

NO. 93-33063

PEGGY CORMIER, INDIVIDUALLY
AND AS MOTHER AND NEXT FRIEND
OF NICOLETTE JEANNE' CORMIER,
A MINOR AND GRANDMOTHER
AND ADMINISTRATOR OF THE ESTATE
OF ASHLEY RENEE CORMIER,
DECEASED,

PLAINTIFF,

V.

DOUGLAS A. KARPEN, M.D.,
RICHARD CUNNINGHAM, M.D., and
WOMEN'S PAVILION, INC., a Texas
Corporation,

DEFENDANTS

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

157th

TH JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

PEGGY MELANCON CORMIER, individually, and as mother and next friend of NICOLETTE JEANNE' CORMIER and as Grandmother and Administrator of the Estate of ASHLEY RENEE CORMIER, Deceased, Plaintiffs, complaining of DOUGLAS A. KARPEN, M.D., RICHARD CUNNINGHAM, M.D., and WOMEN'S PAVILION, INC., a Texas Corporation, Defendants, and for causes of action would show the Court and Jury as follows:

**I.
PARTIES**

Plaintiffs are residents of the state of Texas. Process may be served on them through service upon their undersigned attorneys.

Defendant, WOMEN'S PAVILION, INC., is a Texas corporation, duly organized and existing pursuant to law. It may be served with citation by serving its registered agent, Douglas

A. Karpen, O.D. at 202 S. John Redditt, Lufkin, Texas 75901.

Defendant, DOUGLAS A. KARPEN, M.D., is an adult resident of Harris County, Texas and may be served at 6430 Hilcroft, #115, Houston, Texas 77081 or at his last known residence of 5200 Wesleyan #A107 Houston, Texas.

Defendant, RICHARD R. CUNNINGHAM, M.D., an adult is a resident of Harris County, Texas, and may be served at 2600 South West Freeway #1010, Houston, Texas 77098.

Plaintiffs allege that the damages sustained exceed the minimum jurisdictional limits of this Court.

II. VENUE

Venue of this action is proper in Harris County, Texas, because the events and injuries which are the basis of this lawsuit took place in Harris County, Texas, and the Defendants reside and conduct business in Harris County.

III. REQUIRED NOTICE

Pursuant to Section 4.01 of the Texas Medical Malpractice Act, Plaintiffs gave Defendants notice of the matters complained of herein. All conditions precedent have been performed or have occurred prior to the filing of this lawsuit. However, a time for making disposition of said claim has expired and the Defendants have failed and refuse to dispose of this claim, forcing the Plaintiffs to file this lawsuit in order to secure legal redress of wrongs alleged.

IV. FACTS AND ALLEGATIONS

It has become necessary to file this lawsuit due to the various acts and omissions of negligence, generally, by Defendants, Douglas A. Karpen M.D., hereinafter "Karpen", Richard Cunningham, M.D., hereinafter "Cunningham" and Women's Pavilion, Inc., hereinafter

"Pavilion", in their care and treatment of Nicolette Cormier, a minor who was pregnant, while performing or attempting to perform a third trimester abortion upon her. These acts and omissions were a proximate cause of injuries sustained by Nicolette Cormier, Ashley Cormier, and Peggy Cormier as described below.

V.

On or about August 7, 1991, Nicolette Jean Cormier, hereinafter "Nicolette", phoned Pavilion, from her home in Louisiana, to get counseling for her pregnancy. Nicolette was 16 years of age at the time. The agents and employees of Pavilion encouraged the minor Nicolette to proceed with a late trimester abortion. Nicolette was advised that this procedure would cost \$895.00, but the price would increase weekly as the pregnancy progressed.

On or about August 17, 1991, Nicolette called Pavilion to schedule an appointment. At that time she was told that the price for the abortion would be \$1,050.00.

VI.

On or about August 21, 1991, Nicolette drove to Houston alone for the abortion. She did not notify her parents or obtain any parental consent for the abortion, nor did the counselor at Pavilion request any such parental consent. Immediately thereafter, Nicolette was told the cost of the procedure had increased to \$1,800.00. She was told also that she had to pay in full before the procedure would be commenced. Nicolette left Pavilion in order to try and pawn her jewelry to cover the additional cost of the abortion. She was unable to raise the necessary funds and began to drive back to Louisiana. However, as a last effort, she borrowed the money and returned to the Pavilion the next day, August 22, 1991.

