

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

FEB 16 2001

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

JAMES W. McCORMACK, CLERK
By: *William B* DEP CLERK

ROBERT R. DI TROLIO
CLERK OF COURT

RECEIVED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MEMPHIS (901) 495-1200
FAX (901) 495-1250
JACKSON (901) 427-6586
FAX (901) 422-3367

FEB 16 2001

February 13, 2001

JAMES W. McCORMACK, CLERK
By: _____ DEP CLERK

4 - 01 CV 00093 SMR

Clerk of Court
Eastern District of Arkansas
402 United States Post Office and Courthouse
600 West Capitol Ave.
Little Rock, AR 72201-3325

This case assigned to District Judge *Reasoner*
and to Magistrate Judge *Ray*

RE: 00-3138-MI/Bre

Lashonda Dandridge Stokes, et al. v. Jerry Edwards, et al.

Pursuant to the attached Order Transferring Case, filed on January 30, 2001, the above-styled case is being transferred to your office.

Enclosed is the complete original case file, a certified copy of the Order transferring the case and a certified copy of the docket entries.

Please acknowledge receipt of the same on the enclosed copy of this letter and return it to the above office.

Sincerely,

Robert Di Trolio
Clerk of Court

BY: *Jolanda Savage*
Deputy Clerk

cc: Judge McCalla
File

RECEIVED THE DOCUMENTS LISTED ABOVE ON THIS THE _____ DAY OF
_____ 2001

BY: _____



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY up D.C.

01 JAN 30 AM 10: 46

ROBERT R. DI TROLIO
CLERK, U.S. DIST. CT.
W.D. OF TN, MEMPHIS

LASHONDA DANDRIDGE STOKES,
et al.,

Plaintiffs,

v.

JERRY EDWARDS, et al.,

Defendants.

No. 00-3138 M1/Bre

ORDER TRANSFERRING CASE

Before the Court are motions from Plaintiffs and Defendants moving the Court to transfer this matter to the United States District Court for the Eastern District of Arkansas at Little Rock. The Court finds that the transfer is proper and hereby GRANTS the motions to transfer. The Court transfers this matter to the Eastern District of Arkansas.

So ORDERED this 30 day of January, 2001.

JON P. McCALLA
UNITED STATES DISTRICT JUDGE

CERTIFIED TRUE COPY
ROBERT R. DI TROLIO, CLERK
BY: John A. Savage
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY ABJ D.C.

00 NOV 29 PM 12:10

Robert R. Di Tollo
CLERK, U.S. DIST. CT.
W. D. OF TN, MEMPHIS

LASHONDA DANDRIDGE STOKES
and KELVIN STOKES,

Plaintiffs,

00-3138 MI BRE

vs.

JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

COMPLAINT FOR MEDICAL MALPRACTICE

Comes now the plaintiffs, Lashonda and Kelvin Stokes and alleges that the defendants are guilty of medical negligence against the plaintiffs.

Supporting grounds for the allegation of medical negligence are as follows:

JURISDICTION

1. This cause arises under Title 28 U.S.C. §1332, and involves an action on questions of State law between citizens of different states.
2. That the plaintiffs, Lashonda and Kelvin Stokes, are resident citizens of Memphis, