

ENTERED
VERIFIED

NO. 93-016264

STACEY ANN STALNAKER
VS.
DOUGLAS A. KARPEN, D.O. and
AARON WOMEN'S CLINIC

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IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
129th JUDICIAL DISTRICT

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ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants DOUGLAS A. KARPEN, D.O. and AARON WOMEN'S CLINIC make the following Original Answer, and in support thereof, would show the Court as follows:

I.

These Defendants generally deny the material allegations of Plaintiff's Original Petition and all Amended Petitions and demand proof thereof as required by the Texas Rules of Civil Procedure and reserve the right to plead further and in greater particularity as the case progresses should such be indicated.

II.

These Defendants plead the provisions of §§11.02, 11.03 and 11.04 of Article 4590i, which limits the amount of damages, except for past and future medical expenses, that may be recovered herein.

III.

For further answer, these Defendants invoke their legal right to a reduction of any dollar verdict which may be

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rendered in this cause by credit for payments made by other persons or entities or by percentage reductions to which this Defendant would be entitled as a result of jury findings against other persons or entities. In this connection, these Defendants reserve the right to submit issues against parties who may be present in the case or absent from the case at the time the matter is submitted to the jury for fact determinations.

IV.

Should Plaintiff make a claim for punitive damages at any time, these Defendants further invoke their rights under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and affirmatively plead that the Plaintiff's pleading for punitive and/or exemplary damages is violative of the Fourteenth Amendment inasmuch as punitive and/or exemplary damages can be assessed:

1. in an amount left to the discretion of the jury and judge;
2. in assessing such sums, the decision of the jury need only be based on a vote of ten jurors and does not require a unanimous verdict;
3. in assessing such penalty or exemplary awards, plaintiff need only prove the theory of gross negligence on a "preponderance of the evidence" standard and not on a "beyond a reasonable doubt" standard, as should be required in assessing a punishment award;

4. further, the defendants who are subject to the award do not have the right to refuse to testify against themselves, but must, in fact, take the stand and/or give deposition testimony or subject themselves to the consequences of a default judgment;
5. the assessment of such a punishment and/or exemplary award is not based upon a clearly defined statutory enactment setting forth a specific mens rea requirement and/or other prerequisites of a criminal fine and, in effect allows the assessment of such awards even though there are not specific standards, limits or other statutory requirements set forth which define the mens rea and scope and limit of such awards. Therefore, the awards are unduly vague and do not meet the requirements of due process;
6. in essence, this defendant is subjected to all the hazards and risks of what amounts to a fine and, in fact, such awards often exceed normal criminal fines; but this defendant receives none of the basic rights afforded a criminal defendant when being subjected to possible criminal penalties; and
7. the assessment of punitive and/or exemplary damages differs from defendant to defendant and treats similar defendants in dissimilar ways.

Further, if such be necessary, these Defendants further affirmatively plead that the assessment and award of punitive and/or exemplary damages is violative of the Eighth Amendment of the United States Constitution as it is applied to the States through the Fourteenth Amendment of the United States Constitution in that such awards potentially

constitute an excessive fine imposed without the protections of fundamental due process.

V.

Accordingly, these Defendants invoke their rights under the Eighth and Fourteenth Amendments of the United States Constitution and respectfully request that this Court disallow the award of punitive and/or exemplary damages inasmuch as an award in this case would be violative of the Defendants' United States constitutional rights.

VI.

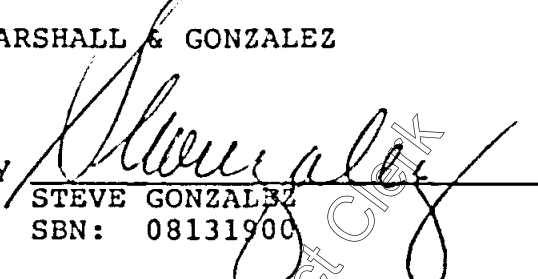
Defendants would further invoke their right under the Fifth Amendment to the United States Constitution wherein it reads in part, "No person shall be . . . deprived of . . . property, without due process of law; . . ." for the same reasons enumerated above.

WHEREFORE, PREMISES CONSIDERED, Defendant DOUGLAS A. KARPEN, D.O. and AARON WOMEN'S CLINIC pray that Plaintiff take nothing by reason of this suit, that Defendants recover their costs, and for such other and further relief, both at law and in equity, to which they may show themselves justly entitled.

Respectfully submitted,

MARSHALL & GONZALEZ

By



STEVE GONZALEZ
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ATTORNEY FOR DEFENDANTS,
DOUGLAS A. KARPEN, D.O. and
AARON WOMEN'S CLINIC

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing has been forwarded to Plaintiff's counsel of record by certified mail, return receipt requested, on this 3 day of May, 1993.



STEVE GONZALEZ

SG:aw
sgs2:101/002:p1

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STEVEN M. GONZALEZ
BOARD CERTIFIED - PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

May 3, 1993

Ms. Katherine Tyra
District Clerk
Civil Courts Building
301 Fannin St.
Houston, Texas 77002

Re: Cause No. 93-016264; Stacey Ann Stalnaker v. Douglas A. Karpen, D.O., et al.; In the 129th Judicial District Court of Harris County, Texas

Dear Ms. Tyra:

Enclosed please find Defendants' Original Answer and Demand for Jury Trial, which we would appreciate your filing in connection with the captioned matter and acknowledging receipt to the undersigned in your usual manner.

By copy of this letter, we are forwarding copies of these instruments to all counsel of record.

Thank you for your cooperation in this matter.

Respectfully,

MARSHALL & GONZALEZ


Steve Gonzalez

SG:aw
sgs2:101/002
Enclosures

cc: Stanley F. Swensen

(CM/RRR #P187 746 842)

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D. Deane
129th Judicial District Clerk