

(P14)

ASSESSED
ENTERED
RECORDED

CAUSE NO. 95-018195

QUINNETTA DUGAS,
Plaintiff,

VS.

DOUGLAS A. KARPEN,
THE WOMEN'S PAVILION, INC.
and THE WOMEN'S
PAVILION, P.A.,
Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

05 APR 11 11:10 AM
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PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES QUINNETTA DUGAS ("Dugas"), Plaintiff complaining of DOUGLAS A. KARPEN ("Karpen"), THE WOMEN'S PAVILION, Inc. and THE WOMEN'S PAVILION, P.A., hereinafter referred to as Defendants, and for cause of action would show the following:

PARTIES

1. Plaintiff is an individual residing in Harris County, Texas.
2. Defendant Douglas A. Karpen ("Karpen") is an individual believed to be residing in Harris County, Texas. It is believed that Karpen has done business as The Women's Pavilion, Inc. and is now doing business as The Women's Pavilion, P.A. Karpen may be served with citation at 6430 Hillcroft, Suite 120, Houston, Harris County, Texas 77087.

3. Defendant, The Women's Pavilion, Inc. (the "Corporation") is a Texas corporation which was apparently dissolved on December 30, 1995, but which may be served with citation by serving its registered agent, Douglas A. Karpen at 6430 Hillcroft, Suite 120, Houston, Harris County, Texas 77087.

4. Defendant Women's Pavilion, P.A. (the "Association") is a Texas professional association, having been so recognized by the state of Texas on December 20, 1993 and which is doing business in Harris County, Texas. Service of citation may be had upon defendant The Women's Pavilion, P.A. by serving its registered agent Douglas A. Karpen at 6430 Hillcroft, Suite 120, Houston, Harris County, Texas 77087.

VENUE

5. The events made the basis of this lawsuit occurred in whole in part in Harris County, Texas.

THE DEFENDANTS

6. At the time of the events made the basis of this lawsuit, Karpen ostensibly worked for the Corporation. Then, after receiving notice of this claim, the Corporation was dissolved and the Association created. Dugas alleges that the Association is in fact a successor to the Corporation and that the Corporation was dissolved and the Association created to perpetrate a fraud on Dugas and other potential judgment creditors. Dugas alleges that the Association is in fact a continuation of the Corporation and therefore

should be held liable for all the wrongful conduct alleged herein. Accordingly, the Corporation and Association will be referred to collectively as "The Women's Pavilion" insofar as the conduct of the clinic is being described.

STATEMENT OF CASE

7. Dugas went to the Women's Pavilion on April 20, 1993 to inquire as to a pregnancy termination procedure. At that time, she believed she was very near the third trimester of her pregnancy. Upon arriving at The Woman's Pavilion, Dugas was given several documents to sign. Although the documents purported to give information regarding the termination of her pregnancy, the documents actually contained numerous misrepresentations and failed to disclose essential information.

8. For example, Dugas was given a document entitled "Fact Sheet-Early Abortion Through Thirteen Weeks". This document is in fact deceptive as to Dugas because Dugas was well beyond thirteen (13) weeks in her pregnancy. Consequently, the "facts" and "statistics" contained therein, insofar as they relate to first term pregnancy terminations, are false and misleading as to the procedure to be performed on Dugas. Also misleading is the statement at the top of the document which claims that:

"Abortion is now one of the safest medical procedures available. Having an abortion in the first three months of pregnancy is considerably safer than bearing a child."

As Dugas was well beyond the first three (3) months of her pregnancy, this statement is deceptive and no doubt was intended to lead Dugas to believe that the procedure was

much safer than was actually the case. This statement is not accurate as to one who is twenty-four to twenty-six (24-26) weeks pregnant. Additionally, the document fails to disclose that women who have abortions significantly increase their risk of breast cancer and that many women suffer the psychological sequelae known as post-abortion stress disorder.

9. Additionally, Dugas was given a document entitled "Informed Consent for Abortion, Anesthetic, and Other Medical Procedures." This document fails to disclose an increased risk of breast cancer which occurs in women who have abortions as well as post-abortion stress disorder. Additionally, the statement "I understand the complications associated pregnancy termination are generally much less severe than with child birth." is misleading as to Dugas who was well beyond the first trimester of pregnancy. Finally, the last paragraph which stated that neither the physicians, nor employees shall be responsible for any deleterious consequences resulting from the operation is a misrepresentation of the law and is therefore deceptive. Such a statement is meant to persuade the patient that she has no recourse against physicians and employees of The Woman's Pavilion although she may suffer damages as a result of the their negligence or deceptive acts.

