

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

CARRIE L. COMBS *
4658 32nd Street *
South Arlington, Virginia 22206 *

5 of
2065

Plaintiff *

P-6158
12446

v. *

A.M. GOHARI, M.D. *
Shady Grove Professional Park *
9061 Shady Grove Court *
Gaithersburg, Maryland 20877 *

Case No.:

Case# 148522
NEW CASE
CV CLERK FEE- 30.00
TOTAL 30.00
Rec# NONE Ref# 14571
MER PAN Dtl # 83
Mar 01, 1996 02:40 PM

and *

UPTOWN WOMENS' CLINIC *
Shady Grove Professional Park *
9061 Shady Grove Court *
Gaithersburg, Maryland 20877 *

20,000.00

Defendants *

SERVE: *

A.M. Gohari, M.D. *
Shady Grove Prof. Park *
9061 Shady Grove Court *
Gaithersburg, MD 20877 *

148522 V

* * * * *

COMPLAINT

COMES NOW the Plaintiff, Carrie L. Combs, by and through her attorneys, Plaxen & Adler, P.A. and states as follows:

1. The jurisdiction is conferred on this court pursuant to the Annotated Code of Maryland, Courts and Judicial Proceedings Article, §3-2A-06A.

2. Arbitration has been waived and a copy of the waiver is attached to this complaint.

3. The damages sought herein are in excess of Twenty Thousand Dollars (\$20,000.00).

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596-1133 (DC)

4. That at all relevant times, the health care provider, A.M. Gohari, M.D., held himself out to the Plaintiff and to the general public as an experienced, competent and able physician and health care provider, possessing or providing that degree of skill and knowledge which is ordinarily possessed by those who give special study and attention to the practice of medicine and, in particular, to the specialties of obstetrics and gynecology. In such capacity, he owed a duty to the Plaintiff to render that degree of care and treatment for Carrie Combs which is ordinarily rendered by those who devote special study and attention to that particular specialty and to the practice of medicine.

5. That at all relevant times, the health care provider, Uptown Womens' Clinic, operated as a clinic offering medical and other related services to the general public and in such capacity that this health care provider, its agents, servants, and/or employees, medical staff and consultants held themselves out as practicing ordinary standards of medical care, and thus owed a duty to the Plaintiff to render and provide health care within the ordinary standards of medical care and to exercise reasonable skill and care in the selection of its personnel to provide competent physicians and other medical personnel possessing that degree of skill and knowledge which is ordinarily possessed by those who devote special study and attention to the practice of medicine and to supervise and provide its patients those diagnostic and medical services and treatment commensurate with the condition for which the patient came under the care of the

health care provider.

6. That at all relevant times, the health care provider, A.M. Gohari, M.D., acted as the agent of the health care provider, Uptown Womens' Clinic.

7. That on or about November 25, 1991, the Plaintiff, Carrie Combs, under the care of health care provider, A.M. Gohari, M.D., submitted to an elective abortion in order to terminate a pregnancy for personal reasons. At the aforementioned time, health care provider, A.M. Gohari, M.D., determined that she was approximately seven (7) weeks' pregnant.

8. That on or about December 9, 1991, the Plaintiff, Carrie Combs, was examined by health care provider, A.M. Gohari, M.D., who confirmed that as a result of the procedure performed by health care provider, A.M. Gohari, M.D., on November 25, 1991, that the Plaintiff was no longer pregnant and who furthermore prescribed birth control pills for use by the Plaintiff.

9. On or about March 13, 1992, the Plaintiff, Carrie Combs, was diagnosed by health care provider, A.M. Gohari, M.D., as being between nineteen (19) and twenty (20) weeks pregnant.