VII.

After paying Pavilion \$1800.00 for the abortion, Nicolette was told one laminaria implant would be inserted during the first stage of the D & E procedure. However without her consent or knowledge Dr. Karpen's nurse, with Dr. Karpen's expressed authorization, inserted six (6) laminaria into her cervix to initiate dilation and begin the abortion procedure. After this procedure, Nicolette was told to return later that day for the second stage of the procedure.

VIII.

Shortly thereafter Nicolette returned to her aunt's house in Houston and learned that her mother, Peggy Cormier (hereinafter "Peggy"), had come to Houston from Louisiana looking for Nicolette. Later that day, Nicolette Cormier began feeling the first stages of the laminaria procedure. The baby was moving around and Nicolette became scared. The counseling at the clinic did not prepare her for this, nor did they explain the procedure, the developmental stage of the baby, the effect on her and her baby and/or the risks involved in the abortion procedure.

IX.

The minor Nicolette Cormier told Peggy that she had changed her mind, and didn't want to proceed with the abortion. Immediately thereafter, both mother and daughter returned to the Pavilion together to meet and discuss with Dr. Karpen the removal of the laminaria and reversal of the abortion procedure.

X.

Dr. Karpen became defensive and hostile and failed to answer basic questions including, but not limited to, the following:

- a. How would the fetus, Nicolette's unborn child, be disposed of;

- b. What was the present stage of development of the baby;
- c. What would happen during the D & E procedure and what was it about;
- d. What was a D & E procedure; and
- e. What kind of complications could Nicolette expect, and what kind of emergency arrangements could be made to care for her.

XI.

In violation of his patient's request, Dr. Karpen encouraged Nicolette to have the abortion by telling her not to let her mother influence her decision. He also made other representations to her and her mother, including, that no one reversed or could reverse the procedure this far along, and that removal of the laminaria could and would pose a serious health threat to Nicolette.

XII.

Based on these representations, Nicolette and her Mother, Peggy, agreed reluctantly to proceed with stage two. At this time, Dr. Karpen removed the previous laminaria and inserted sixteen (16) or eighteen (18) more.

XIII.

Later while continuing to progress through the laminaria procedure, Nicolette became very upset and again told her mother she didn't want to continue the procedure. At this time they put in an emergency call to the Pavilion and Dr. Karpen. However, it was not until sometime between 11:30 p.m. that same day, and midnight, that Dr. Karpen returned the call. Dr. Karpen first talked to Nicolette and asked her who was influencing her. He told her he would not meet her to remove the laminaria.

XIV.

Peggy saw her daughter become hysterical and took the phone away and spoke with Dr. Karpen. Dr. Karpen again made statements to Peggy that she was jeopardizing Nicolette's life, because she could bleed to death if she were to stop the procedure at this time. He said that a reversal at this stage had **NEVER** been done, and that no hospital would take Nicolette because of the laminaria implants. Peggy asked for a referral to another doctor and hospital but Dr. Karpen refused to give her a referral to reverse the procedure. Dr. Karpen also told Peggy they had taken up too much of his time.

XV.

However, Dr. Karpen told Peggy to meet him at Pavilion at 8:30 a.m. for an evaluation. Dr. Karpen said that at that time they could sign a release in the morning and then return to Louisiana and see an Obstetrician. Dr. Karpen did not meet them at Pavilion, but instead sent Dr. Cunningham. Dr. Cunningham told Peggy and Nicolette that he and Dr. Karpen had discussed the case and that they were against removing the laminaria and releasing her.

XVI.

Dr. Cunningham talked to Peggy and Nicolette for approximately thirty minutes and used high pressure scare tactics to get them to continue with the abortion. When they continued to refuse, he told them to look in the yellow pages for an anti-abortion group, forced them to sign a release, and told them they could leave the clinic.

XVII.

Immediately thereafter, Peggy and Nicolette sought and received emergency medical care at St. Joseph's Hospital in Houston, Texas. On August 23, 1991 Nicolette gave birth to a baby

girl weighing 1 pound, 13 ounces. She was named Ashley Renee Cormier (hereinafter "Ashley"). However, despite intensive life saving measures, Ashley died on February 17, 1992.

