

MARGARET WADE and SAMUEL F. VIOLA, PARENTS AND NATURAL GUARDIANS OF SCOTT FIORENTINO VIOLA vs. NGHIA TRAN, M.D., JAN VOLIN, M.D. and JEANES HOSPITAL

Court and Docket No.: Court of Common Pleas of Philadelphia County, January Term, 1995; No. 3721

Trial Judge: Honorable Arnold New

Facts:

Plaintiffs brought this medical malpractice wrongful death/survival action on behalf of the estate of their son, Scott Fiorentino Viola, who was 21 days old when he died on November 10, 1993. The child died as a result of an infection that he contracted in the neonatal intensive care unit at Jeanes Hospital.

Scott was born October 21, 1993 in Jeanes Hospital as the second twin after a gestational period of 30 weeks. Scott was born with immature lungs and was given medication to assist the development of his lungs. After his birth the child was placed on a ventilator to assist his breathing. After 4 days of life, an unsuccessful attempt was made to take him off the ventilator. Thereafter, he was placed back on the ventilator and remained ventilator dependent for the rest of his stay at the neonatal intensive care unit of Jeanes Hospital. The Neonatologists in charge of the unit were Doctors Jan Volin and Nghia Tran. Generally, from the time Scott was placed on a ventilator until November 7, 1993, his need for ventilator support was decreasing. On November 7, 1993 at 4:00 p.m. it was noted that Scott had developed inflammation at a left hand IV site which was not infiltrated. That IV site was then discontinued and a new IV site initiated in his right hand. Approximately 6 hours after first noting the inflammation, Scott developed worsening of his breathing problems and required increased ventilator support. Scott's condition continued to slowly deteriorate through the early morning hours of November 8, 1993. During this time period the infant was being cared for by a resident covering the neonatal intensive care unit. No blood work was ordered during this time period and there was no work up for the possibility of an infection. It was noted in the record that at some time between 1:00 and 4:00 a.m. the resident called Dr. Nghia Tran at home to discuss the worsening condition of the child. This conversation did not result in any work up for an infectious process. At approximately 8:00 in the morning of November 8, 1993, laboratory blood work was drawn. At this time Dr. Jan Volin took over for the neonatal intensive care resident. Some time prior to 12:00 noon on November 8, 1993, the blood work indicated an increasing white blood cell count as well as increasing band cells. Although an infectious process was considered as a possibility, no antibiotics were provided at that time.

The child continued to deteriorate until 4:00 p.m. on November 8, 1993, when it was noted that he had a red streak up his left arm extending from his old IV site. At that time antibiotic therapy was initiated. Unfortunately, Scott had already developed an overwhelming sepsis which the antibiotics were unable to alleviate.

On or about 11:00 a.m. on November 9, 1993, Scott was transferred to St. Christopher's Hospital for Children. Scott died from sepsis at 2:00 a.m. on November 10, 1993.

Contentions as to Liability: Plaintiff alleged that the doctors caring for Scott failed to appreciate that he was developing an infection and initiate appropriate antibiotic therapy in a timely manner. It was agreed that Scott developed sepsis while in the neonatal intensive care unit and that he died of sepsis.

Plaintiffs' expert testified that infections are a major concern of premature children in a neonatal intensive care unit. He further testified that once Scott started to exhibit signs of deterioration following the recording of an unexplained inflammation at an IV site, that it was below the standard of care not to provide antibiotic therapy at that time. Additionally, he opined that when the laboratory results indicated evidence of an infectious process, it provided another opportunity to institute antibiotic therapy. He further testified that the failure to initiate antibiotics sooner increased the risk of death for this child. Defendants argued that redness at an IV site is a common occurrence and the use of antibiotic therapy would not have been warranted simply from this notation of inflammation. Moreover, the argued that the deteriorating condition of Scott was well explained by his bronchopulmonary dysplasia which was a developing respiratory problem which they diagnosed as his problem. Defendants' expert testified that it was within the standard of care to withhold antibiotics until 4:00 in the afternoon and that in fact antibiotics were given at the earliest possible time. The defense expert also opined that the delay in providing antibiotics did not increase the risk of harm to the child.

Injuries and Damages: Plaintiffs' economist projected that decedent's lost future earnings was in a range from \$350,000 to \$650,000 with zero growth factors.

Outcome of the Case: After 9 days of trial the jury awarded a verdict in favor of Plaintiffs and against doctors, Volin and Tran, in the amount of \$500,000. Delay damages of approximately \$150,000 have also accrued. The jury found in favor of Jeanes Hospital based on the alleged negligence of the resident. There was never an offer to settle the case. (It was stipulated that Drs. Volin and Tran were agents of Jeanes Hospital).

Plaintiffs' Expert Witnesses: Dr. Harris Jacobs, (Neonatologist), Yale University; and Dr. Andrew Verzilli, (Economist).

Defendants' Expert Witnesses: Dr. Robert Stavis; and Julie Henderson, R.N.

Plaintiffs' Attorney: Louis Podel, Philadelphia

Defendants' Attorneys: Donald Ladd of White & Williams, Philadelphia on behalf of Defendants, Tran & Volin; and Kathleen M. Chancler of Post & Schell on behalf of Defendant, Jeanes Hospital.

Verdict
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