

IN THE CIRCUIT COURT FOR THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION

CASE NO: 04-CA-1202  
DIVISION: 34


C.H., individually, and as Settlor of the J.F.  
Special Needs Trust, and THE CENTER FOR  
SPECIAL NEEDS TRUST ADMINISTRATION,  
INC., as Trustee of the J.F. Special Needs Trust,

Plaintiffs,

vs.

RANDALL B. WHITNEY, M.D.,  
JAMES SCOTT PENDERGRAFT, IV, M.D.,  
and ORLANDO WOMEN'S CENTER, INC.,  
a Florida corporation,

Defendants.

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CLERK OF COURT  
IN OFFICE  
H. COV. 

**SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

COME NOW the Plaintiffs, C.H., individually, and as Settlor of the J.F. Special Needs Trust, and THE CENTER FOR SPECIAL NEEDS TRUST ADMINISTRATION, INC., as Trustee of the J.F. Special Needs Trust, by and through their undersigned counsel, and hereby sue the Defendants, RANDALL B. WHITNEY, M.D., JAMES SCOTT PENDERGRAFT, IV, M.D., and ORLANDO WOMEN'S CENTER, INC., a Florida corporation, and states as follows:

**GENERAL ALLEGATIONS**

1. This is an action for damages which exceed \$15,000.00, exclusive of attorneys' fees, interest and costs.
2. All conditions precedent to the filing of this action have been performed or have occurred, including compliance with all pre-suit requirements of Chapter 766, Florida Statutes, compliance with all notification and other requirements of Section 768.28, Florida Statutes, and

the filing of an automatic 90-day extension of the statute of limitations for medical malpractice causes of action pursuant to Section 766.104, Florida Statutes.

3. J.F. is an incapacitated minor who was born on November 16, 2001, in Orlando, Orange County, Florida and who is a resident of Orange County, Florida. Due to the nature of the allegations contained herein, and the events surrounding the child's birth, the pseudonym "J.F." is being used to protect the identity of the injured child and the pseudonym "C.H." is being used to protect the identity of the child's mother from public disclosure. The Defendants will suffer no prejudice resulting from the use of said pseudonyms.

4. At all times material, C.H. was and is a resident of Orange County, Florida and is the natural mother of J.F., a minor.

5. THE CENTER FOR SPECIAL NEEDS TRUST ADMINISTRATION, INC. is a Florida Not-For-Profit Corporation that has been selected to serve as Trustee of the J.F. Special Needs Trust (the "Trust"). The Trust has been established for J.F.'s sole benefit and for the primary purpose of better protecting the interests and well-being of J.F. by providing for J.F.'s extraordinary medical and life care needs. The Trust has been established with minimal funds, and it shall be further funded by C.H., who is the Settlor of the Trust, as additional funds become available.

6. At all times material, the Defendant, RANDALL B. WHITNEY, M.D., (hereinafter referred to as "WHITNEY") was and is a physician duly licensed to practice in the State of Florida, with his principle place of business in Daytona Beach, Volusia County, Florida and his secondary place of business in Orlando, Orange County, Florida.

7. At all times material, the Defendant, JAMES SCOTT PENDERGRAFT, IV, M.D., (hereinafter referred to as "PENDERGRAFT") was and is a physician duly licensed to practice in the State of Florida, with his principle place of business in Orlando, Orange County, Florida.

8. At all times material, the Defendant, ORLANDO WOMEN'S CENTER, INC., was and is a Florida corporation, authorized to do business and providing medical services, in Orlando, Orange County, Florida.

9. At all times material to this action, Defendant WHITNEY was employee of the ORLANDO WOMEN'S CENTER and was acting within the course and scope of said employment with the ORLANDO WOMEN'S CENTER in his care and treatment of C.H.

10. At all times material to this action, Defendant WHITNEY was the agent and/or apparent agent of, and was acting within the course and scope of his agency with, the ORLANDO WOMEN'S CENTER in his care and treatment of C.H.

11. At all times material, Defendant WHITNEY held himself out as a specialist in the field of Obstetrics and Gynecology.

12. At all times material, Defendant WHITNEY also held himself out as having the ability to perform pregnancy terminations.

13. At all times material, Defendant PENDERGRAFT was the sole director and registered agent for the Defendant, ORLANDO WOMEN'S CENTER, and the sole director and registered agent for the entity which owns the ORLANDO WOMEN'S CENTER, 1103 Lucerne Terrace Corporation.

14. At all times material, Defendant PENDERGRAFT was the medical director of the ORLANDO WOMEN'S CENTER and was responsible for the implementation of medical protocols and procedures and proper operation of said clinic.

15. As the medical director of the ORLANDO WOMEN'S CENTER, Defendant PENDERGRAFT was responsible for formulating and/or overseeing the policies, procedures and operations of the facility, to specifically include, but not limited to, the following aspects:

- a). that all procedures performed at the facility, including pregnancy terminations, were performed by a licensed physician;
- b). the proper administration of labor-inducing medications at the clinic;
- c). that appropriate and thorough informed consent forms were given to patients of the clinic; and
- d). the appropriate management of patients in active stage labor.

16. At all times material to this action, all staff members who consulted with, examined, evaluated, and rendered treatment to C.H. at the ORLANDO WOMEN'S CENTER on November 15-16, 2001, to specifically include, but not limited to, Tanya Severance, Janet Rainer and Davela Cleveau, were the agents and/or apparent agents of, and were acting within the course and scope of their agency with, the ORLANDO WOMEN'S CENTER and/or Dr. PENDERGRAFT in their care and treatment of C.H..

17. On or about November 15, 2001, C.H. presented to the ORLANDO WOMEN'S CENTER for termination of what she believed to be a 16 to 20-week pregnancy.

18. On said date, C.H. was evaluated by staff members at the ORLANDO WOMEN'S CENTER, who concluded that she was 22.3 weeks pregnant. Thereafter, C.H. was given consent forms by non-physician staff members working at the clinic and received "counseling" from non-physician staff members working at the clinic.

19. At no time during her did the physician who was to perform the termination provide counseling and/or physically examine or evaluate C.H. At no time did any licensed physician provide counseling and/or physically examine or evaluate C.H. while she was a patient at the ORLANDO WOMEN'S CENTER.

20. Based upon the assessment of gestational age by the Defendants and due to previous medical complications she had suffered with a prior, full-term pregnancy, C.H. elected to proceed with termination of this pregnancy, as it was explained to her by the non-physician staff members at the ORLANDO WOMEN'S CENTER.

21. On said date, C.H. gave her authorization and consent to allow Dr. WHITNEY, any physician designated or selected by Dr. WHITNEY, or any licensed physician associated with the ORLANDO WOMEN'S CENTER, to perform the pregnancy termination.

22. At approximately 1:30 p.m. on November 15, 2001, non-physician staff members at the ORLANDO WOMEN'S CENTER began administration of the prescription medication Cytotec, 200 mg., to induce labor in C.H. The non-physician staff members of the ORLANDO

WOMEN'S CENTER initiated administration of this labor-inducing agent from 1:30 p.m. on November 15, 2001 until approximately 12:00 a.m. Further, non-physician staff members at the ORLANDO WOMEN'S CENTER administered the prescription medication RU-486 to C.H. at some time on November 15, 2001.

23. The foregoing prescription medications were administered to C.H. by non-physician staff members of the clinic pursuant to protocol written by medical director PENDERGRAFT for all second-trimester termination patients.

24. Pursuant to Defendant's PENDERGRAFT's protocol, and with the authorization of Defendant WHITNEY, the staff of the ORLANDO WOMEN'S CENTER administered twelve, 200 mg. doses of Cytotec and a single dose of RU-486 to C.H. over an 11-hour period of time.

25. At approximately 1:00 a.m. on November 16, 2001, C.H. was instructed to and/or allowed to leave the ORLANDO WOMEN'S CENTER while in active labor. Thereafter, she presented to the Emergency Room at Orlando Regional Medical Center, where she gave birth, via cesarean section, to a viable female child with APGAR scores of 3/3 and a weight of 555 grams.

