer found McKinzie dead in the bedroom 19 minutes after finishing a phone call in the kitchen. When Anderson gave her a bottle he had moved her off the bed onto pillows alongside the bed, which Jennifer claimed she had instructed him not to do. Jennifer and Anderson had been "dating" for 3 weeks since Jennifer's return to Montana to visit her family. Jennifer and Rackley met in 2001 and conceived McKinzie that fall but did not stay together. Jennifer met Anderson while visiting Montana in 2001/02 while pregnant with McKinzie. The State charged Anderson with negligent homicide. Rackley filed his wrongful death claims while those charges were pending. Anderson invoked his 5th Amendment rights, declined to answer discovery, and refused a deposition. The criminal charges were dismissed without prejudice in 9/05 for unknown reasons. Anderson then withdrew his 5th Amendment position and the civil case proceeded with depositions. Anderson initially told DOJ investigators that he had left McKinzie on the bed, then later admitted he had placed her on the pillows. He stated in a 2nd statement that he had found her not breathing, checked for a pulse and freaked out, turned off the light, and left the bedroom while Jennifer was on the phone. The DOJ agents testified over objection as to his different statements and that he was not credible. In 8/02 Anderson told Dep. Goffena that he had a religious experience in which God had told him to bury his possessions, eat cow manure, kill his dog, and if he wanted to be saved, to "sacrifice a pure soul." Anderson had an exorcism performed on his house. He saw green mist, floating balls, and liquid on his windows. Over objection, Judge Cebull allowed this information as circumstantial evidence of an intentional or malicious act. Plaintiff contended that Anderson had a motive to want McKinzie dead, as Jennifer had plans to return to California to live with Rackley. Dr. Mueller concluded that McKinzie died of positional asphyxia. Anderson contended that the cause of death was undetermined or could have been SIDS or choking from gastroesophageal reflux disease, which had been noted in McKinzie's medical records at 3 months.

At the close of evidence Cebull ruled as a matter of law that McKinzie did not die instantaneously. He previously denied summary judgment on absence of duty. He instructed on ordinary negligence as well as increasing risk to a helpless person after taking the person into his "charge." He refused instruction on the exceptions to the bystander rule and the Good Samaritan statute. He ruled that evidence of the criminal charges and investigation were inadmissible, but denied mistrial motions when the DOJ agents testified as to their titles and when Anderson was asked to admit that he had been read his rights during the investigation. Cebull excluded drug use as to Anderson and Jennifer, who, according to Defendant, were recovering meth addicts. He excluded evidence that Jennifer had withdrawn her wrongful death claim, excluded "extrinsic" proof that her testimony was not credible, and excluded evidence of Rackley and Jennifer having children with other partners after McKinzie's death. He excluded prenatal drug use and smoking in the house as possible risk factors for a SIDS death. He directed verdict at the close of evidence that McKinzie had survived an appreciable time.

Plaintiff's experts: pathologist Kenneth Mueller, Billings (performed an autopsy at the request of the coroner); economist Joseph Kasperick, Butte.

Defendant's expert: pediatric forensic pathologist Janice Ophoven, Minneapolis.

Demand, \$1.5 million policy limits; offer, \$100,000. Jury request, "millions" for grief/companionship, \$350,000-\$724,000 future earnings (\$724,000 according to Defendant), \$350,000-\$724,000 or jury's discretion for conscious pain & suffering (at least \$724,000 according to Defendant), finding of malice; jury suggestion, in the event of liability, \$100,000 for grief and \$100,000 for companionship (total of \$100,000 according to Plaintiff), 0 for conscious pain & suffering and future earnings. No mediation.

Jury deliberated 5 ½ hours 4th & 5th days.

Rackley v. Anderson, CV-04-141-BLG, 6/30/06.

Joseph Cosgrove & Zander Blewett (Hoyt & Blewett), Great Falls, for Rackley; Randall Nelson & Jared Dahle (Nelson & Dahle), Billings, for Anderson (Mountain West Farm Bureau Mutual Ins.).