XVIII.

Plaintiff's would show that the Defendant, Pavilion, held itself out to the Plaintiffs, and the public in general, that it was a competently staffed and operated health care provider.

XIX.

The Defendants, Karpen and Cunningham, at all material times held themselves out to the Plaintiffs and to the public in general as being competent and qualified to provide proper and competent medical care.

XX.

At all material times hereto the physician/patient relationship existed between Plaintiffs and Defendants, Dr. Douglas A. Karpen and Dr. Richard Cunningham; and the hospital/patient relationship existed between Plaintiff's and Defendant Women's Pavilion, Inc.

XXI.


CAUSES OF ACTION

1. Negligence per se

Plaintiffs adopt and reallege paragraphs V through XX, above, and would show that Defendants, Pavilion and Dr. Karpen, were negligent in violating the laws of the State of Texas by intentionally and knowingly commencing an abortion procedure on Nicolette, who was pregnant with a viable unborn child at or beyond twenty-six (26) gestational weeks, in violation of the Texas Medical Practice Act, as amended Vernon's Tex. Civ. Stats Ann., art. 4495b, Sec. 4.011. Nicolette was in her third trimester of her pregnancy and Ashley Cormier was a viable fetus as that time. The abortion was not necessary to prevent the death of Nicolette, nor was

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April 15, 2004, 7:05AM

Abortionists: Karpen

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Plaintiffs win suit but no money for underage abortion

By **RON NISSIMOV**
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A jury Wednesday awarded no money to a woman and her father who sued an osteopath for performing an abortion while she was a minor without notifying the parent.

Ninety percent of the blame was assigned to the woman for using a fake identification indicating she was not a minor, the panel decided.

But the jury also found the doctor negligent, allowing both sides to claim victory in the first-of-its-kind lawsuit that could help determine how extensively physicians should verify the identification of women seeking abortions.

Cherise Mosley Hughes and her father, Frederick Mosley, 48, sued Dr. Douglas A. Karpen, alleging that he violated a 1999 Texas law requiring that minors' parents be notified at least 48 hours before an abortion. Hughes, who was seven weeks shy of her 18th birthday at the time of the August 2000 abortion, used an ID she obtained from a supermarket to convince Karpen and employees of his clinic that she was 18.

Hughes and Mosley did not seek criminal charges against Karpen, or seek to have his license revoked.

"This is a great day for women and women's right to choose, and a great day for doctors," said Barbara Hachenburg, Karpen's lawyer.

"Doctors don't have to worry about becoming investigators or private eyes, and focus on what they do best," Hachenburg said. "You can't deceive people and come into court and sue the people you deceived."

But Hughes, Mosley and their lawyer, Jared Woodfill, insisted

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that the verdict sent a message that doctors must carefully examine the IDs of women seeking abortions.

"I'm very pleased with the verdict," said Mosley. "My purpose was to expose the clinic. ... Money wasn't the issue at any time."

Mosley said he refused a "substantial" amount of money to settle the case, but declined to say how much.

Hughes, who after the abortion had two children with the father of the aborted fetus and married him, said she believes doctors will be much more careful in checking the identification of women seeking abortions because of the verdict.

"It was so easy for me to get an ID that was clearly not a government ID," Hughes said. "I know a lot of girls do the exact same thing and no one blinks an eye."

She said she accepted blame for lying to Karpen, but said she thought Karpen was more than 10 percent responsible. During the trial, she said she feared that her father, a Pentecostal minister who does not condone premarital sex, would be disappointed if she told him about the pregnancy.

Woodfill said jurors found that Karpen "did break the law" by saying he was negligent. He said he believes that doctors will ask for governmental ID's as a result of the verdict.

Hachenburg said new state guidelines that went into effect in January allow women to get abortions without any identification. Women are required to sign an affidavit saying they are 18 if they have no identification.

State District Judge Mark Davidson did not allow the new guidelines to be introduced during the trial because he said they were not relevant to what occurred in 2000.

Jurors declined to discuss their 10-2 verdict, which was reached after three hours of deliberation.

Karpen, who owns Aaron Family Planning Clinic in southwest Houston, also declined to comment.

