

over 100 pounds during pregnancy, classifying her as obese and further complicating her pregnancy.

{¶3} Plaintiffs allege that OSUH was negligent in its evaluation, care and treatment of plaintiffs Shawnda McDaniels and Edward Blackstone, Jr., and that OSUH's evaluation, care and treatment fell below acceptable standards of care for reasonably prudent physicians, nurses and health care providers under the same or similar circumstances.

{¶4} The alleged negligence of defendant includes, but is not limited to the failure to perform a Cesarean section (C-section) for the delivery of Edward Blackstone, Jr.; the failure to recognize the seriousness of Edward Blackstone, Jr.'s condition; the failure to properly diagnose, monitor, and treat plaintiffs Shawnda McDaniels and Edward Blackstone, Jr. during the labor and delivery process; and the failure to properly diagnose, treat, manage and monitor Edward Blackstone, Jr. during his October 1995 hospitalization at OSUH.

{¶5} Plaintiffs further allege that, as a direct and proximate result of defendant's negligence, Edward Blackstone, Jr., sustained an injury known as shoulder dystocia; that he was denied the opportunity for effective treatment of his condition; that he was forced to undergo additional treatment which would otherwise have been unnecessary, including treatment for shoulder dystocia; that he suffered impaired physical capacity to enjoy the amenities of life; and that he suffered permanent neurological deficits and brain injury.

{¶6} Upon plaintiff's admission to the labor and delivery unit at OSUH, the doctors performed an amniocentesis to determine whether the baby's lungs had developed to a point where the baby could breathe sufficiently if it were delivered prematurely. The results of the amniocentesis confirmed that the baby's lungs were mature enough for delivery. An ultrasound examination revealed that the baby had an estimated fetal weight of 4,033 grams.

{¶7} In her deposition, plaintiff² said that she had requested a C-section and believed that the baby was going to be so delivered. However, plaintiff did agree to labor induction, which she knew from experience would not be required for a C-section. The court finds that the OSUH doctors explained the options of C-section versus vaginal delivery. The court also finds that the OSUH doctors recommended vaginal delivery because of plaintiff's obesity, medical problems and history of three successful vaginal deliveries and that plaintiff consented to vaginal delivery.

{¶8} On the evening of October 3, 1995, plaintiff was administered a drug called Pitocin to initiate uterine contractions. After 10:30 a.m. on the following morning, OSUH doctors decided that plaintiff had entered the active stage of labor and by 2:30 p.m. plaintiff's cervix was fully dilated. Her labor had advanced about twice as fast as the doctors had expected and her rapid progress indicated to them that plaintiff was capable of delivering vaginally. As plaintiff neared delivery, the Chief Resident at OSUH, Dr. Eric Hartman, personally took over the care of plaintiff. He evaluated plaintiff's condition and agreed that plaintiff could and should deliver the baby vaginally.

{¶9} The baby was progressing through the birth canal as expected until Dr. Hartman encountered the first complication of the delivery. As plaintiff pushed, the baby started to experience deep, variable decelerations which is indicative of some form of umbilical cord compression taking place. Umbilical cord compression can interrupt the baby's oxygen supply, thereby causing significant neurological damage. Therefore, Dr. Hartman decided that the baby must be promptly delivered. To assist plaintiff in the delivery, he used a vacuum extractor which is a vacuum with a cup at the end of it. Dr. Hartman placed the cup on the baby's head and as plaintiff pushed, the suction

from the vacuum prevented the baby from regressing back into the birth canal between pushes. The vacuum extractor worked and Dr. Hartman delivered the baby's head. However, as soon as the head was delivered, Dr. Hartman saw the "turtle sign," a classic medical indication that a shoulder dystocia had just occurred. In a shoulder dystocia, one of the baby's shoulders gets caught in the mother's pelvis and the baby cannot be delivered. This is a very serious problem because it can cause an interruption in the baby's oxygen supply.

{¶10} Dr. Hartman immediately called for assistance and Drs. Kelly and Tuffariello promptly responded. The doctors employed the "McRoberts maneuver" which consists of: pushing plaintiff's legs as far back as possible towards her chest; applying suprapubic pressure; cutting a fourth degree episiotomy; applying downward traction to the baby; and rotating the baby's anterior shoulder to free the shoulder dystocia. The baby was freed from the shoulder dystocia and was delivered.