10. Additionally, Dugas was provided with the document entitled "Additional Information and Consent to the Two-Stage Second Trimester Termination of Pregnancy Procedure." This document was also misleading. The document contains a statement that only a slightly greater risk is involved in the termination of a pregnancy over twelve weeks than in earlier termination was misleading and false as to Dugas who was in fact

beyond the stage of pregnancy to which such a statement would be accurate. Finally, the last paragraph of the document which states that the undersigned agrees that neither the clinic, its physicians, nor its employees shall be responsible in any way for any deleterious consequences is a misrepresentation of the law as stated above.

11. Moreover, Dugas was given a fourth document, "Fact Sheet-Mid-trimester Abortion." This document is also deceptive as to Dugas since she was in fact in her third trimester and the document applies only to Mid-trimester abortions. This document also includes the statement that, "It is also generally accepted that at any stage in mid-trimester of having an abortion, there is no more risk of death than with the carrying a pregnancy to full term." This statement is misleading and false as applied to Dugas.

12. Additionally, the method in which these documents were presented to Dugas constitutes a deceptive trade practice. Dugas was not given a chance to read the documents nor were they explained to her. They were simply put in front of her and she was told to sign them. The "counselors" assigned to Dugas did not counsel Dugas but, in fact, failed to sufficiently explain the potential risks and complications that are concomitant with the termination of a pregnancy. Karpen and the Women's Pavilion failed to disclose the true risks of a late term abortion.

13. Also, Karpen misrepresented to Dugas that she was twenty-four (24) weeks pregnant, when in fact, Dugas now believes she may have been into her third trimester of pregnancy. This representation was made knowingly for the intended purpose of insuring that Karpen could at least ostensibly perform a legal abortion. Had Dugas known the

procedure that Karpen was about to perform was in fact illegal, she never would have consented to it. Furthermore, Karpen failed to disclose to Dugas that a twenty-four (24) week fetus is potentially viable and that approximately fifty percent (50%) of the babies born in the United States at twenty-four (24) weeks do in fact survive. Dugas relied on the representations of Karpen, The Women's Pavilion and its employees in entering into the procedure.

14. Not having been properly informed of the risks of the procedure, Dugas went ahead with the pregnancy termination. The documents described above were signed on April 20, 1993. On that same day, Dugas had her Laminaria inserted. She was then asked to return the following day for its removal and reinsertion of the second Laminaria. Finally she returned on April 22, 1993 for the dilation and instrumental extraction abortion (D&E). However, Karpen apparently failed to utilize the ultrasound equipment which was present in his office during the abortion. After the abortion, Defendants noticed that Dugas was experiencing heavy bleeding and episodes of vomiting. However, Defendants waited nearly two (2) hours to call for an ambulance to transport Dugas to the hospital. When Dugas finally arrived at Lyndon B. Johnson General Hospital she underwent an emergency hysterectomy in an effort to save her life.

15. Dugas has now learned that during the abortion, Karpen perforated Dugas' cervix. As a result, Dugas was taken by ambulance to Lyndon B. Johnson General Hospital where an emergency hysterectomy was performed in order to save Dugas' from bleeding to death. Thereafter, in an attempt to exonerate himself from his negligent

conduct, Karpen apparently altered Dugas' medical records (stating that Dugas moved during the abortion) in order to conceal his negligent conduct.

16. Moreover, Karpen should never have attempted to perform such a late term abortion in a facility which is more than five (5) minutes from a hospital who can adequately treat complications which may arise from the procedure. Karpen's decision to undergo such a late term abortion on Dugas in his clinic was both negligent and unconscionable. In fact, Karpen's history of medical negligence should have excluded him as a candidate for performing a late term abortion, which should have been performed by a more skilled physician.

