

DAILY REPORT

A SMART READ FOR SMART READERS

An ALM Publication

Brain damage leads to \$13.9M

JURY FINDS GWINNETT HOSPITAL liable for ailments of girl who was deprived of oxygen during birth, lawyers say

MARK NIESSE | mniesse@alm.com

THE MOTHER OF a girl born with brain damage won a \$13.9 million verdict from a Gwinnett County jury based on a claim that doctors and nurses failed to detect oxygen deprivation to the child during labor.

The mother's attorneys told the jury during the two-week trial that Gwinnett Medical Center personnel misread a fetal heart monitor and incorrectly diagnosed the cause of the girl's condition as an infection or meningitis. The verdict was reached Jan. 25.

The girl was born with cerebral palsy, epilepsy and mental retardation, said attorney Nelson Tyrone. Now 10 years old, the girl has the intellectual ability of a 3-year-old.

During six days of testimony, jurors heard from a series of experts including obstetricians, gynecologists, a nurse midwife expert, life care planners, pediatric neurologists and endocrinologists.

Jurors had a hard time knowing which experts to trust, Tyrone said they told him in post-trial interviews.

"They said it was very intimidating to not be a doctor or have medical training when doctors were saying very different things," he said. "Several said they were left with their own life experience and their own common sense, which is what every juror brings into the courtroom."

After three hours of deliberation, the jury of six men and six women wrote a note to the judge saying they were divided, with seven favoring the defense and five for the plaintiff. But Tyrone said he believed the jurors supporting his client had deeper convictions, and when jurors returned the following day, they were able to agree on a verdict after six more hours of deliberation.

Tyrone boiled his argument down to this: doctors should have intervened by performing a cesarean section to rescue the baby.

"It's no different from a pilot misreading altitude when flying in the



Nelson Tyrone represented the girl's mother. He said jurors overcame the challenge of assessing competing testimony from obstetricians, neurologists and other experts.

mountains. Having misread the baseline heart rate, they missed that the baby was not recovering well from mom's contractions," Tyrone said.

Defense attorney John Hall Jr. said he would attempt to have the verdict overturned on appeal.

"Occasionally juries get it wrong. This is one of those times," said Hall, of Hall Booth Smith. "To an independent observer, the evidence

was overwhelmingly in favor of the nurses' care."

Educating jurors on the science of obstetrics was essential to winning the case, Tyrone said.

He and lead attorney Hunter Hillin of Austin, Texas, used about 55 poster boards to help the jury learn some of what a doctor should know during labor and delivery.

One series of posters broke down the case by saying, "Oxygen Loss + Time = Brain Damage."

A video of the birth graphically demonstrated that the girl lacked oxygen and hadn't suffered any infection, said Hillin, who specializes in birth injury cases for Mueller Law. An oxygen bag and mask were used to resuscitate her.

"The baby looked like she had been at the bottom of a swimming pool when she was delivered," Hillin said. "When she got the oxygen she needed, fortunately she responded, and that's why she's with us today."

The plaintiff's attorneys asked the jury for a \$19 million verdict—\$12 million for a life care plan and \$7 million for pain and suffering at a rate of \$100,000 per year and a life expectancy of 70 years. Tyrone said he didn't know how the jury arrived at the \$13.9 amount.

The girl's mother, Melissa Dempsey, was in labor for about 17 hours before giving birth Aug. 17, 2002.

During the last 2½ hours of labor, when Dempsey was trying to push, there were signs of distress, Tyrone said. The mother had an elevated temperature, the baby's heart rate rose to over 160 beats per minute, and the baby was slow to return to her baseline heart rate following contractions, he said.

After doctors administered pitocin to hasten delivery, the mother became "hyperstimulated" because she was experiencing an increased number of contractions, which squeezed the

umbilical cord and placenta, limiting oxygen flow to the child, he said.

"Each problem stacked upon the next, painting a picture that any competent nurse or member of the team should have recognized was an absolute distress call," he said.

The defense argued that meningitis directly caused the child's brain damage, or an infection prevented her access to oxygen.

The hospital system said in a statement provided by Hall that some of the country's leading obstetricians testified that the child's injuries were associated with an infection rather than the medical care she received.

"Gwinnett Hospital System is confident that the nursing care provided was appropriate," the statement said.

Neonatal doctors saying that meningitis was the likely diagnosis started what would become a long paper trail of similar assessments, said Tyrone.

"It became a self-fulfilling prophesy. It just kept being repeated in the medical records," he added.

Doctors for the plaintiff serving as expert witnesses testified that the girl's brain imaging looked different from how it would appear if damage were caused by meningitis, he said. They should have diagnosed her with a hypoxic ischemic encephalopathy

(HIE), a term used to describe birth-related brain injuries caused by oxygen deprivation.

When one of the mother's doctors asked her months later if there had been any signs of oxygen deprivation, she started asking questions, Tyrone said. She also spoke with a friend whose child had cerebral palsy following a lack of oxygen during delivery.

She contacted Hillin, and suit was filed in 2004. The case took a long time to come to trial because it was so complicated and there were changes in lawyers on both sides, Tyrone said.

A nurse midwife and Dr. Renwick Hood were originally named as defendants, but they were dismissed before trial. The plaintiff reached a confidential settlement with the midwife, Jonne Sveum of Maternal Gynerations, and Hood was dismissed because he was never alerted to any problem by the labor and delivery team, Tyrone said.

The trial was overseen by Gwinnett County State Court Judge Joseph Iannazzone.

The case is *Dempsey v. Gwinnett Hospital System*, No. 09-C-20372.

Reprinted with permission from the 02/01/13 edition of the DAILY REPORT © 2013 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. Contact: 877-257-3382 reprints@alm.com or visit www.almreprints.com. # 451-02-13-02.

Nelson Tyrone

office: 404.377.0017
cell: 404.849.2860

nelson@tyronelaw.com
www.tyronelaw.com



TYRONE LAW FIRM

Wrongful Death & Serious Injury

Auto, Trucking & Motorcycle Accidents

Dangerous Products & Premises

Super Lawyers
2010-2012



MILLION DOLLAR ADVOCATES FORUM
The Top Trial Lawyers in America™



Atlanta
MAGAZINE
Top Attorneys
in Georgia

1201 Peachtree St. NE 400 Colony Square Suite 1900 Atlanta, GA 30361