{¶11} Dr. Russell Jelsema, M.D., plaintiff's expert witness, is an obstetrician and gynecologist (Ob-Gyn) with a sub-specialty in maternal fetal medicine which includes the care of mothers with complicated or high-risk pregnancies. He opined that OSUH doctors were negligent in the care of plaintiff because they did not recommend a C-section in favor of a vaginal delivery when they discussed the medical options with plaintiff. He further opined that OSUH doctors were negligent in that they did not perform a C-section on the following morning when they knew that plaintiff had suffered an active phase arrest in the first stage of labor. He also opined that OSUH doctors were negligent by using the vacuum extractor and by applying excessive force to free the baby from the shoulder dystocia, thereby causing the baby to sustain a brachial plexus injury.

{¶12} Dr. Steven Clark, M.D., defendant's expert witness, is an Ob-Gyn with a sub-speciality in maternal fetal medicine. He opined that OSUH doctors were not negligent and that they made the proper judgment when they recommended that plaintiff deliver the baby

vaginally. Furthermore, he opined that plaintiff did not suffer an arrest in her first stage of delivery, that the use of the vacuum extractor demonstrated sound judgment by the OSUH doctors and that the baby's brachial plexus injury probably did not occur in the attempt to release the baby from the shoulder dystocia.

{¶13} "In order to establish medical malpractice, it must be shown by a preponderance of the evidence that the injury complained of was caused by the doing of some particular thing or things that a physician of ordinary skill, care and diligence would not have done under like or similar conditions or circumstances, or by the failure or omission to do some particular thing or things that a physician or surgeon would have done under like or similar conditions or circumstances, and that the injury complained of was the direct and proximate result of such doing or failing to do one or more of such particular things." *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127.

{¶14} Both expert witnesses are members of the American College of Obstetricians and Gynecologists (ACOG). ACOG is the leading organization for Ob-Gyns in the nation. ACOG publishes technical bulletins as an educational aid to Ob-Gyns. The technical bulletin does not define a standard of care, nor is it intended to dictate an exclusive course of management. It presents recognized methods and techniques of clinical practice for Ob-Gyns to incorporate into their practices, taking into account the needs of the individual patient, resources, and limitations unique to the institution or type of practice. (See Defendant's Exhibit B, Pg. 7.)

{¶15} Both Drs. Jelsema and Clark were aware of plaintiff's pre-delivery condition. Dr. Jelsema opined that since the estimated weight of the fetus was over 4,000 grams, and considering the other problems, that OSUH doctors had a responsibility to recommend a C-section delivery. However, Dr. Clark testified that a C-section delivery is not mandated where the estimated fetal weight is 4,033 grams. He testified that a vaginal delivery is still an option where the fetal weight is less than 4,500 grams. Both expert witnesses recognized that

plaintiff was not an ideal subject for a C-section delivery because of her weight and medical history. Dr. Clark disputed the contention that plaintiff suffered an active phase arrest in the first stage of labor, or that OSUH doctors used excessive force either in the use of the vacuum extractor or during the handling of the shoulder dystocia problem. He also denied that the brachial plexus injury to the baby occurred during the time OSUH doctors were working on the shoulder dystocia problem.

{¶16} The court finds that both medical expert witnesses were well-qualified and made excellent witnesses. The court further finds that OSUH doctors reasonably recommended a vaginal delivery for plaintiff. Plaintiff had three previous vaginal deliveries and had an increased risk for complications with a C-section because of her obesity and medical history.

{¶17} The court further finds that plaintiff has failed to prove by a preponderance of the evidence that she suffered an active phase arrest in the first stage of labor which would have required a C-section delivery. Furthermore, plaintiff has failed to prove that OSUH doctors fell below the standard of care in resolving the shoulder dystocia problem. The evidence is too speculative to support a finding that the brachial plexus injury was caused by the release of the shoulder dystocia. Under circumstances where time is of the essence and the baby's life was at risk, quickly facilitating the baby's delivery was the most important issue.

{¶18} The court concludes that plaintiffs have failed to prove by a preponderance of the evidence that defendant was negligent in the care and treatment of plaintiff and her baby. Therefore, judgment will be rendered in favor of defendant.

FRED J. SHOEMAKER
Judge

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