

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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MICHAEL BLACKARD and  
SHARON BLACKARD, both  
individually and as parents,  
legal guardians and next friends  
for ASHLEY BLACKARD, a minor,

Plaintiffs,

vs.

MEMPHIS AREA MEDICAL CENTER  
FOR WOMEN, INC.,  
UT MEDICAL GROUP, INC.,  
DeANNA GREER,  
JEANETTE BROWN, and  
FAZEL MANEJWALA, M.D.,

Defendants.

FILED IN OPEN COURT:

DATE: 11-23-99

TIME: 3:55 p.m.

INITIALS: BMW

No. 98-2996 MIA

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**JOINT PRE-TRIAL ORDER**

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A pretrial conference is scheduled in this matter for 8:30 a.m. on Monday, November 22, 1999, before the Honorable Jon Phipps McCalla, United States District Judge.

**THE PARTIES**

The following counsel will be appearing:

A. For the Plaintiffs:

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79 (a) FRCP on 11-26-99

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**JURISDICTION**

Jurisdiction is proper in this Court, as this matter is brought pursuant to 28 U.S.C.

§ 1332.

### **PENDING MOTIONS**

There are currently pending before the Court the following motions:

1. Joint Motion of Defendants for Summary Judgment Under Rule 56 or for Relief Under Rule 60(b), filed on August 31, 1999;
2. Plaintiffs' Motions *in Limine*.
3. Defendants' Motions *in Limine*.

### **STATUS OF DISCOVERY**

All discovery is complete at this time.

### **SETTLEMENT NEGOTIATIONS**

The parties have briefly discussed settlement of this matter. An offer has been made, but there is no possibility of settlement.

### **CONTENTIONS OF PLAINTIFFS**

Michael and Sharon Blackard are the natural parents of Ashley Blackard. In March of 1998 Ashley was a seventeen year old Junior in high school and was an unemancipated minor living at home with her parents. In March of 1998, Ashley discovered she was pregnant, and on Thursday, March 26, 1998, Ashley went with her boyfriend Matthew Justice to the Memphis Area Medical Center for Women and paid \$265.00 to receive an abortion. The abortion was performed by Dr. Fazel Manejwala.

The Tennessee Parental Consent for Abortion by Minors Act requires physicians and clinics that perform abortions to have the consent of at least one parent or legal

guardian before performing an abortion upon a minor, or alternatively require the minor to obtain permission from Juvenile Court to receive an abortion without parental consent. The statute further provides that failure to obtain parental consent or a court order is prima facie evidence of failure to obtain informed consent and of interference with family relations in appropriate civil actions. The statute further provides that the law of the state shall not be construed to preclude an award of exemplary damages in any appropriate civil action for violation of the statute.

Ashley Blackard did not tell her parents prior to the abortion that she was pregnant. At no time did Michael or Sharon Blackard have reason to know, nor did they consent to their daughter having an abortion. Furthermore, Ashley did not obtain a judicial bypass as required by statute in order for a minor to obtain an abortion without parental consent.

Ashley, having had the abortion, now seriously regrets having ended her unborn baby's life. Had Ashley talked with her parents prior to procuring the abortion, Ashley would not have aborted her child. Ashley now suffers from mental anguish and emotional distress as a direct and proximate result of the abortion.

Dr. Fazel Manejwala and the abortion clinic intentionally and unlawfully made contact with Ashley, without legal consent, by performing an abortion upon Ashley, and such acts constitute battery under Tennessee law. Failure to obtain parental consent or a judicial bypass prior to performing an abortion on a minor is prima facie evidence of

failure to obtain informed consent, and such lack of informed consent constitutes battery under Tennessee law.

Additionally, Michael and Sharon Blackard allege that the defendants' conduct constitutes tortious interference with family relations, giving rise to damages for emotional distress and mental anguish. Furthermore, the defendants' intentional act of disregarding the Tennessee Parental Consent for Abortion by Minors Act warrants an imposition of punitive damages.

#### **CONTENTIONS OF DEFENDANT DR. MANEJWALA**

Ashley Blackard, a seventeen and a half year-old young woman, became pregnant and sought an abortion in March of 1998. An abortion procedure was performed on Ashley Blackard by Dr. Manejawla on March 26, 1998, at the Memphis Area Medical Center for Women, Inc.

Ms. Blackard was fully informed before her abortion and consented to it. She went to the Memphis Area Medical Center, saw a video, reviewed printed information, conferred with officials at the Center and Dr. Manejawla, and signed a consent form.

