

DISTRICT 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 Stiehlin and awarded her father Thomas Rackley \$300,000 for his grief, sorrow, and emotional anguish and \$150,000 for loss of society, comfort, and companionship, and \$100,000 for the estate for her conscious pain and suffering prior to death. It awarded \$0 for lost earning capacity.

According to Plaintiff, McKinzie, 7 months, traveled to Montana with her mother Jennifer McKinnie to visit Rackley in California. Jennifer and Rackley had a troubled relationship. Jennifer became involved with Anderson and was at his home in Billings on 2/10/03. Late that evening Anderson and Jennifer were in Anderson's bedroom with McKinzie while 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 gave the phone to Jennifer because her aunt was calling. At or around the same time, Jennifer left the bedroom to take a call. Anderson prepared a bottle for McKinzie who had begun crying. Jennifer left the bedroom to take the call and 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 while the other child was covered and immediately went into the kitchen and joined the conversation between Jennifer and her aunt. Rackley contended based on the conversation that Anderson had confessed to causing McKinzie's death, that he left the bedroom to talk to Jennifer and her aunt, and when he returned he found McKinzie not breathing. He also contended that Anderson did not attempt to perform rescue breathing and did not call 911. Jennifer and Anderson denied any knowledge of the events leading to her death. Rackley presented to the jury that Anderson acted with malice. Anderson said that he remained in the bedroom after giving McKinzie the bottle. He contended that at no point was she in peril; she was breathing normally when he left the room and he denied that her death was from positional asphyxia, but from SIDS or some other unknown natural cause. He also denied that he acted with malice, contending that he loved McKinzie and he was persecuted by Jennifer's parents. Rackley felt he could infer from the mental state to act maliciously. Jennifer's mother believed that Anderson was not able to address the problem and would not provide to watch her through trouble. Jennifer and Anderson were alone. Jennifer and Anderson denied any knowledge of the contents of the balloon, but consented to a search of their belongings. No narcotics were found. The substance turned out to be non-narcotic. Judge Gould permitted the 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 methamphetamine. Rackley declined to ask.

According to Defendant: At 12:54 am, 2/11/03, McKinzie Stiehlin was pronounced dead at the Billings hospital. The evening of 2/10 she and her mother Jennifer had spent the evening at Anderson's home. Jennifer found McKinzie dead in the bedroom 9 minutes after finishing a phone call. When Anderson gave her a bottle he had moved her from the bed onto pillows alongside the bed which Jennifer claimed she had instructed him not to do. Jennifer and Anderson had been "dating" for 2 weeks since Jennifer's arrival. Anderson was taken to the hospital. Jennifer and Rackley met in 2001 and conceived McKinzie but did not stay together. Jennifer met Anderson while visiting Montana in 1/03 while preparing dinner. The State charged Anderson with negligent homicide. Rackley filed his wrongful death suit while those charges were pending. Anderson invoked his 5th Amendment rights during discovery and refused a deposition. The criminal charges were dismissed without prejudice in 9/05 for unknown reasons. Anderson then withdrew his 5th Amendment invocation and the case proceeded with deposition. Anderson had paid \$500 to make his bail. He initially stated he placed McKinzie on the bed, then later admitted he had placed her on the pillows. He gave a 2nd statement that he didn't hear her, including checking for a plate and checking out, turning off the lights, and left the bedroom while Jennifer was on the phone. The detective testified over objections about the different statements and what were the right to do. In 2004 Anderson told him to confirm that he had a religious experience in which God had told him to buy his possessions, not even marks that he had never been able to save his brother's partner, and "Anderson had been a concern performed on his home. He was given much floating balls, and liquid on his windows, over objections, Judge Gould allowed this information to circumvent the issue of death in the morning." However, Jennifer and Anderson had a motive to want McKinzie dead as Jennifer had been born in California to live with Rackley. Dr. Muller concluded that McKinzie died of positional asphyxia. Anderson contended that the cause of death was undermined if it could have been from SIDS or choking from gastroesophageal reflux disease, which had been noted in McKinzie's medical records at 3 months.

At the close of evidence Gould ruled as a matter of law that McKinzie did not die instantaneously. He previously denied summary judgment on absence of duty. He instructed on editing techniques as well as increasing data to help keep person alive taking the person into life change. He gave instructions on the exceptions to the judgment rule and the Good Samaritan statute. He ruled that evidence of the criminal charges and investigations were inadmissible, but denied ancillary motions from the detective's testimony and the brief that was that when Anderson was asked to alert that he had been sent his right during the investigation, Gould concluded that yes are to Anderson and Jennifer, who testified for Defendants, were recovering their suicide. 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 personal drugs and monitors the house as possible in the form for a SIDS death. He directed Kenny at the door of evidence that McKinzie had survived as a proactible trial.



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

Defendants' experts: pediatric forensic pathologist Jamie Ophoven, Minneapolis.

Demand, \$1.5 million policy limits; offer \$100,000. Jury request, "million" for pre-death pain, \$350,000-\$75,000 for future earnings (\$73,000 second) and Defendants, \$150,000-\$75,000 in jury detection for conscious pain and suffering (at least \$75,400 second) and Defendants, finding of malicious jury suggestions in the event of liability, \$100,000 for grief and \$100,000 for companionship (used of \$100,000 according to Plaintiff), 0 for conscious pain and suffering and future earnings. No mediator.

Jury deliberated 8 hours over 7th & 8th days.

Rackley v. Anderson, CV-04-141 BLG, 6/20/06.

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