



VERDICTSEARCH

TEXAS

VERDICT *of the* WEEK

NURSING HOMES

Abuse or Neglect — Negligent Supervision

Resident with violent history beat roommate's face to a pulp

VERDICT **\$160,050,000**

CASE Rosamarie Paradez, as the Administrator and Heir at Law of the Estate of Tranquilino Mendoza, Deceased v. Summit Care Corp., Summit Care Texas, L.P., d/b/a Comanche Trail Nursing Center, Sylvia Casas, Individually, and Robert Gundling, Individually, No. 99-CI-17411

COURT Bexar County District Court, 73rd, TX

JUDGE Andy Mireles

DATE 2/22/2006

PLAINTIFF

ATTORNEY(S) David T. Marks, Marks, Balette & Giessel, Houston, TX
 J. Thomas Rhodes, III, Lyons & Rhodes P.C., San Antonio, TX
 Jacques G. Balette, Marks, Balette & Giessel, Houston, TX
 Henry P. Giessel, Marks, Balette & Giessel, Houston, TX
 Jason N. Young, Marks, Balette & Giessel, Houston, TX
 Laura R. Pazin, Lyons & Rhodes P.C., San Antonio, TX

DEFENSE

ATTORNEY(S) Laurie A. Weiss (lead), Fulbright & Jaworski, San Antonio, TX (Summit Care Texas L.P., Robert Gundling, Summit Care Corp.)

William Baine, Fulbright & Jaworski, San Antonio, TX (Summit Care Texas L.P., Robert Gundling, Summit Care Corp.)
 R. Brent Cooper, Cooper & Scully P.C., Dallas, TX (Summit Care Texas L.P., Robert Gundling, Summit Care Corp.)
 Diana L. Faust, Cooper & Scully P.C., Dallas, TX (Summit Care Texas L.P., Robert Gundling, Summit Care Corp.)
 Richard N. Francis, Jr., Plunkett & Gibson Inc., San Antonio, TX (Sylvia Casas)
 Jerry A. Gibson, Plunkett & Gibson Inc., San Antonio, TX (Sylvia Casas)
 William T. Sullivan, Fulbright & Jaworski, San Antonio, TX (Summit Care Texas L.P., Robert Gundling, Summit Care Corp.)

FACTS & ALLEGATIONS On Sunday, Sept. 28, 1997, plaintiff's decedent Tranquilino Mendoza, then an 81-year-old dementia sufferer who resided in the general population of Comanche Trail Nursing Center in Big Spring was attacked by his roommate, Geronimo Vela, resulting in serious, disfiguring injuries to his head and face.

On behalf of her father, Rosamarie Paradez, sued Comanche Trail owners Summit Care Corp. and Summit Care Texas L.P.; Summit's regional vice president, Robert Gundling; and nursing home administrator Sylvia Casas, for negligence and, against the two business entities, malice. After Mendoza died of unrelated causes on Dec. 20, 2000, Paradez was appointed administrator of the estate and the caption was restyled accordingly.

Before coming to Comanche Trail, Vela was an involuntary patient in the locked psychiatric unit of the V.A. hospital in Big Spring. According to attorneys for the estate, Vela was diagnosed

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with acute psychosis with schizophrenia and delusions and had a history of escalating violence that continued at the V.A.

On July 8, 1997, Vela was admitted to a secure unit at Comanche Trail. According to the plaintiff's attorneys, by the time Vela was moved into the general population on Friday, Sept. 26, he had attacked residents on at least 29 occasions, four of whom ended up in the hospital, where they were treated and released. Two of the attacks occurred within 10 days of Vela being moved to the general population. The victim of one of those attacks required stitches, and the victim of the other sustained a broken nose. The latter attack occurred on Sept. 24, just four days before Vela attacked Mendoza.

When Vela was moved into the general population, he and Mendoza were assigned to be roommates. That same day, Mendoza left the facility on a weekend pass with his daughter. The attack on him occurred when he returned on Sunday night.

Plaintiff counsel claimed that Vela had been recruited to Comanche Trail as a result of Summit Care Corp.'s recent decision a year earlier to mandate an increase in occupancy rates to 95% and launch an active marketing program to achieve this goal. Plaintiff counsel showed that Summit's CEO, through internal memos and weekly phone conferences, ordered Comanche Trail to create and aggressively market a locked Alzheimer's unit, despite Summit's lack of a certificate to operate an Alzheimer's unit; that the unit in which Vela resided before being moved to the general population was that Alzheimer's unit; that Summit recruited psychiatric patients from nearby hospitals and offered bonuses to Comanche Trail's administrator and recruiting coordinators for meeting the occupancy target; and that the pressure to "increase census" was intense. Plaintiff's attorneys argued for findings of 35% responsibility against each of the two business entities, 20% against Casas and 10% against Gundling.

The defendants denied negligence or malice, contending that, although the decision to keep Vela and move him in with Mendoza was a bad one in hindsight, it was a reasoned team decision by the department heads of the facility. The defendants reasoned that residents in the general population would be less likely than residents in the Alzheimer's unit to invade Vela's personal space. Also, staff members recorded that Vela and Mendoza's initial meeting went well and the two were chatting amicably.