The Tennessee Consent for Abortions by Minors Act, codified at T.C.A. §§ 37-10-301 to 37-10-307 (hereinafter "the Act" or the "Statute"), was preliminarily enjoined by the United States District Court for the Middle District of Tennessee from July, 1996, until August 11, 1997. Enforcement of the Statute was again preliminarily enjoined on August

26, 1997. Memphis Planned Parenthood, Inc. v. Sundquist, 2 F.Supp. 2d 997 (M.D. Tenn. 1997). The injunction in the Memphis Planned Parenthood case was in effect at the time of the events alleged in the Complaint in the present case. Therefore, the Statute relied upon by the plaintiffs as a basis for this action was not in effect; and the Statute is not a basis for the present action. Further, the injunction is applicable, and binding upon, the plaintiffs in the present case, and the injunction prohibits the present action which is based upon the statute.

Ashley Blackard was a mature minor who was informed of the various risks and benefits associated with both pregnancy and abortion, exercised her fundamental privacy right and her constitutional right to terminate her pregnancy, and consented to the procedure in question. Ashley signed informed consent forms confirming that she was informed and that she consented to the procedure.

The abortion itself was uncomplicated and there are no claims that the procedure itself was performed negligently.

Ms. Blackard did not incur damages as a result of the procedure. If she has experienced only mental trauma, it is the result of her subsequent pregnancy, her marriage, her withdrawal from high school, the birth of her daughter, her relationship with her father and/or mother, and/or publicity surrounding this lawsuit.

**CONTENTIONS OF DEFENDANT MEMPHIS AREA MEDICAL CENTER**

The plaintiff Ashley Blackard became pregnant at age 17. She performed two home pregnancy tests in February, 1998 which showed the pregnancy. She and her boyfriend, Matthew Justice, who was almost 20 years of age, decided to have an abortion without informing Ashley Blackard's parents. Ashley Blackard and Matthew Justice did not want to discuss the pregnancy or the abortion with her parents. Ms. Blackard could not discuss the pregnancy or the abortion with her parents. Ashley Blackard and Matthew Justice came to the Memphis Area Medical Center for Women on March 26, 1998. Ms. Blackard was informed of the various risks and benefits associated with both pregnancy and abortion. Ms. Blackard signed two informed consent forms confirming that she was informed and that she consented to the abortion procedure to terminate her pregnancy. Ms. Blackard also viewed a videotape explaining the abortion procedure and she discussed the abortion procedure with a counselor. Ms. Blackard exercised her constitutional right to terminate her pregnancy. Ms. Blackard gave her consent for the abortion.

Dr. Manejwala performed the abortion procedure. Dr. Manejwala obtained the informed consent of Ms. Blackard for the abortion procedure. Dr. Manejwala was not an employee or agent of the defendant Memphis Area Medical Center for Women, Inc. Therefore, the Memphis Area Medical Center is not responsible or liable for any alleged claims involving or arising out of any conduct and procedures performed by Dr. Manejwala.

The plaintiff Ashley Blackard's abortion procedure was performed in accordance with the acceptable standard of professional practice applicable to the defendant. The abortion procedure was uncomplicated, and there is no claim that the procedure itself was negligently performed.

No employee of Memphis Area Medical Center for Women performed the abortion procedure. A female employee of Memphis Area Medical Center for Women was in the room when Dr. Manejwala performed the abortion procedure but the female employee did not perform the abortion procedure.

Ms. Blackard was a mature minor. She knew and understood what an abortion was and she consented to the abortion. Ms. Blackard knew that it was an option to talk to her mother, but Ms. Blackard could not. Ms. Ashley Blackard knew that she was perfectly free to walk out of the clinic if she did not want to have the abortion. She knew it was her choice. She and Matthew Justice made the decision to have the abortion, and she willingly had the abortion procedure. No one forced her to have the abortion procedure.

Ms. Blackard became pregnant within six weeks after the abortion. She quit school in November 1998. She gave birth to a healthy baby in February, 1999. She and Matthew Justice were married on March 20, 1999.

The Memphis Area Medical Center for Women did not interfere with the family relations. It was Ashley Blackard who decided not to discuss the abortion with her parents. Also, family relationship was closer after the abortion than prior to the abortion. The



defendant did not cause any harm to the family relations. The Memphis Area Medical Center was not the proximate cause of any alleged emotional distress.

The Memphis Area Medical Center contends that the Tennessee doctrine of Comparative fault as an affirmative defense. Under this doctrine, the defendant is not liable to the plaintiffs. Further, under this doctrine, the conduct of the plaintiff Ashley Blackard, including the decision to terminate the pregnancy and the consequences thereof, must be apportioned to the plaintiffs. Also, under this doctrine, the defendant is not responsible or liable for any allegation made against Dr. Manejwala.

