



PENNSYLVANIA

JURY VERDICT

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BABY KIMBERLY WRIGHT BY HER PARENT PAULA HAUGHTON vs. HOSPITAL OF UNIVERSITY OF PENNSYLVANIA, ET AL.

Results: \$350,000 Verdict

State: Pennsylvania

County: Philadelphia

Judge: Annette Rizzo

Plaintiff Attorney: John Mirabella of Duffy & Keenan in Philadelphia

Verdict Date: September 12, 2003

Defendant Attorney: Peter J. Lynch of Christie Pabarue, Mortensen & Young in Philadelphia

Facts: This medical malpractice action was brought on behalf of the minor plaintiff against the hospital where the child was born as well as four individual physicians. The plaintiff contended the defendants negligently applied forceps during vaginal delivery, resulting in a permanent facial scar to the minor female plaintiff. The defendants denied the child's facial defect resulted from the forceps delivery and contended it was a congenital birth defect.

The minor plaintiff was born by vaginal forceps-assisted delivery in the defendant hospital with the four defendant doctors present. The defendants included a second-year ob/gyn resident, a third-year ob/gyn resident the chief ob/gyn resident and the attending ob/gyn.

The plaintiff's expert ob/gyn opined the forceps were improperly applied during the delivery so the blades went over the baby's face and the back of her head rather than sides of her head. This expert testified the misapplication of the forceps resulted in lacerations and contusions to the baby's face.

The plaintiff claimed the minor plaintiff has been left with permanent scarring and discoloration of skin below her left eye. The little girl, age four at trial, appeared for jury selection and walked past the jury box prior to the close of evidence.

The plaintiff's plastic surgeon testified surgical correction was not an option for this child. The plaintiff's plastic surgeon also testified the location of the facial defect and the delivery room record was consistent with a forceps injury. The plaintiff's expert utilized an anatomical doll and forceps to demonstrate that the location of the defect matched placement of the forceps on the back of the child's head and her face.

The plaintiff introduced photographs of the child at six-weeks of age, depicting the defect below the left eye. In addition, the plaintiff claimed that MRI results were negative for presence of a blood vessel in the area of the defect which would indicate hemangioma (a benign tumor of dilated

blood vessels also known as a birthmark).

The defendants argued the defect documented in the delivery room record was a result of the normal birthing process and was not due to misapplication of forceps as alleged by the plaintiff. All of the defendants testified they had no specific recollection of the plaintiff's delivery and were not aware of any injury sustained by the baby. The defendants contended their practice and procedure included double and triple checking the application of forceps prior to placement of the blades. The defense argued the condition under the minor plaintiff's left eye was a congenital capillary hemangioma (birthmark).

The defendant's ophthalmologist testified there was nothing documented in the child's outpatient pediatric records until six months after birth. The defense maintained the timing of the first notation of the defect was consistent with development of hemangioma and that the defect did not become discolored until the child was several years old.

The defense introduced enlarged pediatric reports representing the child's checkups at ages three, six and eight weeks. The records indicated a checklist showing no defects noted in the area of eyes, skin or other areas.

The jury found the attending physicians 45% negligent, the chief resident 30% negligent and the third-year resident 25% negligent. The second-year was also found negligent, but her negligence was found not have been a legal factor in causing injury to the plaintiff. The second-year resident testified her function was to handle paperwork during the delivery and she would not likely have handled the forceps. The plaintiff was awarded \$350,000 in damages. Posttrial motions are pending.

Defendant Experts: Ophthalmologist: Leonard Nelson from Philadelphia Ob/Gyn: Thomas Westover from Camden, N.J.

Commentary: The key to the plaintiff's victory in this medical malpractice action may have been

delivery room record which documented a facial defect below the left eye at birth. The defense maintained the defect did not manifest until six months after birth and was consistent with a birthmark. Along these lines, the defense stressed several pediatric reports showing normal examination of the baby's skin, eyes and other features during the first weeks of her life. However, the plaintiff argued the delivery room record, as well as a photograph taken at age six weeks, was inconsistent with the normal pediatric reports.

The plaintiff's expert also presented a persuasive demonstration involving an anatomical doll and forceps. The plaintiff claimed the forceps, when fitted improperly on the doll's face and the back of its head, created a mark at the same location of the plaintiff's defect.

The focus of the plaintiff's presentation on damages centered on testimony from the minor plaintiff's mother, who discussed how almost every adult she encounters asks about the scar on her daughter's face.

Plaintiff's counsel sought to protect the emotional well-being of the child by limiting her exposure to a brief appearance during jury selection and at the close of evidence. Otherwise, the injury was presented through medical photographs.

The defect on the light-skinned African American child appeared similar to a swollen black eye with an extra fold of skin. The plaintiff's plastic surgeon testified cosmetic correction was not an option for the little girl. The jury may also have felt that, even if surgical correction were performed, it would most likely be done when the child is older forcing her to go through her formidable years with a visible facial abnormality that draws attention from others.

No settlement offers were made by the defendants prior to verdict.