NEGLIGENCE AND GROSS NEGLIGENCE OF DEFENDANTS

17. The evidence will show upon a trial of this case that Defendants were negligent and/or grossly negligent in one or more of the following particulars:

- In attempting to perform an abortion on Dugas when she may well have been in her third trimester (negligence per se);
- In failing to adequately inform and advise Dugas of the increased risks of morbidity and complications in abortions that are attempted beyond eighteen (18) and twenty (20) weeks gestation;
- In failing to obtain informed consent from Dugas prior to performing the abortion;
- In selecting an abortion technique and procedure that is associated with increased complications in gestations beyond twenty (20) weeks;

- In even attempting to perform an abortion, using the technique he did;
- In failing to perform such a late term abortion in a clinic rather than in a hospital;
- In failing to utilize ultrasound equipment which was present in the clinic during the abortion;
- In attempting to perform such a late term abortion instead of referring Dugas to a more skilled physician with experience in late-term abortions;
- In failing to perform pre-procedure lab work;
- In lacerating Dugas' cervix during the abortion procedure;
- In attempting to perform a late term abortion, which he did not have the skill or expertise to perform;
- In attempting to perform a late term abortion in a facility which was more than five (5) minutes from a hospital which could treat complications which may arise from the procedure;
- In waiting nearly two hours to call an ambulance to transport Dugas to the hospital after the procedure;
- Alternatively, in failing to properly anesthetize Dugas.

Each of the above and foregoing acts of negligence was a proximate cause of the occurrence in question and Dugas' resulting injuries and damages.

18. The evidence will further show upon a trial of this case that the Defendants were well aware of the astonishing increase in complications in abortions attempted beyond eighteen (18) to twenty (20) weeks gestation. The evidence will further show that

the vast majority of clinics in the United States that hold themselves out in performing abortions, refuse to perform abortions where fetal gestation has progressed beyond twenty (20) weeks.

19. In this particular case, the evidence will show that the informed consent form which was presented to Dugas does not adequately convey the increased possibility of morbidity and complications. Had Dugas been informed of the increased risks of morbidity and complications in attempting to terminate a pregnancy such as hers, she would never have consented to have the abortion performed.

GROSS NEGLIGENCE

20. Such action on the part of the Defendants in failing to advise of the risks involved constitutes a heedless and reckless disregard of the rights and safety of Dugas as to constitute gross negligence as that term is understood under the laws and statutes of the State of Texas. Such gross negligence was also a proximate cause of the occurrence in question and Dugas' resulting injuries and damages.

RESPONDEAT SUPERIOR

21. The evidence will show that upon trial of this case that at all times material to this cause Karpen was acting as an employee and/or vice principal of The Women's Pavilion within the scope of his employment. Accordingly, the Corporation and the Association are jointly and severally liable with Karpen for the negligence of Karpen under the doctrine known as Respondeat Superior, as that term is defined and understood under the laws and statutes of the State of Texas.

DECEPTIVE TRADE PRACTICES

22. The conduct of Defendants as set out herein and more particularly in paragraphs 6-21 also constitutes violations of the Texas Deceptive Trade Practices Act ("DTPA") as set out in Sections 17.41 et seq. of the Texas Business and Commerce Code. Specifically, Defendants have violated Sections :

- 17.46 (a) (b) (2) (5) (7) (9) (12) (23); and
- 17.50 (a) (1) (2) (3).

And, the conduct of Defendants whether taken individually or as a whole was a producing cause of damages to Dugas in an amount within the jurisdictional limits of this Court and as set out herein.

23. Moreover, the conduct of Defendants was committed "knowingly" as that term is defined in the DTPA. Accordingly Dugas is entitled to additional damages as provided by the DTPA. Furthermore, at all times relevant to the events set out herein, Dugas was a "consumer" as that term is defined in the DTPA. Dugas has provided Defendants with statutory notice as required by law.

ATTORNEY FEES

24. Dugas would further show that the undersigned attorney has been retained to represent her and to prosecute the claims mentioned herein on her behalf. Dugas would further show that she has made demand on Defendants more than sixty (60) days prior to filing this lawsuit. However, Defendants have refused to meet Dugas' demand. All conditions precedent to Dugas' recovery under the DTPA have been performed or have occurred.

OTHER COMMON-LAW CLAIMS

25. Furthermore, Defendants conduct as described herein constitute:

- Assault and Battery;
- Breach of Contract;
- Fraud;
- Breach of Express Warranties
- Breach of Implied Warranties;
- Breach of Fiduciary Duty.

DAMAGES

26. As a proximate and producing result of Defendant's conduct as set out above, Dugas has incurred the following damages:

- Medical care;
- Loss of earning capacity;
- Physical impairment;
- Pain, suffering and mental anguish;
- Disfigurement;

and other actual and compensatory damages and attorneys fees, all in an amount within the jurisdictional limits of this Court.

ART. 4590i

27. Dugas has provided Defendants with notice pursuant to Section 4.01(a) of Art. 4590i and has otherwise complied with the statutory prerequisites to bringing this suit both under Art. 4590i and the Texas Deceptive Trade Practices Act.