The Memphis Area Medical Center for Women acted in good faith reliance upon the injunction from the United States District Court in Nashville which prohibited the enforcement of the Tennessee Parental Consent for Abortions by Minors Act. The defendant contends that the statute was not in effect at the time of the plaintiff's abortion. The defendant Memphis Area Medical Center for Women did not intentionally violate any law.

### **CONTESTED ISSUES OF FACT**

#### **A. Plaintiffs**

1. The extent of damages directly and proximately caused by Ashley Blackard's receiving an abortion.

2. The extent of punitive damages that should be awarded due to the defendants' intentional violation of the Tennessee Parental Consent for Abortion by Minors Act.

3. The extent of damages suffered by Michael and Sharon Blackard as a direct and proximate result of the defendants' interference with family relations by performing an abortion upon Ashley without parental consent.

B. Defendant Dr. Manejwala

1. The extent of damages, if any, directly and proximately caused by Ashley Blackard's receiving an abortion.

2. The extent of damages, if any, suffered by Michael and Sharon Blackard as a result of the defendants' performing an abortion upon Ashley Blackard.

3. Whether defendant Dr. Manejwala knowingly violated any law.

4. Whether Dr. Manejwala could reasonably rely on the consents and warning received by and given by the Clinic.

C. Defendant Memphis Area Medical Center for Women

1. Did Ashley Blackard request and consent to an abortion.

2. Did Ashley Blackard decide not to inform her parents of the pregnancy or her decision to have an abortion.
3. Did Ashley Blackard know what an abortion was.
4. Did Ashley Blackard willingly have the abortion.
5. Was Ashley Blackard a "mature minor".
6. Whether the family relationship was closer after the parents learned of the abortion than prior to the abortion.
7. Whether the plaintiff Ashley Blackard has any emotional distress and mental anguish which was proximately caused by the abortion?
8. Whether the plaintiff Ashley Blackard's alleged emotional or mental distress was caused by the newspaper article in the Commercial Appeal, by her subsequent pregnancy, and by other events in her life unrelated to the abortion.
9. Whether the defendants acted in good faith reliance upon the injunction and did not act intentionally, knowingly, recklessly or maliciously violate the law.
10. Whether a judicial bypass was available to Ashley Blackard.
11. The extent of the fault of the plaintiff Ashley Blackard under the Tennessee law on comparative fault.

### **CONTESTED ISSUES OF LAW**

The contested issues of law are as follows:

A. Plaintiffs

1. Whether Ashley Blackard gave legal consent to defendants to perform an abortion, when Ashley Blackard was an unemancipated minor, who did not obtain parental consent for an abortion, and when the defendants failed to comply with the Tennessee Parental Consent for Abortion by Minors Act?

2. Whether the defendants' performing an abortion upon Ashley Blackard without legal consent constitutes a battery under Tennessee law?

3. Whether Dr. Fazel Manejwala and the Memphis Area Medical Center for Women obtained legal informed consent from Ashley Blackard to perform an abortion?

4. Whether the defendants intentionally, maliciously, or recklessly violated the Tennessee Parental Consent for Abortion by Minors Act when they performed an abortion upon Ashley Blackard, warranting an imposition of punitive damages?

B. Defendants Dr. Manejwala

1. The effect of the injunction of the Tennessee Consent for Abortions by Minors Act which was enjoined on August 26, 1997.

2. Whether the Statute relied upon by the plaintiffs as a basis for this action was in effect at the time of Ashley Blackard's abortion.

3. Whether the Statute upon which plaintiffs rely, T.C.A. § 37-10-301 et seq. is unconstitutional under both the United States and Tennessee constitutions.

C. Memphis Area Medical Center for Women

1. Was it necessary for Ashley Blackard to obtain parental consent when it is undisputed that there was no bypass procedure in place at the time of the plaintiff's abortion procedure.

2. Whether punitive damages may be imposed upon the defendants when it is undisputed that both defendants acted in good faith reliance on the injunction.

3. Whether the absence of a bypass procedure rendered the Tennessee Parental Consent statute unconstitutional?

4. The effect of the injunction of the Tennessee Consent for Abortions by Minors Act which was enjoined on August 26, 1997.

5. Whether the Statute relied upon by the plaintiffs as a basis for this action was in effect at the time of Ashley Blackard's abortion.

