

ASSESSED	
ENTERED	<i>[Signature]</i>
VERIFIED	<i>[Signature]</i>

NO. 2002-38801

(PS)

CHERISE MOSLEY AND
FREDRICK MOSLEY,

Plaintiffs,

VS.

DOUGLAS A. KARPEN, D.O., and
AARON FAMILY PLANNING CLINICS
of HOUSTON, INC., A/K/A
AARON WOMEN'S MEDICAL CENTER

Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE COURT:

COMES NOW Cherise Mosley and Fredrick Mosley, Plaintiffs, and complain of Douglas A. Karpen, D.O., and Aaron Family Planning Clinics of Houston, Inc., also known as Aaron Family Planning Clinic of Houston, also known as Aaron Women's Medical Center and for cause of action show the following:

**I.
PARTIES**

Plaintiff Cherise Mosley is a resident of Harris County, Texas.

Plaintiff Fredrick Mosley is a resident of Harris County, Texas.

Defendant Douglas A. Karpen is a natural person who resides in Harris County.

Defendant Aaron Family Planning Clinics of Houston, Inc., also known as Aaron Family

JUDICIAL DISTRICT CLERK
HARRIS COUNTY, TEXAS
02 JUL 31 PM 7:53

Planning Clinic of Houston, also known as Aaron Women's Medical Center, is a Texas corporation organized under the laws of the state of Texas and may be served with process by serving its registered agent for service, Douglas A. Karpen, at 202 South John Redditt, Lufkin, Texas.

Defendant John Doe is an as yet unidentified person, male or female, believed to be a physician, nurse, or other medical occupational worker, who performed or participated in performing the abortion complained of in this cause of action.

II. DISCOVERY

Discovery in this case is to be conducted pursuant to Level II of the Texas Rules of Civil Procedure.

III. JURISDICTION AND VENUE

Venue is proper in Harris County under § 15.002(a)(1), and (2), and (3) and § 15.005 of Texas Civil Practice and remedies Code: all or a substantial part of the events or omissions giving rise to these claims occurred in Harris County; Defendant Douglas A. Karpen resides in Harris County; the principal office of Defendant Aaron Family Planning Clinics of Houston, Inc., is in Harris County.

Plaintiffs seek damages in amounts within the jurisdiction of this Court.

IV. BACKGROUND

On or about August 1, 2000, Cherise Mosley visited the Aaron Family Planning Clinics of Houston, Inc., also known as Aaron Family Planning Clinic of Houston, also known as Aaron Women's Medical Center. When she visited the clinic, Ms. Mosley was an unemancipated minor

and did not have a court order authorizing the performance of an abortion without notifying her parents, as required by state law.

One or more physicians or other clinic personnel performed an abortion on Ms. Mosley without requiring her to present an apparently valid governmental record of identification verifying her legal age to consent to an abortion, without providing at least 48 hours actual notice to either of Cherise Mosley's parents or notifying a court-appointed managing conservator or guardian, and without having court authority to perform an abortion on a minor. Instead, clinic personnel accepted as proof of Cherise Mosley's age a purported identification card that clearly stated on its face in bold letters the warning, "THIS IS NOT A GOVERNMENT DOCUMENT."

Defendants Douglas A. Karpen and John Doe, an as yet unidentified physician, nurse, or other medical occupational worker performed or participated in performing the abortion on Cherise Mosley.

Defendants' acts and omissions deprived Ms. Mosley of the opportunity for parental counseling that the law is designed to provide and thereby prevented her from using informed judgment in making a critical, irrevocable, life-affecting decision. Because she was denied this opportunity, Ms. Mosley was also denied the benefit of the guidance, love, and reassurance of her father when she made this critical decision in her life. Concomitantly, Defendants' actions also deprived Frederick Mosley of the opportunity to counsel his daughter about the magnitude of the decision she was making and to offer her his guidance and love.