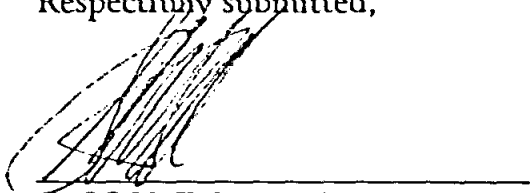
JURY TRIAL

28. Dugas requests a jury trial on all issues to be tried in the case and herewith submits the jury fee.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Dugas requests that Defendants be cited to appear and answer and that upon final hearing, Dugas have judgment against Defendants, jointly and severally for her actual, punitive and additional damages (as provided by the DTPA), plus interest before and after judgment as provided by law, court costs, reasonable attorney fees and such other and further relief to which she is justly entitled.

Respectfully submitted,



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Fax (713) 661-6371
ATTORNEY FOR PLAINTIFF

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5959 WEST LOOP SOUTH, SUITE 150
BELLAIRE, TEXAS 77401

TELEPHONE (713) 661-1146
TELECOPIER (713) 661-6371

April 12, 1995

Via Hand-Delivery

Charles Bacarisse, District Clerk
Harris County Courthouse
301 Fannin
Houston, Texas 77002

Re: *Quinnetta Dugas vs. Douglas A. Karsh, et al., Women's Pavilion, Inc. and The Women's Pavilion, P.A.*; Cause No. 95-018195 In the District Court of Harris County, Texas, _____ Judicial District.

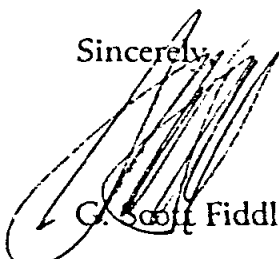
Please find enclosed and process the following in your usual manner:

1. Plaintiff's Original Petition.

Additionally, I have enclosed a Civil Process Request, a Civil Case Information Sheet and a check for three hundred twenty-four dollars (\$324.00) representing the one hundred thirty five dollar (\$135.00) filing fee, the thirty dollar (\$30.00) jury fee and the one hundred fifty-nine dollar (\$159.00) service fee for service on three (3) defendants.

Thank you for your prompt attention to this matter.

Sincerely,


G. Scott Fiddler

baca-cov.dug
Enclosures

95 APR 12 PM 1:40

Handwritten initials and signature
Fiddler

Unofficial Copy of Chris Daniel District Clerk



COUNTY AUDITOR'S FORM 1123-A
 HARRIS COUNTY, TEXAS (REV. 11/94)
 STATE OF TEXAS
 COUNTY OF HARRIS

CHARLES BACARISSE DISTRICT CLERK

3 No. 790378

OFFICIAL RECEIPT

790378

ACTION: PERSONAL INJURY (NON-AUTO)

CDI: 7

CASE: 9518195

COURT: 190

STYLE PLTF: DUGAS, QUINNETTA

PMT DATE: 04/12/95

DEFT: KARPEN, DOUGLAS A

FILE DATE: 04/12/95

TRANS NO.: 2347828

RECEIVED FIDDLER, G SCOTT
 OF 5959 W LOOP S #150
 BELLAIRE TX 77401-

0 (56957750)

THREE HUNDRED TWENTY FOUR AND 00/100 *****DOLLARS

FEE	DESCRIPTION	QTY	AMOUNT	PAYMENT 1	
100	FILING NEW CASE	1	45.00	CHECK	324.00
300	SHERIFF'S BAILIFF FEE	1	10.00		3480
450	JUDICIAL FILING FEE	1	40.00	PAYMENT 2	.00
475	LAW LIBRARY	1	15.00		
601	DISPUTE RESOLUTION FEE	1	10.00		
775	APPELLANT JUDICIAL FUND	1	5.00	AMOUNT TENDERED:	324.00
199	RECORD PRESERVATION FEE	1	5.00		
195	SECURITY SERVICE FEE	1	5.00		
502	JURY FEE (Rule 216 (2) T.	1	10.00		
500	JURY FEE (51.604 Gov. Cod	1	20.00	TOTAL PAYMENT:	324.00
121	CITATION WITH 1 COPY	3	24.00		
350	CONSTABLE FEE	3	135.00		
TOTAL ASSESSED:			324.00		

CHANGE: .00



ASSESSED BY: DILL, DANA

VALIDATED 04/13/95 BY CARLTON, SHARON
 FILE COPY

(1)
[Signature]