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Pennsylvania Jury Verdict Review & Analysis

Goldberg vs. Isdaner, et al.

Case No. 10-97-2834

2000 PA Jury Verdicts Review LEXIS 738

Verdict Date: February 10, 2000;

Publication Date: April, 2000

Topic: OBSTETRICAL MALPRACTICE - FAILURE TO PERFORM IMMEDIATE CERVICAL EXAMINATION UPON PRESENTATION TO HOSPITAL - PREMATURE LABOR - DEATH OF ONE TWIN - SEVERE CEREBRAL PALSY TO SECOND TWIN

Result: \$ 7,200,000 Verdict

State: Pennsylvania

County: Philadelphia County

Judge: Judge Sandra Mazer Moss

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

Defendant Attorney: Attorney for defendant obstetrician: John F. O'Brien, III of O'Brien & Ryan in Plymouth Meeting

Attorney for defendant perinatologist: Charles A. Fitzpatrick, III of Mylott, David & Fitzpatrick in Philadelphia

Attorney for defendant hospital: Israel N. Eisenberg of Post & Schell in Philadelphia

Facts: This was an obstetrical malpractice action brought by the plaintiff against her treating obstetrician, a visiting perinatologist and the hospital where her twin sons were born. The plaintiff maintained that the defendants' negligence resulted in premature birth of her twins, the death of one of the babies and severe cerebral palsy to the surviving twin. The defendants denied that the plaintiff's pre-mature labor could have been halted and maintained that her treatment met the required standard of care in all respects.

The plaintiff experienced a bloody mucus discharge on November 20, 1995, in her 25th week of pregnancy. She called the defendant obstetrician to report the incident, but the defendant was not in. The defendant was contacted by his office manager and instructed the plaintiff to go to the hospital. At the hospital, the plaintiff was placed on a fetal monitor at approximately 1:00 p.m. Irregular contractions and uterine irritability were noted. At approximately 4:45 p.m. (some 3.5 hours after admission) the defendant perinatologist performed a cervical examination and discovered that the plaintiff was 2.6 cm. dilated.

The defendant perinatologist spoke with the defendant obstetrician on the telephone and it was decided to start tocolytic drugs and steroids in an attempt to inhibit the plaintiff's labor. The defendant obstetrician arrived at the hospital at approximately 9:30 p.m. At 10:30 p.m. the plaintiff's water broke and a Caesarean section delivering twin boys was performed by the defendant obstetrician at 1:00 a.m. One of the twins died

after 1.5 days of hospitalization. The second twin was hospitalized for a period of three months and suffers severe cerebral palsy which the plaintiff's experts attributed to his premature birth.

The plaintiff contended that the defendant obstetrician was negligent in failing to examine or have the plaintiff examined during the 3.5 hours before she was seen by the defendant perinatologist. The plaintiff also alleged that the defendant hospital was liable for the negligence of its nurses who also failed to perform a cervical examination. The plaintiff contended that she was at high risk for premature labor due to the known fact that she was carrying twins.

The plaintiff's obstetrician testified that the standard of care required that the plaintiff undergo a cervical examination within an hour of her admission to the hospital. Failure to perform such an examination increased the risk of irreversible premature labor, according to the plaintiff's experts. The plaintiff also contended that the plaintiff should have been transferred to a level III hospital, where premature babies are known to do better. The defendant hospital was a level II hospital.

The surviving twin was four-years old at the time of trial. He made a brief appearance in the courtroom in a wheelchair. The plaintiff's life care expert testified that the minor plaintiff will require daily living assistance for the remainder of his life and that he will need modifications to his home and a special handicapped vehicle for transportation. The plaintiff's economic damages were estimated at between \$ 1 million and \$ 5 million.

The defendant's medical experts testified that what was seen on the plaintiff's monitors did not warrant an immediate cervical examination and that it was not a deviation from the required standard of care to perform such an examination 3.5 hours after admission. The defendant's experts also opined that, in any event, an earlier cervical examination would not have made a difference in the plaintiff's medical outcome.

The defendant's pathologist testified that placental examination showed chorioamnionitis. (inflammation of the membranes that cover the fetus) which was the cause of the plaintiff's pre-term labor. Defense experts opined that tocolytic drugs would not have been effective in stopping the plaintiff's labor even if they had been administered earlier.

The jury found the defendant obstetrician 100% negligent and also found that he was an ostensible agent of the defendant hospital. The defendant perinatologist was found not negligent. The plaintiff was awarded \$ 7.2 million. The award included \$ 6 million to the surviving minor plaintiff; \$ 600,000 to the estate of the minor decedent and \$ 600,000 to the plaintiff parents. Post-trial motions are pending.

Plaintiff Experts: Plaintiff's obstetrician: Stewart Dershaw from Abington
Plaintiff's perinatologist: Yvonne Thorton from Morristown, New Jersey
Plaintiff's pathologist: John Shane from Bethlehem
Plaintiff's neonatologist: Howard Harris from Indianapolis, Indiana
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

Defendant Experts: Defendants' obstetrician: Derwood Hughes from Philadelphia
Defendants' perinatologist: Ronald Bolognese from Philadelphia
Defendants' pathologist: Emanuel Rubin from Philadelphia

Commentary: This was a difficult medical malpractice action in which plaintiff's counsel was able to successfully prove that a delay of several hours in performing a cervical examination caused the premature birth of the plaintiff's infant twins. The defense stressed evidence of a placental infection and argued that the infection was the cause of the pre-term labor. The defendants maintained that performance of a cervical examination several hours earlier would not have prevented the premature birth. The plaintiff countered that with proper care antibiotics would have controlled the infection and immediate tocolytic drugs would have halted the labor. The plaintiff relied on an "increased risk of harm" theory, arguing that the alleged deviations did not cause the pre-term labor, but increased the risk that it could not be halted, once it began. The plaintiff also stressed that the defendant obstetrician did not appear at the hospital until 9:30 p.m., more than eight hours after he had instructed his patient to report to the hospital. This fact combined with the

defendant's testimony that he could not remember where he was at the time in question, may have been considered by the jury in reaching its ultimate conclusion.

The jury found in favor of the defendant hospital on the plaintiff's claim of direct negligence involving its nurses. The defendant hospital maintained that the defendant doctors were not hospital employees and, therefore, the hospital had no vicarious liability for the doctors' alleged negligence. However the jury found the negligent obstetrician to be an ostensible (implied or presumptive) agent of the hospital. The defense maintains that there was insufficient evidence for such a finding and that the finding places the hospital in the possession of an excess insurer. This is one of the issues on the current appeal. The defendants made no offers to settle the case prior to trial.

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