10. Furthermore, that this unplanned child was born on or about July 1, 1992.

COUNT ONE
(Negligence - Wrongful Birth)

11. The Plaintiff, Carrie Combs, adopts and incorporates all of the allegations of fact set forth above as if fully stated

herein, and in addition, states as follows:

12. That the health care provider, A.M. Gohari, M.D., individually and as agent of Uptown Womens' Clinic, was at all relevant times negligent and careless in the following respects:

a. In failing to exercise that degree of care and skill that is ordinarily and customarily exercised by a physician in the medical community and which is expected of reasonably competent physicians acting in the same or similar circumstances;

b. In failing to properly perform an elective first trimester abortion, thus failing to terminate Plaintiff Carrie Combs' pregnancy;

c. In failing to properly examine tissue allegedly removed from Plaintiff's uterus, thus failing to properly determine whether Plaintiff's pregnancy had been terminated;

d. In failing to properly examine the Plaintiff, Carrie Combs, on December 9, 1991 and to detect a continuing pregnancy;

e. In prescribing birth control pills for the Plaintiff while she was pregnant; and

f. Was otherwise negligent and careless.

13. That as a direct and proximate result of the health care provider, A.M. Gohari, M.D.'s deviation from the standard of care, the Plaintiff, Carrie Combs, has been caused by the unforeseen birth of her child on July 1, 1992, to suffer and continue to suffer severe mental anguish, emotional pain and suffering and financial strain as a result of raising a child;


was caused to incur hospital, medical and nursing care expenses, including the costs of the pregnancy and birth; was caused to incur and will in the future incur financial losses and damages including the costs and expenses of raising this child from birth until the child attains the age of eighteen (18) years, including nursing, custodial care and education. Moreover, Plaintiff, Carrie Combs, was caused to suffer severe pain in giving birth to an unplanned child as well as has incurred past and future loss of earning capacity as a result of the birth of this unplanned child.

14. That all of Plaintiff's injuries and damages were directly and proximately caused by the negligence of the health care providers, without any negligence on the part of Plaintiff's contributing thereto.

WHEREFORE, Plaintiff prays for the entry of judgment against health care providers, A.M. Gohari, M.D. and Uptown Womens' Clinic, in whatever amount in excess of \$20,000.00 she is found to be entitled, together with interest, costs and attorneys fees.

Respectfully submitted,

PLAXEN & ADLER, P.A.




Bruce M. Plaxen
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(301) 596-1133
Attorney for Plaintiff

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The questioning of Dr. Noskow by Plaintiff's counsel was not only appropriate, but made necessary by defense counsel's effort to discredit Dr. Noskow.

The second complaint of the Defendant involves Dr. Gohari volunteering information about his medical malpractice premiums in response to a question clarifying his testimony about prior back surgery. According to the Maryland Rules of Evidence, Rule 5-411, "Evidence that a person was or was not insured against liability is not admissible upon the issue as to whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness."



In the present case malpractice premiums was not mentioned or offered as evidence by the Plaintiff to prove negligence. The cost of malpractice insurance was offered by the Defendant as an explanation for why he no longer delivers babies. While the matter of insurance is generally irrelevant, there are generally recognized exceptions and "where the reference to insurance is made by the Defendant or his witness, in which event the testimony is admissible and is subject to legitimate comment and argument." Morris v. Weddington, 320 Md. 276, 579 A.2d 762 (1990), Snowwhite v. State, 243 Md. 291, 221 A.2d 342 (1966). Furthermore, if an inappropriate reference to insurance is made by the Defendant, the Defendant cannot move for a mistrial. Casey v. Roman Catholic Archbishop of Baltimore, 217 Md. 595, 143 A.2d 627 (1958). Therefore, the statement made by Dr. Gohari concerning his malpractice premiums cannot be used as grounds to support a Motion For New Trial.

The final act of alleged misconduct concerns Dr. Gohari's testimony that the Plaintiff never came back to him despite knowledge that she knew that she was pregnant. In cross-

examination of Dr. Gohari, Plaintiff's counsel directed him to the nurse's notes that refer to a period in January and the nurse's notes that make no mention of her feeling pregnant. Dr. Gohari's response was that "...I have never had such a patient that she knows for 10 weeks that she is pregnant and she just comes right now, and that is the reason she is angry at me and upset, because I have never encountered such a case in the past 25 years of my experience. I have never experienced such a case, that knowingly, with absolute consciousness and knowledge that she knew 100 percent she was pregnant, she told me, and I am 100 percent sure about that, and she tells me...she tells me that right now that, no, she doesn't know."

