

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 17, 2006 Session

GALADRIEL BASHAM v. MARK K. GREAVES

**Appeal from the Circuit Court for Davidson County
No. 00C-1558 Marietta M. Shipley, Judge**

No. M2006-00281-COA-R3-CV - Filed on December 11, 2006

WILLIAM C. KOCH, JR., P.J., M.S., concurring.

This appeal is yet another effort to provide the courts with a permissible vehicle for circumventing the legislatively mandated “locality rule” uniquely applicable to medical malpractice cases. Galadriel Basham seeks to hold the trial court in error for using an instruction based on the Tennessee Pattern Jury Instructions. She insists that the trial court should have given a broader instruction equating the nationwide “community” of board-certified emergency room physicians with the geographical concept of “community” plainly embodied in Tenn. Code Ann. § 29-26-115(a)(1) (Supp. 2006).

Ms. Basham cannot make this argument now because she failed to request the trial court to give a broader instruction. *Rule v. Empire Gas Corp.*, 563 S.W.2d 551, 554 (Tenn. 1978) (distinguishing between erroneous instructions and omitted instructions for the purpose of Tenn. R. Civ. P. 51.02); *Jones v. Tenn. Farmers Mut. Ins. Co.*, 896 S.W.2d 553, 556 (Tenn. Ct. App. 1994). Parties who failed to take actions reasonably available to them to prevent or nullify the harmful effect of an error are not entitled to relief on appeal. Tenn. R. App. P. 36(a).

WILLIAM C. KOCH, JR., P.J., M.S.