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Abortionist: Karpen

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April 13, 2004, 1:57PM

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Fake ID card at center of abortion clinic suit

By **RON NISSIMOV**
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Cherise Mosley Hughes wept Monday as she told jurors that she used a fake ID to get an abortion while she was a minor because she didn't want to break the heart of her father, a Pentecostal minister.

Hughes, now 21, and her father, Fredrick Mosley, are suing Aaron Family Planning Clinic of southwest Houston and Dr. Douglas A. Karpen for accepting the fake identification card and performing the abortion in August 2000 without notifying Mosley.

The doctor and clinic are accused of violating Texas' 1999 parental notification law requiring that minors' parents be notified 48 hours before an abortion.

Hughes and Mosley contend that clinic workers would have realized Hughes was a minor if they had questioned her about the ID, which states that it is not a government document. They testified that if this had been done, the abortion would not have been performed because Mosley would have reassured his daughter that he loved her and would have advised her to keep the baby.

"He would have shown me how to take care of the child," Hughes said while being questioned by her lawyer, Jared Woodfill. "I think about the baby every day. My (other two children) could have had another brother or sister; I don't even know which it was."

She and her father are seeking unspecified damages.

In opening statements Monday in the court of state District Judge Mark Davidson, defense lawyer Barbara Hachenburg told jurors that the doctor and clinic should not be held responsible for Hughes' lies.

"We wouldn't be here today if this lady, who was almost an adult, (had not) perpetrated a crime on this clinic," Hachenburg said. "Cherise Mosley got away with fraud. But please, don't let her profit from it."

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- Paul McGreal, a constitutional law expert at the South Texas College of Law, said the case could help determine whether doctors in Texas should be held accountable for inspecting IDs.
- "If the plaintiffs win, doctors might have to perform additional verification, such as asking for birth certificates or other official government documents," McGreal said. "Doctors would be put to a choice of providing costly background checks or not performing abortions, unless a minor has a driver's license."
- Hughes, who later had two other children with the father of the aborted fetus and then married him, was seven weeks shy of her 18th birthday when the abortion was performed.
- She testified that the father, Reynaldo Hughes, wanted the abortion and helped her get a fake ID at a Fiesta Supermarket.
- Hughes said she lied about her age and address and that no one at the store or the abortion clinic questioned her about the ID.
- Woodfill showed jurors a poster-size copy of the ID, which states in capital letters, "This is not a government document."
- "It even says it cannot be used for check-cashing purposes," he said.
- Woodfill said three clinic employees, including Karpen, saw the ID and should have asked Hughes where it came from.
- Mosley, a pastor in a Pentecostal church in Pearland, said he had a good relationship with his daughter but that she apparently was afraid to tell him about the pregnancy because he disapproves of premarital sex.
- "Many times I didn't sleep because I was behind closed doors doing my own grieving," Mosley said. "August was the anniversary of the death of my first wife (Hughes' mother), and now August is the the anniversary of the death of my first grandchild."
- Hachenburg said the state law does not require that women present government-issued identification. She said many women who visit the clinic do not have government IDs because they can't afford a car.
- The 1999 law states that a doctor cannot be prosecuted for performing an abortion on a minor without notifying parents if the minor has "an apparently valid governmental record of identification."
- The issue of the law did not come up in court Monday. But Hachenburg said after jurors adjourned that the law also states that, to be in violation, a physician must intentionally perform an abortion on a minor.

incontinence in silence

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Woodfill said the family has not pursued criminal charges because he believes it would violate civil court rules to do so while the lawsuit is pending.

Hachenburg said, however, that ethics only prohibit using the threat of criminal charges to extort money in a lawsuit.

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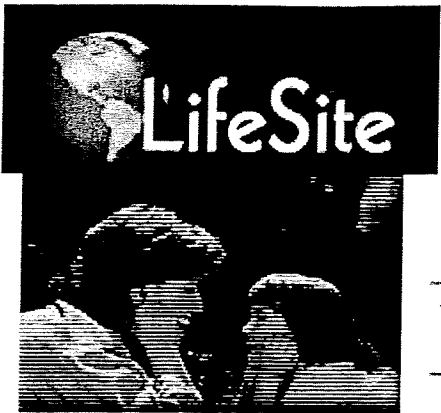
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Thursday February 17, 2005 Printer friendly version Email to a friend

Sewage Spill near Abortion Clinic - Baby Body Parts Seen on Street

HOUSTON, February 17, 2005 (LifeSiteNews.com) - Eyewitnesses reported seeing baby body parts mixed in with sewage after a broken line caused a sewage spill near a north Houston abortuary Tuesday.