Evidently, Dr. Gohari was attempting to convince the jury that it would be impossible for a woman not to know for 10 weeks that she is still pregnant, and therefore the Plaintiff was somehow contributorily negligent. To support this allegation Dr. Gohari stated that he had never encountered such a case. In the prior case handled by Bruce M. Plaxen, counsel for Plaintiff, Dr. Gohari examined a claimant 2 weeks following an attempted abortion procedure in his office and failed to detect a continuing pregnancy. The prior claimant was approximately 10 weeks pregnant and Dr. Gohari's examination took place in May, 1987. It was not until August, 1987, that the claimant in the prior case learned that the abortion procedure had failed and that she was approximately 20 weeks pregnant. The Plaintiff in the prior case testified that until that time she did not have knowledge that she was still pregnant.

In the previous case, Dr. Gohari claimed that the claimant knew she was pregnant and it would have been impossible for her to go 10 weeks from May until August not knowing she was pregnant. In the prior case, Dr. Gohari testified that the prior claimant must have known she was pregnant even at the time of the follow-up examination. He testified in a deposition on May 20,

1991 that "she was probably overweight, or she was not cooperative; and she 100 percent knew that she was pregnant, 100 percent, because I don't know anybody when they come to my office. They know they are pregnant; they come to my office. So I believe the woman is the most accurate pregnancy test in the world. I have never asked anyone. All these patients I am going to see I have never seen them before. They know they are pregnant." See attached Exhibit "A".

According to Dr. Gohari's 1991 testimony, the claimant in the prior litigation knew she was pregnant for approximately 10 weeks, but failed to return to his office. Therefore, when Dr. Gohari testified during his cross-examination that he never encountered such a case in the past 25 years, the testimony was not accurate. Counsel for Plaintiff was entitled to impeach Dr. Gohari and question him concerning facts of the prior case. The evidence concerning the prior case was not being offered by Plaintiff as evidence of negligence. Evidence concerning the prior case was being offered as impeachment evidence. The weight which the fact finder will give to a witnesses' testimony will be lessened if there is evidence in the case contradicting that testimony. Therefore, evidence which contradicts the witnesses' testimony is admissible. By questioning Dr. Gohari about the prior case counsel for Plaintiff was merely attempting to elicit testimony that contradicted the statement he had just made.

In the present case, an objection was made by defense counsel amidst questioning of Dr. Gohari. The objection was sustained and Dr. Gohari was not required to answer the question concerning prior litigation.

At most, the jury could infer that Dr. Gohari may have failed to terminate a pregnancy one other time. Any inference would have to be considered harmless, considering Dr. Gohari later volunteered during cross-examination that it is not unusual to fail to terminate a pregnancy. In

fact, he testified that it happened approximately 1 time per month and he has missed many, many pregnancies.

Dr. Noskow's explanation that he previously testified on a case similar to the one in question was not an improper question, did not taint the jury and was merely a follow-up to a question raised during cross-examination by counsel for the Defendant. Dr. Gohari's statement concerning his malpractice premiums is not conduct that can be attributed to counsel for Plaintiff and is not a reason for a new trial. Dr. Gohari's non-responsive statement about never having a case similar to this one was a statement that was obviously false and counsel for Plaintiff should have been allowed to impeach Dr. Gohari with the facts of the prior litigation. If the question proposed by counsel for Plaintiff was improper, there was no harm that could be attributed to such a statement since Dr. Gohari made far more damaging statements on his own.

The final reason given by the Defendant in support of its Motion For New Trial is a claim that the verdict was excessive in light of the evidence. According to Jones v. Malinowski, 299 Md. 257, 473 A.2d 429 (1984), the jury may consider as damages the costs of raising an unplanned child from birth to the age of majority as well as the personal injuries including mental distress sustained, the effects that such injuries have on the overall physical and mental health and well being of the Plaintiff, and the pain and suffering accompanying childbirth. The Court also decided that any damages should be offset by benefits derived to the child's aid, society and comfort.

In Jones v. Malinowski, an economist testified that based on Mr. Malinowski's earning history, the family's standard of living, and other factors, it would cost the couple an estimated \$53,702.00 in 1981 Dollars to raise their child from birth to majority. The jury awarded

\$70,000.00 to the Malinowskis. After considering the benefits conferred upon the Maninowskis by having a healthy and normal child, the jury still determined that the mental distress, pain and suffering and inconvenience outweighed the benefits and the Malinowskis were awarded an additional \$16,298.00.