26. Despite being administered labor-inducing medications at the ORLANDO WOMEN'S CENTER for twelve (12) hours, C.H. was never, at any time on November 15-16, 2001, personally evaluated, examined or treated by either Dr. WHITNEY, Dr. PENDERGRAFT or any licensed physician associated with the ORLANDO WOMEN'S CENTER.

27. As a direct and proximate result of the negligence of the Defendants, described more fully herein, the child, J.F., was born prematurely and has suffered catastrophic and permanent bodily injuries, impairment, disability, disfigurement.

28. As a further direct and proximate result of the negligence of the Defendants, described more fully herein, Plaintiff C.H. has incurred in the past, and will incur in the future, extraordinary expenditures for hospitalization and medical, rehabilitative and nursing care and treatment of her catastrophically disabled child.

**CLAIM AGAINST RANDALL WHITNEY, M.D.**

The Plaintiffs hereby re-adopt and re-allege paragraphs 1-28, above, and further allege as follows:

29. Defendant WHITNEY had a duty to exercise reasonable care consistent with accepted and prevailing professional standards of care and with that level of care, skill, and treatment recognized as acceptable, adequate, and appropriate by similar and reasonably careful care givers and health care providers, in his treatment of C.H.

30. Defendant WHITNEY breached his duty to care owed to C.H., in that he provided negligent diagnosis, care and treatment of C.H. and her fetus, including, but not limited to:

- a). Failing to personally evaluate, examine or treat C.H.;
- b). Failing to personally evaluate, examine C.H. or her fetus for gestational age;
- c). Authorizing and/or prescribing improper amounts of labor inducing agents to C.H.; and/or
- d). Instructing, authorizing or permitting C.H. to leave the ORLANDO WOMEN'S CENTER in active labor on November 16, 2001.

31. The above-described negligence was a direct and proximate cause of the damages described in paragraphs 27 through 28, above.

**CLAIM AGAINST JAMES SCOTT PENDERGRAFT, IV, M.D.**

The Plaintiffs hereby re-adopt and re-allege paragraphs 1-28, above, and further allege as follows:

32. As the Medical Director of the ORLANDO WOMEN'S CENTER, Defendant PENDERGRAFT had a duty to exercise reasonable care consistent with accepted and prevailing professional standards of care and with that level of care, skill, and treatment recognized as acceptable, adequate, and appropriate by similar and reasonably careful care givers and health care providers, in his directives to and supervision of the staff and physicians who treated C.H. at the ORLANDO WOMEN'S CENTER.

33. Defendant PENDERGRAFT breached his duty to care owed to patients of the ORLANDO WOMEN'S CENTER, and specifically C.H., in that he provided negligent diagnosis, care and treatment of C.H. and her fetus including, but not limited to:

- a). Implementing policies and procedures, followed by the staff and physicians of the ORLANDO WOMEN'S CENTER, which provide for pregnancy termination to be performed by non-physician, unlicensed staff members.
- b). Preparing "informed consent" documents and implementing policies and procedures, followed by the staff and physicians of the ORLANDO WOMEN'S CENTER, which were fraudulent, misleading and in violation of Florida law.
- c). Failing to personally counsel, evaluate, examine or treat C.H. or require, as the Medical Director, that a licensed physician do so, as mandated by Florida law;
- d). Failing to personally evaluate, examine C.H. or her fetus for gestational age or require, as the Medical Director, that a licensed physician do so, as mandated by Florida law;
- e). Implementing a medication protocol, followed by non-physician staff members with second trimester termination patients, which provided for the delivery of excessive amounts of labor-inducing agents to C.H.; and/or
- f). Instructing, authorizing or permitting C.H. to leave the ORLANDO WOMEN'S CENTER in active labor on November 16, 2001.

34. The above-described negligence was a direct and proximate cause of the damages described in paragraphs 27 through 28, above.

#### **CLAIM AGAINST THE ORLANDO WOMEN'S CENTER**

The Plaintiffs hereby re-adopt and re-allege paragraphs 1-28, above, and further allege as follows:

35. At all times material hereto, ORLANDO WOMEN'S CENTER was and is vicariously liable for the actions or omissions of its officers, directors, managers, agents, employees, servants, staff and/or contractors acting within the course and scope of their employment, service or agency with said Defendant.