A car dealership employee working next door to the clinic said she saw what she is convinced were baby body parts.

"Whether it's legal or not, it's not right," Maribeth Smith said, as reported by click2houston.com. "This whole area is nothing but raw sewage and bloody pieces. There were little legs coming out from one side."

Smith said she took pictures of the body parts, but local health inspectors denied seeing them. Inspectors did report evidence of blood and human tissue, but nothing they would not expect in sewage.

See video footage from the scene:
<http://www.click2houston.com/news/4205383/detail.h...#>

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Complaint Report

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Public Health Engineering

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Zip:	Key Map#:	Home Address:
Section: Solid/Hazardous Waste		Home City:
Supervisor: Roosevelt C		Home State: TX Zip:
Investigator: Gartner R		Home Phone:
Referred By: Public Works Sewer		
Business Name: Texas Ambulatory Surgical Ce	Business Phone 1: 7138803354	Ext:
Contact Name: Cynthia Callison	Business Phone 2: 7138803346	
Contact Title: Nurse Manager	2nd Contact:	
Business Address: 2505 N. Shepherd		
Complaint Type: Illegal Discharge	Pool District: 0	Acct #: Acct #2 Acct #3
Initial Inspection: 2/16/2005	Complaint Status: Closed	TPDES: Yes
ReinspectDate:	Date Closed: 2/18/2005	TCB Site #
NOV:	Citation Issued:	Referred To:
Council Correspondence:	Council District:	Unconfirmed: No

2/17/2005

Returned to speak with Mr. Parker about allegations regarding the washing of vehicles. I was shown the Occupancy License wherein it indicates "no washing other than with plain water only".

I asked about the cleanup and was told that all the materials were washed back through and across the fence on to the surgical property. Chlorine had been applied on the other side when the materials hit the parking lot there. This work had been done by AAA Flexible Pipe Cleaning. RDG

2/16/2005 10:30 AM

Site visit. Evidence of a recent overflow was on the adjacent property at 2521 N. Shepherd. This location is John Parker Motors. There is an easement along this property running in an east-west direction. Sanitary wastes from Mr. Parker's dealership and wastes from the Texas Ambulatory Surgical Center, 2505 N. Shepherd enter this sewer at about the same point. One has a four inch cleanout and the surgery center has a 6 or 8" cleanout. The larger cleanout was open at the surface of the ground and someone had sawed sawtooth edges into it. Residues of toilet paper and a couple of tampons were around these cleanouts. Material was dry.

I visited with Cynthia Callison, Nurse Manager, Texas Ambulatory Surgical Center. She said that an overflow had occurred on the previous Friday, 2/11/2005. She knew about it when Mr. Parker told her. I asked her about the processing and disposal of human body parts. She said that anything they generate is washed off and then are stored in a freezer after being placed into a bag. Then they are disposed of by way of manifest with an approved waste processor.

She said that a company with a name that includes AAA had come and she thought that they washed the materials back across the fence onto the clinic property and then sprinkled some chlorine for bacteria control.

Mr. Parker's secretary spoke to the media which had come while I was there, saying that she had seen body parts on the ground. She had taken photos of the overflow but her photos did not reflect her allegations about the body parts. She offered up this information before any comment was made about the photos and what they showed.

Later in the day I checked with dye the flow of both businesses. Each as indicated earlier flowed into this sanitary. The downstream flow was to the east. I checked for the dye there. The line looked clean as well.

Mr. Parker will be asked not to wash his cars as there had been an allegation that this is being done and the water washes across onto the Surgical property. This may account for the jagged edge on the cleanout. It is possible that it was being used to catch rinse water from the car washing.

Nothing could be determined that any type of object or body parts had been disposed of into the sewer. RDG

2/16/2005

Overflow occurred recently and it was said that human body parts came out of the overflow. RDG