



NEW JERSEY

JURY VERDICT

REVIEW & ANALYSIS®

**SUMMARIES
WITH TRIAL
ANALYSIS**

\$2,500,000 RECOVERY – Medical malpractice – Wrongful birth – Failure to test for Jewish genetic disease (Canavan's) – Failure to adequately question 16-year-old mother – Medical expenses – Emotional distress.

Volume 29, Issue
November 2008

\$2,500,000 RECOVERY – MEDICAL MALPRACTICE – WRONGFUL BIRTH – FAILURE TO TEST FOR JEWISH GENETIC DISEASE (CANAVAN'S) – FAILURE TO ADEQUATELY QUESTION 16-YEAR-OLD MOTHER – EXTRAORDINARY MEDICAL EXPENSES – EMOTIONAL DISTRESS.

Ocean County

This wrongful birth case involved the failure to test for Jewish genetic diseases resulting in the birth of a child afflicted with Canavan's disease. Canavan's is a degenerative brain disorder which causes progressive degeneration and eventually death, usually by age 12. Canavan's primarily strikes children of parents of Eastern European (Ashkenazi) decent. The plaintiff made a claim for extraordinary medical expenses and the emotional distress of the mother, a high school junior at the time.

The mother was an unwed high school student when she became pregnant. She presented to the defendant obstetrical clinic in for her prenatal care. The Hospital had a contract with a private obstetric/gynecologic practice to staff and operate the clinic. An obstetrician in that private practice served as the director of the clinic. Three nurse-midwives from the practice staffed the Clinic. An employee of the hospital, an R.N., performed intake functions at the clinic.

The plaintiff established that the nurse met with the mother and her mother at the time of the first visit to the clinic. The prenatal intake form completed by the nurse recorded that the father of the baby was Jewish. As to the religion of the mother of the baby, the nurse recorded "none." A genetic screening form was given to the mother to complete. A question that inquired: "Do you or the baby's father have any close relatives descended from Jewish people who lived in Eastern Europe (Ashkenazi Jews)?" was answered "no". The plaintiff maintained, however, that the nurse did not inquire whether the mother or her mother knew what it meant to be an Ashkenazi Jew or whether the mother or her mother had sufficient knowledge of the father's heritage to be able to give a reliable answer to the question. The plaintiff contended that the nurse also did not explain the significance of an inaccurate answer to the question to either the mother or her mother. The nurse did not suggest that the mother or her mother contact the father or his family to determine the accurate answer to the question.

The form was passed on to the nurse-midwives who thereafter rendered care to the mother. The plaintiff contended that the nurse-midwives did not have any discussion with the youthful mother about the context

or accuracy of the intake sheet and genetic screening forms. The plaintiff further maintained that they had no discussion with her as to whether she understood the questions on the genetic screening form or had sufficient knowledge of the father's heritage to answer reliably and accurately. The plaintiff also stressed that notwithstanding that the vast majority of the Jewish population in the United States is of Ashkenazi descent, the nurse-midwives also did not suggest that the mother speak to the father or his family to accurately determine his heritage.

The plaintiff contended that once the father was identified as Jewish, the standard of care required the mother be offered genetic screening by simple blood test for diseases associated with Jewish heritage. The plaintiff maintained that had that been done, it would have been discovered that both parents were carriers of Canavan's Disease and they would have been counseled as to their option to terminate the pregnancy, an option they would have elected.

The plaintiff advanced the further theory that based on the mother's presentation to the clinic as a high school student, pregnant and unwed, the clinic personnel were on notice that the mother was not likely to have sufficient knowledge of the father's true Jewish heritage to be able to answer genetic screening questions accurately and was not even likely to understand what it meant to be an Ashkenazi Jew. The plaintiff maintained that the nurse-midwives, as the caregivers, had a duty to explain the genetic screening questions, determine that the patient understood the questions, explain the potential consequence of inaccurate answers and recommend that the mother speak to the father. The plaintiff advanced the same theory as to the defendant nurse. As to the ob/gyn, the plaintiff contended that as director of the clinic it was his obligation to properly train and supervise the conduct of the nurses and nurse-midwives who rendered care at the clinic.

The defendants maintained that an ACOG Committee Opinion supported its assertion that genetic testing for Canavan's Disease was not required to be offered unless both parents of the baby were identified as being Ashkenazi Jews. The plaintiff maintained

that defendants misinterpreted the ACOG Committee Opinion and that standard of care required that genetic testing be offered when either parent was identified as Jewish. At deposition, plaintiff's counsel adduced testimony from the defendant ob/gyn that the standard of care was to offer testing when either parent was identified as Jewish. Following the deposition, the defendant ob/gyn attempted to recant the testimony. The plaintiff also had two of the defense experts admit at deposition that standard of care required testing where there was only one parent of Jewish descent.

The evidence reflected that the disease is progressive in nature and is not currently effectively treatable. The infant plaintiff will lose muscle control, become comatose and ultimately succumb. The plaintiff contended that child will require around-the-clock care and, based upon a projected life expectancy of age 11, the plaintiff would have introduced evidence of approximately \$3,000,000 in such costs of care.

Just prior to trial, plaintiff settled with the nurse, Hale, for \$1,500,000. After two days of jury selection, the plaintiff settled with the nurse-midwives for \$1,000,000. The case against the doctor was then dismissed.

REFERENCE

Plt: Alter. Docket no. OCN-L-1763-05; Mediated before the Honorable Joseph Foster, 7-08.

Attorneys for plaintiff: Bruce H. Nagel and Barry M. Packin of Nagel Rice in Roseland, NJ and Michael Weiss of Weiss and Paarz in Northfield, NJ.

COMMENTARY:

The plaintiff, in this wrongful birth suit, emphasized that defendants did not inquire whether the 16-year-old mother or her mother knew what it meant to be an Ashkenazi Jew or whether the mother or her mother had sufficient knowledge of the father's heritage to be able to give a reliable answer to the question regarding his heritage. The plaintiff also stressed that the defendants did not explain the significance of an inaccurate answer to the question to either the mother or her mother and did not suggest that the mother or her mother contact the father or his family to determine the accurate answer to the question. Further, the plaintiff, who maintained that the standard of care requires that genetic testing must be offered when either parent was identified as Jewish, elicited testimony during the depositions of the defendant ob/gyn and two defense experts that the plaintiff's description of the standard of care was accurate. Finally, the plaintiff would have stressed that had testing been provided and both parents identified as carriers, they would have been aware that the baby stood a 25% chance of having the disease. The plaintiff would have argued that in view of the devastating nature of the progressive and terminal disease, and the youthful nature of the parents, the plaintiff's arguments that proper testing would have led to the election to terminate, were particularly persuasive.