In the present case, a report was prepared by Dr. Jerome M. Staller of the Center For Forensic Economic Studies. Dr. Staller determined that based on Carrie Combs' earning history and her standard of living and other factors, it would cost her \$281,637.00 in 1997 Dollars to raise her son Tyler to the age of majority. Dr. Staller also added \$73,428.00 for the cost of increased household services and \$38,948.00 for the cost of a college education. The total economic loss computed by Dr. Staller was \$394,013.00, and these figures were provided to the jury by way of a stipulation of the parties. The Defendant argued that if he was found liable he was not responsible for the entire cost of a college education because the Defendant was only responsible for the costs of raising Tyler through the age of majority. However, it is clear that by only awarding \$137,000.00 for child rearing costs the figure was greatly reduced by the jury.

In addition, there was evidence that the Plaintiff suffered mental distress and suffered physically during her pregnancy. It was also uncontroverted evidence that the Plaintiff suffered mentally and physically during a dramatic and emotional emergency delivery of her baby through caesarean section. Further evidence was provided concerning the inconvenience and mental distress of raising a child alone.

Since Jones v. Malinowski was decided in 1984, Maryland has adopted a cap on non-economic damages. Therefore, this Court properly instructed the jury to itemize their verdict with separate amounts for child rearing costs and non-economic damages. In this case, the jury

awarded no money for non-economic damages even though the evidence was clear that Ms. Combs incurred substantial pain, suffering and inconvenience. The only possible explanation for awarding no money to the Plaintiff for non-economic damages is that the jury paid heed to the Court's instructions and offset any damages by crediting the Defendant for any benefits derived by Ms. Combs for the child's aid, society and comfort.

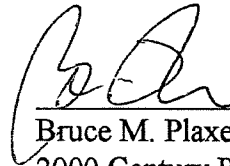
The Defendant claims that "this child does not impose an economic hardship on the Plaintiff". The Defendant claims that because the Plaintiff is employed and earning \$37,000.00 per year and received child support payments "this child does not impose an economic hardship on the Plaintiff". It is difficult to imagine how the additional \$394,000.00 it will take to raise her child will not have an economic impact on Carrie Combs. This argument is not only illogical but not supported by the evidence.

The Defendant also asks this Court to reject the jury's evaluation and find as a matter of law that "the value of the love, aid, comfort and society of a healthy, only child is a number far greater than the estimated child rearing costs...." This exact argument was soundly rejected by the Court in Jones v. Malinowski when Dr. Jones argued that the "the benefits of having a normal child outweigh the costs of rearing the child to majority, both as a matter of law and of the public policy of the State...". Instead, the Court decided that it is up to the Trier of Fact to consider both pecuniary and non-pecuniary elements of damage offset by pecuniary and non-pecuniary benefits which the parent will receive from the parental relationship with the child. The Plaintiff contends that not only is the verdict of \$137,000.00 consistent with a proper analysis by this jury, but considering the Plaintiff was awarded less than half of the economic damages and no money for non-economic damages, the award was conservative. By not awarding the Plaintiff the full

economic damages or any money for non-economic damages, the only conclusion that can be drawn is that the jury gave Dr. Gohari a substantial offset for the benefit of Ms. Combs having a child.

In conclusion, there is no basis to find that the verdict of the jury in this case was either excessive or against the weight of evidence. Therefore, it is respectfully requested that the Defendant's Motion For New Trial be denied.

PLAXEN & ADLER, P.A.



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(410) 730-7737/(301) 596-1133

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July, 1997, a copy of Plaintiff's Opposition To

Motion For New Trial, was mailed, postage prepaid, to:

Regina A. Casey, Esq.
101 S. Washington Street
Rockville, MD 20850

Donna VanScoy, Esquire
4 Professional Drive, #145
Gaithersburg, MD 20879

PLAXEN & ADLER, P.A.



