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Pennsylvania Jury Verdict Review & Analysis

Campisi vs. Graham

Case No. 95-0104084

*1999 PA Jury Verdicts Review LEXIS 1117*

**Verdict Date:** December 17, 1999;

**Publication Date:** May, 2000

**Topic:** OBSTETRICAL MALPRACTICE - IMPROPER DISCHARGE FROM HOSPITAL - FAILURE TO DIAGNOSE PRE-TERM LABOR - FAILURE TO ADVISE TO RETURN TO HOSPITAL UPON TWO TELEPHONE CALLS - PREMATURE BIRTH - CEREBRAL PALSY TO NEWBORN

**Result:** \$ 13,000,000 Verdict

**State:** Pennsylvania

**County:** Philadelphia County

**Judge:** Judge Flora Barth Wolf

**Plaintiff Attorney:** Attorney for plaintiff: Howell Rosenberg of Brookman, Rosenberg, Brown & Sandler in Philadelphia

**Defendant Attorney:** Attorney for defendants: James A. Young of Christie, Pabarue, Mortensen & Young in Philadelphia

**Facts:** The defendants in this medical malpractice action included the hospital where the minor plaintiff was born, a hospital resident and the plaintiff mother's treating obstetrician/perinatologist. The plaintiffs claimed that the defendant resident failed to diagnose pre-term labor and improperly discharged the plaintiff mother from the hospital. The plaintiff also alleged that both the defendant resident and the defendant obstetrician failed to advise her to return to the hospital when she telephoned twice complaining of continued contractions. The defendants maintained that the plaintiff was appropriately discharged from the hospital and denied that she was advised not to come back to the hospital when she called. The defense also contended that even if the plaintiff had remained in the hospital, it would not have made a difference in halting the premature birth of her son.

The plaintiff mother, age 33, was pregnant with her second child after a normal vaginal delivery of her first baby. She had experienced a bleed in the 11th week of the subject pregnancy and was placed at high risk for pre-term labor. Because of this high risk, the plaintiff contended that she sought prenatal care from the defendant obstetrician's practice group. On February 10, 1993, the plaintiff mother testified that she passed a clot in her 26th week of pregnancy and was taken to the emergency room at the defendant hospital. At approximately 7:30 PM, the plaintiff was seen by the defendant resident who placed her on fetal monitor, noted irregular contractions and performed a cervical examination showing no dilation.

The plaintiff was observed for approximately four hours in the hospital and discharged at approximately midnight at the direction of the attending defendant obstetrician. Records indicated that she

had been contraction-free for the last 20 minutes before discharge. The plaintiff testified that she was awakened at 4:00 A.M. that morning (February 11, 1993) with contractions, called the hospital and spoke with the defendant resident. The plaintiff contended that the resident told her, she had just been to the hospital, real labor occurs only when there is a regular pattern to the contractions and since her contractions were not regular, she did not need to come back to the hospital. The plaintiff testified that at 6:00 A.M. she experienced similar contractions and reached the defendant obstetrician by telephone. The plaintiff testified that the defendant obstetrician also told her that she was having false labor and not to worry about it.

In the afternoon of February 11, 1993, the plaintiff testified that she passed another clot and was taken back to the hospital. It was then discovered that the plaintiff was 7 to 8 cm. dilated, labor could not be halted and a Caesarean section was performed. The minor plaintiff, a male, was born at 26 weeks with mild to moderate cerebral palsy. He was hospitalized for the first four months of his life.

The plaintiff's medical experts testified that, in light of the plaintiff's high risk for pre-term labor, 20 minutes without contractions was not a significant period to warrant her discharge from the hospital. The plaintiff also claimed that the defendant resident was negligent in not advising the plaintiff to report to the hospital when he spoke to her at 4:00 A.M. and the defendant obstetrician was negligent in not advising her to come to the hospital when he spoke to her at 6:00 A.M.

The minor plaintiff was seven years old at the time of trial. He made a brief appearance before the jury and walked with braces and crutches. A "Day In The Life" film was also presented and the plaintiff's physicians testified that the boy suffers mild to moderate cerebral palsy as a result of his premature birth, with borderline cognitive deficits and will require special education classes. The plaintiff's life care expert testified that the minor plaintiff will require various physical therapy and may be able to someday live independently with supervision. The plaintiff's vocational expert opined that the child has a significantly limited economic horizon and the plaintiff's economist estimated his diminished earning capacity as between \$ 770,000 and \$ 2 million.

The defendant maintained that four hours of hospital observation was sufficient, the plaintiff mother showed no cervical change during that time and was appropriately discharged with instructions to call immediately if contractions resumed. The defendant resident testified that he told the plaintiff to come to the hospital when he spoke with her at 4:00 A.M.

The defendant obstetrician denied speaking with the plaintiff at 6:00 A.M. He testified that he first learned of the plaintiff's 4:00 A.M. call from the defendant resident. The defendant obstetrician also testified that, if he had spoken to the plaintiff, he would have advised her to come to the hospital immediately.

The defendant's medical experts testified that, even if the plaintiff had remained in the hospital, her pre-term labor could not have been halted. The defendant's experts testified that the reason for the pre-term labor was a history of bleeding caused by placental separation. Administration of drugs or steroids would not have been successful in halting the labor, according to defense experts.

The jury found the defendant obstetrician 80% negligent and the defendant resident 20% negligent. The plaintiff was awarded \$ 13 million, comprised of \$ 7 million to the minor plaintiff; \$ 2.5 million to the plaintiff mother and \$ 3.5 million to the plaintiff mother and father. Post-trial motions are pending.

**Plaintiff Experts:** Plaintiff's perinatologist: Denise Guidetti from Long Island, N.Y.  
Plaintiff's neonatologist: Howard Harris from Indianapolis, Ind.  
Plaintiff's placental pathologist: Carolyn Salafia from New York, N.Y.  
Plaintiff's life care expert: Mona Yudkoff from Bala Cynwyd.  
Plaintiff's vocational expert: Mark Lukas from Maryland  
Plaintiff's economist: Andrew Verzilli from Kintnersville

**Commentary:** The reason for the jury's strong reaction in this medical malpractice action may have been the credibility issues which were set up during trial. The defendants, essentially, took the position that the plaintiff was told to come into the hospital and refused to do so. Under the circumstances of the case, the jury may have been extremely reluctant to accept this contention. Evidence showed that the plaintiff had

admitted herself through the emergency room and did exactly as she was instructed after she was discharge by calling the hospital upon experiencing continued contractions. Although the defendant resident testified that he told the plaintiff to come to the hospital immediately when he spoke to her at 4:00 A.M., this advice was not noted in the plaintiff's medical chart and this may have been another factor in the plaintiff's favor. As a second tier of defense, the defendants stressed that the plaintiff had a history of bleeding caused by a separated placenta and that hospitalization would not have halted her premature labor. The jury placed the bulk of responsibility (80%) on the defendant obstetrician, apparently accepting the plaintiff's arguments that the attending physician placed too much responsibility on the resident and did not properly supervise him. Also, it was the attending physician who made the decision to initially release the plaintiff from the hospital and this may have been a key factor in the jury's apportionment of the bulk of responsibility upon him. The defense called no witnesses on damages.

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