Connecticut Law Tribune
NOVEMBER 10, 2008
VOL. 34, NO. 45 • $10.00
An incisivemedia publication
CTLAWTRIBUNE.COM

$38.5 Million Birth Injury Verdict Upheld

Defense said baby had already suffered brain damage in womb

By THOMAS B. SCHEFFEY

Lawyers defending a Stamford obstetrician were unable to persuade a trial judge to set aside a $38.5 million medical malpractice verdict rendered in February, or reduce the award by a single penny. The case now heads to an appeal.

Stamford Superior Court Judge Taggart Adams held last week that this state record award was "just and reasonable compensation" and fully supported by the evidence.

The award covers nursing care over a 50-year life expectancy for Spencer Oram, now 5, who suffered severe brain injury during the birthing process.

On April 3, 2003, Elizabeth Oram was admitted to Stamford Hospital, pregnant with twins. She is a former Day Pitney associate who now works as a staff attorney at Pace University's Women's Justice Center in White Plains, N.Y.

The next morning, Oram delivered a healthy baby girl, Emma. Minutes later, at 3:13 a.m., complications arose with unborn Spencer. His heart rate fell to an alarming 50 to 70 beats per minute. Almost immediately, Dr. Corrine de Cholnoky noticed the baby's umbilical cord was being restricted. She first attempted to have the mother deliver normally by pushing for 10 minutes, to no avail. At 3:23 a.m., de Cholnoky ordered a Caesarean section, which was begun at 3:27 a.m. and completed at 3:38 a.m.

Plaintiff's lawyer Richard Silver, of Silver, Golub & Teitell, presented expert testimony that an emergency C-section should take only five minutes and that de Cholnoky responded too slowly. Spencer suffered brain damage and is a quadriplegic unable to walk, talk or even eat normally.

During last winter's trial, defense attorney James B. Rosenblum tried to show that Spencer was oxygen-deprived for a week or more before the delivery, due to a placental abnormality that was no fault of the doctor. Using expert testimony, Rosenblum reasoned there were two types of brain damage. One was the "global" injury from poor oxygenation before birth, for which the doctor was arguably blameless. The other was the "focal" injury from the pinched umbilical cord, which made up the heart of the malpractice claim.

In post-verdict briefs, Rosenblum contended that Adams should have instructed the jurors to separate Spencer's pre-existing injuries from any harm that occurred during delivery to keep his client from bearing financial responsibility for injuries that were not her fault. "There is no recovery for the pre-existing condition," Rosenblum argued.

RICHARD SILVER

ANGELO ZIOTAS

Vulnerable State

The plaintiffs' legal team saw it differently. Silver's partner, Angelo Ziotas, argued at trial that, instead of showing two separate injuries, the defense had simply established that Spencer was physically more vulnerable at birth. As such, he would fall under the "eggshell-skull rule" in tort law, which holds that a plaintiff is entitled to full compensation even if he was in a vulnerable state before being harmed by the defendant.

Adams wrote that he found the defense arguments unpersuasive, in part because Rosenblum cited no case law. "Connecticut law is clear that a defendant takes the plaintiff 'as he finds him,'" the judge wrote.

Damages are sometimes allocated among more than one party, the judge noted, but that's only when a co-defendant or the plaintiff is found to have "proximately

caused" some of the injuries. In this case, the only person found negligent was de Cholnoky, Adams concluded.

Rosenblum's briefs attacked Adams's decisions during trial and challenged his jury instructions. He also claimed the judge was allowing the child to recover twice for the same injury – his inability to eat normally. The boy is fed through a tube.

The judge explained that eating falls into two categories of compensable damages. Not being able to eat normally, he wrote, is a physical disability which may cause distress and pain. Secondly, the "inability to enjoy the taste or satisfaction of a normal eating experience is a qualitatively different kind of loss," but just as compensable.

Rosenblum's brief listed 22 reasons to set aside the verdict, grant a new trial or reduce the award. In their response, Silver and Ziotas countered that the jury instructions were well within a trial judge's discretion and that the damages were supported by the evidence.

Rosenblum, of Stamford's Rosenblum Newfield, has selected Wiggin and Dana appellate advocate Jeffrey Babbin to handle the appeal. "We feel we have excellent grounds for appeal on issues of causation, liability and damages," Rosenblum said. ■