

Bussey v. E.S.C. Restaurants

November 4, 2005

Virginia Supreme Court

This case concerns the sufficiency of the evidence in an adulterated food case.

The plaintiff went to a Golden Corral. There she ordered beef tips well done for lunch. She testified that she hadn't had anything to eat since the previous day's breakfast when she had a bowl of cereal. She had eaten some when she decided that the meat smelled bad and she called the manager over. The manager, in testimony that was contradicted, allegedly said that not five minutes earlier he told the cook not to use that meat it was bad. The plaintiff ate no more of the meat. Later that day, within a couple of hours, she began to feel sick, and the next day she went to the ER. She following day she went to see her family doctor who diagnosed her with food poisoning and sent her to the hospital for four days. The friend that she ate lunch with confirmed the meal and her complaining about the smell, as did the restaurant manger. The family doctor, who was Board Certified in internal medicine, diagnosed her with staphylococcal food poisoning, largely a diagnosis of elimination of other possible causes. That is, he tested extensively for other possible causes and the tests came back negative.

The jury found for the plaintiff in the amount of \$111,765.25. The trial judge set aside the verdict on several grounds. Chief among these was the fact the medical evidence was two obtained two days after the event, that there was never a test for staphylococcal bacteria, the fact the time line for the first symptoms was sooner than normally expected. Usually it take more than 6 hours for significant symptoms to appear, here it was only two. The good doctor did testify that it was too expensive to do significant scientific testing in a typical food poisoning case. The Virginia Supreme Court reviewed the facts and held that there was enough evidence to uphold the verdict.