V. CAUSES OF ACTION

Defendants knew through a previous visit that Plaintiff failed to have identification, yet upon

viewing a non-governmental identification card. Defendants negligently and recklessly decided to accept Cherise Mosley as a patient. Defendants knew or should have known that such negligent and reckless behavior could lead to the performance of a surgical abortion on a minor without the lawfully required proper consent.

Defendants owed a duty to Plaintiffs to comply with the age verification and parental notification requirements of Texas Family Code Title 2, Subtitle A, Chapter 33. Defendants' acts and omissions constitute a failure to use due diligence as required by Texas Family Code Chapter 33 to determine Cherise Mosley's age or identity. Defendants' acts and omissions also constitute a failure to comply with the parental notification provisions of Texas Family Code Chapter 33. The age verification and parental notification requirements of Texas Family Code Chapter 33 were specifically designed and intended to protect and benefit persons situated as Plaintiffs were situated. Therefore, Defendants' failure to comply with the Texas Family Code constitutes negligence per se, negligence, and gross negligence as to both Plaintiffs.

Defendants owed a duty to Plaintiff to exercise reasonable care in obtaining the proper consent necessary to perform a surgical procedure on a minor, and to inform that the patient of all risks associated with the procedure as well as possible alternatives. Defendants failed to meet the appropriate standard of care in obtaining lawful informed consent or providing parental notification before performing an abortion on a minor. In addition to the failure to obtain informed consent as required by the Texas Family Code, Defendants' acts and omissions also constitute a failure to obtain informed consent to perform a medical procedure as required by the Texas Medical Liability Insurance Improvement Act, Article 4590(I) of the Texas Revised Civil Statutes. Thus, Defendants intentionally or knowingly caused bodily injury to plaintiff by performing an abortion without

obtaining proper consent. As a direct and proximate result of Defendant's conduct, Plaintiff Cherise Mosley sustained bodily injuries requiring medical treatment by physicians and counselors. Defendants' failure to obtain informed consent before performing a surgical procedure on a patient constitutes negligence and assault and battery as to Plaintiff Cherise Mosley.

Defendant's conduct in failing to obtain proper consent as well as failure to properly counsel Plaintiff Cherise Mosley was grossly negligent, in that, when viewed objectively from the standpoint of Defendants at the time of the acts and omissions, the conduct involved an extreme degree of risk, considering the probability and magnitude of potential harm to others, and in that Defendants had actual subjective awareness of the risk involved, but, nevertheless, proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs.

Defendant's performed an abortion on a minor after accepting an identification card that on its face did not meet the requirements of the law Defendants are charged with obeying. This conduct constitutes behavior extreme and outrageous in character, and so extreme in degree as to go beyond all possible bounds of decency, as to be regarded as atrocious and utterly intolerable in a civilized community. This conduct was outrageous because Defendants knew from a previous visit that Plaintiff did not have proper identification of legal capacity to make an informed decision regarding a surgical procedure as life-affecting and irrevocable as abortion. Furthermore, Defendants knew or should have known that they failed to adequately counsel the Plaintiff. Defendants' acts and omissions constitute intentional infliction of emotional distress as to both Plaintiffs.

VI. DAMAGES

Defendant's conduct proximately caused Plaintiffs damage in that it caused Plaintiffs to

suffer severe emotional distress. In particular Defendants' conduct was the direct and proximate cause of severe despair, disappointment, indignation, wounded pride, shame, and public humiliation. Additionally, Plaintiffs must live with the life-long knowledge that had Defendant's complied with the law, Cherise Mosley's unborn child and Frederick Mosley's unborn grandchild would not have been aborted.

Plaintiffs' emotional distress has been severe in that Plaintiffs have suffered loss of appetite, disturbed sleep, bad dreams, and feelings of guilt and depression. In addition to severe emotional distress, the Plaintiff has suffered and will continue to suffer additional damages as a proximate result of the Defendants' conduct in that, in all reasonable probability, Plaintiffs will continue to suffer this mental pain and anguish for a long time in the future.