6. Whether the Statute upon which plaintiffs rely, T.C.A. § 37-10-301 et seq. is unconstitutional under both the United States and Tennessee constitutions.

7. Whether the elements for the alleged civil conspiracy and battery are present in this case.

8. Whether Dr. Manejwala was an independent contractor to Memphis Area Medical Center for Women.

**STIPULATED FACTS**

The following is a summary of stipulated facts:

1. Michael and Sharon Blackard were married on April 2, 1976. Ashley Blackard is the natural daughter of Michael and Sharon Blackard.
2. Ashley Blackard was born on December 30, 1980.
3. On Thursday, March 26, 1998, Ashley Blackard traveled to the Defendant Memphis Area Medical Center for Women, Inc.'s abortion clinic and received an abortion, which was performed by Dr. Fazel Manejwala.
4. At the time the abortion was performed upon Ashley, she was a 17 year old, living at home.
5. Ashley Blackard informed personnel at the Memphis Area Medical Center for Women that she was 17 years old prior to Ashley receiving an abortion.
6. Ashley Blackard did not tell her parents about her plans to receive an abortion prior to receiving an abortion.
7. Ashley's parents, Michael and Sharon Blackard, did not give their consent or permission for their daughter to receive an abortion.
8. Ashley Blackard did not obtain a court order to receive an abortion without parental consent from Juvenile Court or any other court prior to receiving an abortion.
9. Approximately six weeks after the abortion, Ashley Blackard learned she was pregnant again.
10. In November 1998, Ashley Blackard dropped out of high school.
11. On March 26, 1999, Ashley Blackard and Matthew Justice married.

### **EVIDENTIARY DISPUTES**

- 1) Plaintiffs and defendants have filed motions *in limine* detailing all known evidentiary disputes that may be anticipated at this time.
- 2) Relevance/admissibility of clinic accounting records.
- 3) Relevance/admissibility of insurance of clinic and physician.

### **PROPOSED EXHIBITS**

The following is a list and brief description of all exhibits to be offered into evidence by the respective parties, (except exhibits to be used for impeachment only). For all the listed exhibits, the parties stipulate that the documents are authentic, and these do not have to be authenticated by a keeper of the records.

#### A. Proposed Exhibits That May Be Offered by Plaintiffs:

1. Stipulations of Fact by the parties.
2. Records of the Memphis Area Medical Center for Women relating to Ashley Blackard's obtaining an abortion.
3. The Clinic's practice and procedure manual relating to abortions.
4. The accounting records regarding Ashley Blackard's payment on March 26, 1998.

#### B. Proposed Exhibits That May Be Offered by Defendants Dr. Fazel

Manejwala:

1. Stipulations of Fact by the parties.
2. Records of the Memphis Area Medical Center for Women relating to Ashley Blackard, including any and all materials reviewed by Ashley Blackard prior to her abortion.
3. The consent form signed by Ashley Blackard confirming that she was informed and that she voluntarily consented to have the procedure performed at Memphis Area Medical Center for Women, Inc. by Dr. Manejawla.

C. Proposed Exhibits That May Be Offered by Defendants Memphis Area Medical Center for Women:

1. Stipulations of Fact by the parties.
2. The plaintiff Ashley Blackard's medical records from Memphis Area Medical Center for Women including but not limited to the consent forms, Dr. Tabb, Dr. Jenkins.
3. The records of Rebecca Caperton, Ph.D.
4. Video viewed by the plaintiff Ashley Blackard at Memphis Area Medical Center for Women before her abortion procedure.
5. Records from Olympic Fitness Center regarding the plaintiff Ashley Blackard.
6. Records from Life Choices regarding the plaintiff Ashley Blackard.



7. Newspaper article regarding case from 11-14-98 Commercial Appeal.

### **CHARTS, GRAPHS AND DIAGRAMS**

The following is a list and brief description of any charts, graphs, models, schematic diagrams, and similar objects which will be used in opening statements or closing statements and for illustration purposes during testimony, but which will not be offered into evidence:

A. Plaintiffs

1. None are anticipated to be used.

B. Defendants

1. None are anticipated to be used.

### **WITNESSES**

The following is a list of witnesses whom the parties anticipate calling at the trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed witnesses must be present to testify when called by a party unless specific arrangements are made with the trial judge prior to commencement of trial. The listing of a WILL CALL witness herein constitutes a representation, upon which opposing counsel may rely, that the witness will be present at trial in the absence of reasonable written notice to opposing

counsel to the contrary. The list of a MAY CALL witness constitutes a representation that counsel reasonably expects to call the witness at trial, but is not bound to do so.