According to defense counsel, the plaintiff's family medicine expert, David Mansfield, M.D., testified that Vela did well in the last two weeks at the V.A. and that the transfer to Comanche Trail was appropriate. Vela's physicians approved that transfer and reported that he was no longer a danger to himself or others,

he noted. Mansfield also testified that Vela was not "recruited" by Summit.

While acknowledging that Vela was involved in numerous incidents with other residents in the secure unit at Comanche Trail, the defendants argued that many were minor disagreements not involving physical aggression and, in some instances, Vela did not initiate the aggression.

The defendants also denied any pressure from corporate to up the census, and argued that the census-related memos merely reflected efforts to stay in line with an overall planned budget. The defense also cited testimony by Mendoza's family that the decedent had received good care for the two years he resided in the nursing home before the beating.

Gundling denied negligence on the grounds that he knew nothing of Vela's history until well after the incident.

INJURIES/DAMAGES *blunt force trauma to the head; concussion; head; traumatic brain injury*

The plaintiff alleged that Vela pummeled Mendoza's head with his fists and a hard plastic water pitcher. Persons who saw Mendoza afterward said that he was beaten "beyond recognition." He was transferred to a hospital and diagnosed with a severe concussion, lacerations to the face and ear, contusions, abrasions and hematomas. According to his attending physician after the attack, Mendoza suffered a severe head injury and looked like a mess. He received a few stitches above one eye, received wound care, and remained in the hospital two weeks, including seven or eight days in a transitional care unit. He was then discharged to a nursing home in Odessa.

The attending physician also testified that, by the time of discharge, Mendoza "recovered his ability to be the smiling, polite, lovely little old guy that I had known." Mendoza was moved to Odessa by his family, and this doctor did not see him again or review Mendoza's subsequent records. However, he did testify at his deposition that, in medical probability, the kinds of injuries suffered by Mendoza could have sequelae.

Paradez claimed that, although her father's visible injuries healed, he suffered permanent brain injury and permanent personality change and was not the same man. The plaintiff's attorneys argued that Mendoza's medical records and testimony from Comanche Trail employees showed that, before the attack, he was considered the nicest man in the building, a quiet man who routinely played ranchero songs on his guitar for his fellow residents, passed out candy, escorted ladies to the dining room and played games with his grandchildren. Paradez said that, after

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the attack, until his death, he was broken and withdrawn. Mendoza spent those years in an Odessa nursing home and with his daughter and his son, Ray. The plaintiff claimed Mendoza's pain and suffering, disfigurement, and physical impairment, including lost enjoyment of life. The plaintiff's attorneys argued for \$15 million total in actual damages. Mendoza's medical bills were stipulated at \$11,845.

The plaintiff also sought findings of malice and punitive damages, against Summit Care Corp. and Summit Care Texas L.P., seeking 5% of the net worth of those defendants. Their combined net worth was stipulated at \$207 million, and they were recently purchased, subject to liabilities, for \$650 million.

The defendants contended that Mendoza recovered fully and quickly and was not permanently injured. According to defense counsel, his family took him to no doctors from September 1999, until his death, and no doctors who saw him while he was in Odessa found any permanent injuries as a result of the assault. Paradez was the only child to testify as to the changes in Mendoza, and she testified that "he was never the same." She saw Mendoza twice after September 1999, before his death. According to defense counsel, evidence showed that none of the children ever reported to any doctor that Mendoza had suffered permanent or disabling injuries from the assault. The defense argued that, if the jury found liability, \$300,000 would be reasonable actual damages.

Mendoza was not treated for any emotional or psychological problems during his last three years, said the plaintiff's attorneys. A psychology expert saw Mendoza in June 2000, but did not testify.

RESULT The jury found for the plaintiff and allocated 35% fault to Summit Care Corp., 35% to Summit Care Texas L.P., 25% to Casas, and 5% to Gundling. Mendoza's damages were \$7 million for physical impairment, \$3 million for pain and suffering and \$50,000 for disfigurement. The damages against the partnership were capped by statute at approximately \$1.58 million. According to the plaintiff's attorneys, the cap does not apply to Casas or the corporation, which are not healthcare providers under the statute. Damages against Gundling, \$502,500, were less than the cap anyway.

The jury also found malice by the corporation and the limited partnership and assessed punitives of \$50 million and \$100 million, respectively. Each of these amounts was capped at about \$774,000 plus two times the medical bills, which were \$11,845.

To settle, the plaintiff had demanded \$1.25 million before significant discovery and trial preparation. The defense offered \$300,000 and declined to negotiate further, so the plaintiff

withdrew her demand. Over the next 20 months, the plaintiff raised her demand as discovery proceeded.

ESTATE OF MENDOZA	\$7,000,000 past physical impairment \$3,000,000 past pain and suffering \$50,000 past disfigurement \$50,000,000 punitive damages (corp.) \$100,000,000 <u>punitive damages (partnership)</u> \$160,050,000
DEMAND OFFER	\$2.4 million \$1 million
INSURER(S)	AIG for all defendants
TRIAL DETAILS	Trial Length: 2 weeks Trial Deliberations: 2 days Jury Vote: 12-0 Jury Composition: 6 male, 6 female
PLAINTIFF EXPERT(S)	David E. Mansfield, M.D., family medicine, Alto, NM Vincent DiMaio, M.D., forensic pathology, San Antonio, TX
DEFENSE EXPERT(S)	Louis Lux, M.D., internal medicine, Austin, TX Richard Senelick, M.D., neurology, San Antonio, TX