As a direct and proximate result of Defendants' conduct, Plaintiff Cherise Mosley has sustained bodily injuries requiring medical treatment by physicians and counselors. In all probability, Plaintiff Cherise Mosley will continue to require medical care and attention in the future and, thus, will continue to incur expenses for medical treatment.

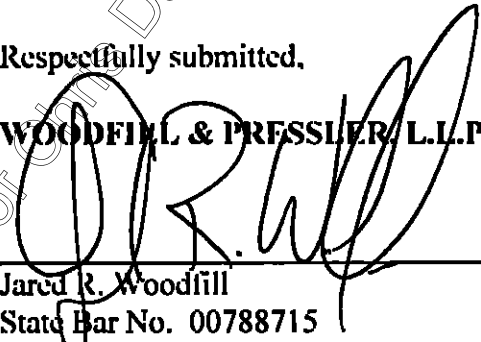
Plaintiffs sue the Defendants for the damages and injuries proximately flowing from the acts and omissions as described above, including but not necessarily limited to: (1) additional medical expenses; (2) physical pain and suffering; (3) mental anguish; (4) physical impairment; and (5) lost wages. Plaintiffs seek recovery for damages in the past, as well as in the future, where applicable. Plaintiffs sue the Defendant in an amount exceeding the minimum jurisdictional limits of this Honorable Court.

**IX.
PRAYER**

Wherefore, premises considered, Plaintiffs, respectfully pray that the Defendant's be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiffs against Defendants for damages in an amount within the jurisdictional limits of the Court; exemplary damages, excluding interest, and allowed by Sec. 41.008, Chapter 41, Tex. Civ. Prac.&Rem.Code; together with the pre-judgment interest (from the date of the injury through the date of the judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of the court, and such other and further relief to which the Plaintiffs may be entitled to at law or in equity.

Respectfully submitted,

WOODFILL & PRESSLER, L.L.P.



Jared R. Woodfill
State Bar No. 00788715
II. Paul Pressler III
State Bar No. 1626300
Brent Haynes
State Bar No. 24028874
917 Franklin, Penthouse
Houston, TX 77002
(713)751-3080
(713)751-3058 Fax
ATTORNEYS FOR PLAINTIFFS

Unofficial Copy Office of Daniel District Clerk



COUNTY AUDITOR'S FORM 99A
HARRIS COUNTY, TEXAS 1/10/99

OFFICIAL RECEIPT

2 NO 114172

CHARLES BACARISSE DISTRICT CLERK

ACTION: OTHER CIVIL CASE: C-200238801 TRANS NO: 6399287 COURT: 11
STYLE PLT: MOSLEY, CHERISE
DEF: KARPEN, DOUGLAS A (D O)

FEE	DESCRIPTION	QTY	AMOUNT	PAYMENT 1	CHECK	1055	
100	FILING NEW CASE	1	45.00	PAYMENT 2			168.00
121	CITATION WITH 1 COPY	1	8.00				
195	SECURITY SERVICE FEE	1	5.00	AMOUNT TENDERED:			-----
199	RECORD PRESERVATION	1	5.00	TOTAL AMOUNT:			168.00
450	JUDICIAL FILING FEE	1	40.00	AMOUNT APPLIED:			168.00
452	LEGAL SRVC FEE-CIVIL	1	10.00				158.00
475	LAW LIBRARY	1	15.00	REFUND AMOUNT:			
525	STENO FEE	1	15.00				10.00
601	DISPUTE RESOLUTION F	1	10.00	RECEIVED WOODFILL & PRESSLER LLP			
775	APPELLANT JUDICIAL F	1	5.00	OF 917 FRANKLIN ST PENTHOUSE			(LFIC9914)
800	REFUNDS	1	10.00	HOUSTON, TX 77002			

ONE HUNDRED FIFTY-EIGHT DOLLARS AND 0/100***** DOLLARS
PAYMENT DATE: 07/31/2002 FILE DATE: 07/31/2002

ASSESSED BY: NUNEZ, ELKIN NELSON
VALIDATED 08/06/2002 BY: CARLTON, SHARON JANE