A. Plaintiffs' Witness List

1. Will Call

- a. Ashley Blackard (Plaintiff)
- b. Sharon Blackard (Plaintiff)
- c. Michael Blackard (Plaintiff)
- d. Rebecca Caperton, Ph.D. (expert)

2. May Call

- a. Dr. Thomas Gray (expert and treating physician)
- b. Matthew Justice (boyfriend of Ashley Blackard)
- c. David Justice (Father of Matthew Justice)
- d. Gail Justice (Mother of Matthew Justice)
- e. Fazel Manejwala, M.D.
- f. Jeanette Brown
- g. DeAnna Greer
- h. JoAnn Lewallen
- i. Charlotte Jacobs
- j. Valerie Morrow
- k. Jacqueline Scott, R.N.

- I. Gilbert Drummond
- m. Nancy Drummond
- n. Thomas H. Turner

Plaintiffs reserve the right to call any witness listed by Defendants.

B. Defendant Dr. Manejwala's Witness List

- 1. Will Call
  - a. Dr. Fazel Manejwala
- 2. May Call
  - a. Ashley Blackard
  - b. Sharon Blackard
  - c. Michael Blackard
  - d. Matthew Justice
  - e. Gail Justice
  - f. Jeannette Brown
  - g. DeAnna Greer
  - h. Charlotte Jacobs
  - i. Valerie Morrow
  - j. Jacqueline Scott, R.N.
  - k. Jacqueline Scott, R.N.
  - l. Gilbert Drummond

- m Nancy Drummond
- n. Thomas H. Turner
- o. Dr. Thomas Gray
- p. Dr. Frank Ling
- q. Dr. Joel Reisman

C. Defendant Medical Area Medical Center Witness List

1. WILL CALL

JoAnn Lewallen

Dr. Fazel Manjewala

2. MAY CALL

Jeannette Brown

DeAnna Greer

Valerie Morrow

Charlotte Jacobs

Gilbert Drummond

Nancy Drummond

Thomas Turner

Dr. Joel Reisman

Dr. Frank Ling

Defendants reserve the right to call any witness listed by the plaintiffs.

D. Will Testify By Deposition:

Indicate whether the entire deposition, or only portions thereof, will be used. Not later than 15 days prior to trial counsel shall confer for the purpose of resolving all controversies concerning depositions. All such controversies not so resolved shall be submitted to the trial judge not later than five days prior to trial. All objections not submitted within that time are waived.

Plaintiffs reserve the right to introduce all or portions of the following depositions:

1. Dr. Fazel Manejwala (Defendant)
2. JoAnn Lewallen

Defendant Dr. Manejwala reserves the right to introduce all or portions of the following depositions:

1. Dr. Thomas Gray
2. Dr. Rebecca Caperton
3. Ashley Blackard
4. Sharon Blackard
5. Michael Blackard
6. Matthew Justice

Defendant Memphis Area Medical Center for Women reserves the right to introduce a portion of or all of the following depositions:

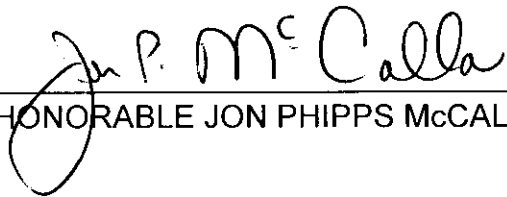
1. Ashley Blackard
2. Sharon Blackard
3. Michael Blackard
4. Rebecca Caperton, Ph.D.
5. Dr. Thomas Gray
6. Matthew Justice

**TRIAL**


This is a jury case to be tried before the Honorable Jon Phipps McCalla. Counsel estimate the length of trial will be three (3) days.

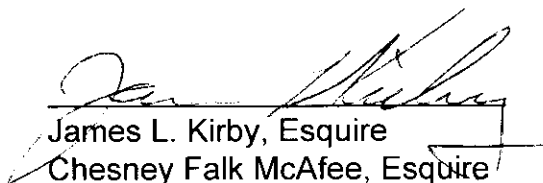
This pretrial order has been formulated at a pretrial conference before the United States District Judge, notice of which was duly served upon all parties, and at which the parties attended as hereinabove shown. Reasonable opportunity has been afforded for corrections or additions prior to signing. This order will control the course of the trial, as provided by Rule 16, Federal Rules of Civil Procedure, and it may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice.


This the \_\_\_\_\_ day of November, 1999.

  
\_\_\_\_\_  
THE HONORABLE JON PHIPPS McCALLA

AGREED:

  
\_\_\_\_\_  
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