Bruce M. Plaxen
2000 Century Plaza, Suite 420
10632 Little Patuxent Parkway
Columbia, MD 21044
(410) 730-7737/(301) 596-1133

1 A Exactly -- not exactly, yes, because if it's
2 eight, nine weeks, the uterus still is baggy and large a
3 little bit. You know, it's not completely back to normal
4 up to six or eight weeks probably. Even they never go
5 back completely normal.

6 Q So how do you reach a conclusion that she's not
7 pregnant?

8 A As I mentioned to you, I just discuss about the
9 symptoms, the pelvic exam. Sometimes I can be
10 questionable, find out. But as I just look through this,
11 the 12 weeks -- because it had some fetal tissues, the
12 likelihood in my conscious at that time that it can be
13 missed was extremely unusual. And that probably made this
14 kind of situation, that it could be twins at that point.

15 She was probably overweight, or she was not
16 cooperative; and she hundred percent knew that she was
17 pregnant, a hundred percent, because I don't know anybody
18 when they come to my office. They know they are pregnant;
19 they come to my office. So I believe the woman is the
20 most accurate pregnancy test in the world. I have never
21 asked anyone. All these patients I am going to see I have
22 never seen them before. They know they are pregnant.

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

CARRIE L. COMBS	:	
	:	
Plaintiff	:	
	:	
v.	:	Case No: 148522-V
	:	
A.M. GOHARI, M.D., et al.	:	
	:	
Defendants	:	

JOINT PRE-TRIAL STATEMENT

1. NATURE OF THE CASE

This is a tort claim sounding in wrongful birth. The Plaintiff, Carrie L. Combs, alleges that the Defendant, A.M. Gohari, M.D., and Defendant Uptown Womens Clinic, breached the applicable standard of care in his performance of an elective abortion on November 25, 1991 and in a subsequent post-operative visit on December 9, 1991. Specifically, the plaintiff alleges that due to Dr. Gohari's failure to diagnose continued pregnancy following the abortion procedure at the subsequent post-operative visit, the Plaintiff was forced to carry to term Tyler Combs who was born on July 1, 1992.

2. CLAIMS AND/OR DEFENSES

The Plaintiff claims that the Defendant breached the applicable standard of care by improperly performing the curettage procedure on November 25, 1991 and by failing to recognize the continued pregnancy on December 9, 1991. The Plaintiff claims that the delivery of an unplanned child on July 1, 1992 was the direct result of these departure from the

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FILED
MOLLY O. RUHL
CLERKS OFFICE
MONTGOMERY COUNTY

DeCARO, DORAN,
SICILIANO, GALLAGHER,
SONNTAG & DeBLASIS

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standard of care.

The Defendants A.M. Gohari and Uptown Womens Clinic maintain that the applicable standard of care regarding the care and treatment of Carrie Combs was at all times adhered to. The Defendants contend that continued pregnancy was a known complication of elective abortion and that the plaintiff was advised of the risk. Additionally, it is asserted that the Plaintiff was contributorily negligent and assumed the risk of carrying the child to term by failing to follow her discharge instructions. These Defendants maintained that the Plaintiff's injuries are not causally related to any action or inaction by the Defendant health care providers.

3. UNDISPUTED ISSUES AND FACTS

The Defendant is willing to stipulate to the authenticity of medical records and dates of treatment.

The parties stipulate that the Plaintiff's biological child Tyler Combs, was born without any health problem or personal physical injury which is attributable to any allegation of negligence, action or inaction by these Defendants.

The parties further stipulate that the child's physical, medical condition will not be at issue in this matter.

4. DISPUTED ISSUES

A. Whether the Defendant complied with the applicable standard of care at the time he treated and evaluated Carrie Combs given the circumstances which then existed.

DeCARO, DORAN,
SICILIANO, GALLAGHER,
SONNTAG & DeBLASIS

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B. Whether any action or inaction by these Defendants resulted in the alleged injuries claimed by the Plaintiff.

C. The nature and extent of the injuries and damages claimed by the Plaintiff as a result of the "wrongful birth" of her son Tyler Combs.

