

VERDICTS & SETTLEMENTS

MEDICAL

MALPRACTICE Wrongful Death

Verdict: Defense

CASE/NUMBER: Shenitha Smith, Richard Forte v. Jon Yamamoto, M.D. / BC635054

COURT/DATE: Los Angeles Superior / Feb. 19, 2019

JUDGE: Mark C. Kim

ATTORNEYS:

Plaintiff - Neil M. Howard (Law Offices of Neil M. Howard)

Defendant - Yuk K. Law (Law Brandmeyer LLP)

FACTS: Plaintiff Shenitha Smith presented to Little Company of Mary-San Pedro Hospital in labor on July 5, 2014. She claimed there was fetal distress, but her obstetrician did not go to the hospital for the labor or delivery. The baby was allegedly delivered by the nursing staff, and the baby was in respiratory distress due to meconium aspiration. She was treated by a neonatologist, who decided the baby needed a higher level of care. The baby was transported to Little Company of Mary-Torrance Hospital's NICU for treatment by neonatologist Dr. Jon Yamamoto for the next 26 hours for persistent pulmonary hypertension of the newborn.

On the morning of July 6, Dr. Yamamoto determined the baby had to receive ECMO and nitric oxide treatment, and such treatment was available at Children's Hospital-Los Angeles. The baby expired at about 9 a.m. on July 6, before she could be transported to Children's Hospital.

Plaintiffs filed the first suit against Little Company of Mary-San Pedro Hospital and the obstetrician. A settlement was reached between plaintiffs and all the defendants in the first action.

Plaintiffs filed a second action for wrongful death against Dr. Jon Yamamoto.

PLAINTIFF'S CONTENTIONS:

Plaintiffs contended that the first action related to the negligent treatment of the mother for her labor and delivery, and they did not know or suspect that Dr. Yamamoto was negligent in the treatment of their baby until defendants filed summary judgment motions that required their attorney to retain a neonatology expert, who opined that Dr. Yamamoto was at fault. This caused the delay in the discovery of their claim against Dr. Yamamoto, hence the filing of the second action against Dr. Yamamoto more than one year after the death of the newborn.

DEFENDANT'S CONTENTIONS:

Dr. Yamamoto testified that he spoke with the parents on the phone a number of times in regards to the baby's condition, and the potential need to transfer the baby to Children's Hospital for a higher level of care. He also testified that he met the parents in person the morning the baby expired, such that the parents knew he was the baby's doctor at Little Company of Mary-Torrance Hospital. Plaintiffs testified that they spoke with Dr. Yamamoto and met with him, and they knew he was their baby's doctor.

Plaintiffs also testified that they hired their attorney, and relied on him to investigate the case and to file legal action to protect and advance their interest. Plaintiff's attorney was called to testify as a trial witness under Evidence Code section 776, and he testified that he did not hire a neonatology expert until August 2016 to learn about Dr. Yamamoto's alleged wrongful conduct. Defense contended the case against Dr. Yamamoto was not filed until Sept. 30, 2016, more than one year following the death of the baby. Defense argued that the amendment of the first complaint on June 25, 2015, was before the expiration of the one-year statute of

limitations, to Doe in Little Company of Mary-Torrance Hospital where the labor and delivery did not occur but where the baby died under the care of treatment of Dr. Yamamoto.

Dr. Yamamoto moved for summary judgment on the statute of limitations without success. A writ petition was summarily denied. Dr. Yamamoto contended that plaintiffs and their attorney, Neil Howard, knew and had facts to suspect that Dr. Yamamoto could be at fault. Dr. Yamamoto argued that the first timely filed action was amended to include Little Company of Mary-Torrance Hospital, where Dr. Yamamoto treated the newborn in the NICU up to the time of her death. Dr. Yamamoto contended that plaintiffs knew of his involvement and relied on their attorney to do the investigation before the first anniversary of their daughter's death. Dr. Yamamoto argued that law does not allow a toll of the statute of limitations due to alleged lack of due diligence on the part of the plaintiffs and/or their counsel, and the delay in hiring a neonatology expert was not an excuse to toll the statute of limitation.

Lastly, Dr. Yamamoto argued that plaintiffs and their attorney, in filing the second action against Dr. Yamamoto, attempted to split a single cause of action for double recovery, and this attempt violated Dr. Yamamoto's rights under Prop. 51.

DAMAGES: Plaintiffs' non-economic damages for the loss of their newborn, and burial and funeral expenses.

SETTLEMENT DISCUSSIONS: Dr. Yamamoto served a CCP 998 for \$20,000.

RESULT: Defense verdict

OTHER INFORMATION: Defendant will seek costs and expert fees pursuant to CCP 998.

FILING DATE: Apr. 28, 2015