36. At all times material hereto, ORLANDO WOMEN'S CENTER had a duty to properly train and supervise its agents, employees, servants, staff and/or contractors utilized by this Defendant in furtherance of its clinic operations.

37. At all times material hereto, ORLANDO WOMEN'S CENTER owed a duty to its patients, including C.H., to provide adequate and appropriate health care consistent with accepted and prevailing professional standards of care and with that level of care, skill, and treatment recognized as acceptable, adequate, and appropriate by similar and reasonably careful care givers and health care providers.

38. ORLANDO WOMEN'S CENTER breached its duty owed to C.H. in that, by the acts or omissions of its agents, servants, employees, staff and/or contractors, it provided negligent diagnosis, care and treatment of C.H. and her fetus, including, but not limited to:

- a). Failing to have a licensed physician personally evaluate, examine or treat C.H.;
- b). Failing to have a licensed physician personally evaluate, examine C.H. or her fetus for gestational age;
- c). Authorizing, prescribing and or administering excessive amounts of labor inducing agents to C.H.; and/or
- d). Instructing, authorizing or permitting C.H. to leave the ORLANDO WOMEN'S CENTER in active labor on November 16, 2001.

39. The above-described negligence was a direct and proximate cause of the damages described in paragraphs 27 through 28, above.

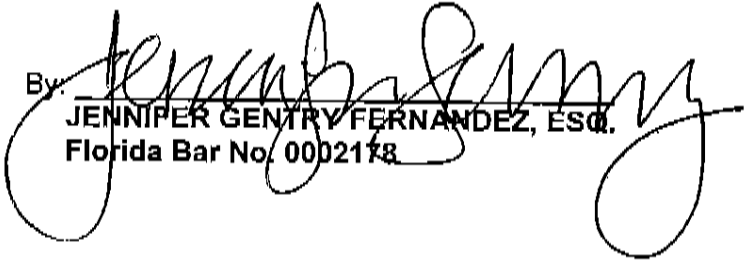
WHEREFORE, the Plaintiffs, C.H., individually, and as Settlor of the J.F. Special Needs Trust, and THE CENTER FOR SPECIAL NEEDS TRUST ADMINISTRATION, INC., as Trustee of the J.F. Special Needs Trust, demand judgment against the Defendants, RANDALL B. WHITNEY, M.D., JAMES SCOTT PENDERGRAFT, IV, M.D., and ORLANDO WOMEN'S CENTER, INC., and further demand trial by jury.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy is being served via hand delivery upon **Joseph P. Menello, Esquire**, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A. 390 North Orange Avenue, P.O. Box 2753, Orlando, Florida 32802-2753, counsel for the Defendants, this 8th day of August, 2006.

**THE FERNANDEZ FIRM**  
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By:   
**JENNIFER GENTRY FERNANDEZ, ESQ.**  
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53816-5/mkh/20148150

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

DOUGLAS B. STALLEY, as guardian  
of the property of J.F., an incapacitated  
minor,

CASE NO. 04-CA-1202

Plaintiff,

vs.

RANDALL B. WHITNEY, M.D.,  
JAMES SCOTT PENDERGRAFT, IV,  
M.D., and ORLANDO WOMEN'S  
CENTER, INC., a Florida corporation,

Defendants.

FINAL SUMMARY JUDGMENT

PURSUANT to the Order on Defendant's Motion for Summary Judgment entered  
on July 24, 2006, it is hereby:

ORDERED AND ADJUDGED that the Plaintiff, Douglas Stalley, as Guardian of  
the Property of J.F., an incapacitated minor, shall take nothing by this action against the  
Defendants, James S. Pendergraft IV, M.D., Randall Whitney, M.D. and Orlando  
Women's Center, Inc. and the Defendants shall go hence without day. This Court shall  
retain jurisdiction to consider the award of costs and fees to be hereinafter taxed by  
separate Order of the Court.

ENTERED at Orange County, Florida, this 20 day of September, 2006

787 DONALD E. GRINCEWICZ

Donald Grincewicz  
Circuit Judge

*Handwritten initials: JAO*

CASE NO. 04-CA-1202

Service List

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