D. Whether the Plaintiff Carrie Combs was contributorily negligent.

E. Whether the Plaintiff Carrie Combs assumed the risk of her alleged injury.

5. RELIEF SOUGHT

The Plaintiff seeks a monetary judgment to compensate the Plaintiff for all child rearing costs until her child reaches the age of majority.

The Defendants seek judgment in their favor as to all claims made against them by the Plaintiffs.

6. CITATIONS

Solely for informational purposes, the Court is referred to the following cases:

A. Jones v. Malinowski, 299 Md. 257, 473 A.2d 429 (1984).

B. Shilkret v. Annapolis Emergency Hospital Association, 276 Md. 187, 349 A.2d 245 (1975).

C. Santoni v. Schaerf, 48 Md.App. 498, 428 A.2d 94 (1981).

D. Johns Hopkins Hospital v. Genda, 255 Md. 616, 258 A.2d 595 (1969).

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BRUCE M. PLAXEN *
HARRY R. ADLER
BLAINE M. KOLKER

BRANCH OFFICES
GREENBELT
OWINGS MILLS
BALTIMORE

* ALSO ADMITTED IN D.C.

February 27, 1996

Clerk
Circuit Court of Maryland
for Montgomery County
Montgomery County Judicial Center
50 Courthouse Square
Rockville, Maryland 20850

RE: Combs v. Gohari, et al.
Initial Filing of Complaint

Dear Clerk:

Enclosed please find the following documents for filing in the above-captioned matter:

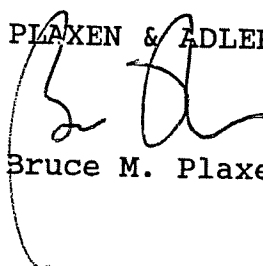
1. Complaint
2. Line requesting jury trial
3. Line
4. Plaintiff's Civil Information Form

Also enclosed is our check payable to the Clerk, Montgomery County, in the amount of \$80.00 representing the filing fee. Please issue Summonses for the Defendants and return to me for private service. I would appreciate your returning one copy of these documents stamped "filed".

Thank you for your cooperation in this matter.

Very truly yours,

PLAXEN & ADLER, P.A.


Bruce M. Plaxen

BMP/gad
Enclosures

90 MAR -1 PM 2:33
FILED
CLERK'S OFFICE
MONTGOMERY CO. MD

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

CARRIE L. COMBS, :
 Plaintiff, :
 vs. : Civil No. 148522
 A. M. GOHARI, M.D., :
 Defendant. :

VERDICT SHEET

1. Do you find that the Defendant, A. M. Gohari, M.D., was negligent in his care and treatment of the Plaintiff, Carrie Combs?

Yes X No _____

If your answer to Question No. 1 is "No," please stop.
If your answer to Question No. 1 is "Yes," please answer Question No. 2.

2. Do you find the negligence of the Defendant, Dr. Gohari, was a proximate cause of the birth of Tyler Combs?

Yes X No _____

If your answer to Question No. 2 is "No," please stop.
If your answer to Question No. 2 is "Yes," please answer Question No. 3.

3. Do you find that the Plaintiff, Carrie Combs, was negligent and that her negligence was a proximate cause of the birth of Tyler Combs?

Yes _____ No X

If your answer to Question No. 3 is "Yes," please stop.
If your answer to Question No. 3 is "No," please answer Question No. 4.

4. In what amount do you award damages to the Plaintiff Carrie Combs?

Child rearing costs: \$ 137,000

Non-economic damages \$ 0
(including pain, suffering, inconvenience,
or other non-pecuniary injuries)

FILED

JUN 12 1997

Clerk of the Circuit Court
Montgomery County, Md.



MANDATE

Court of Special Appeals

410-974-3646
Fax 410-974-2285
Maryland Relay Service
(TT/Voice)
1-800-735-2258

PHC No. 600, September Term, 1997

A.M. Gohari
vs.
Carrie Combs

JUDGMENT: October 22, 1997: Line of Dismissal filed by
counsel for the appellant. Appeal dismissed.

November 7, 1997: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for MONTGOMERY COUNTY
148522

FILED

NOV 12 1997

Clerk of the Circuit Court
Montgomery County, Md.

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony
whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this _____ day

A.D. 19

November

97

seventh
Jedie D. Goad
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.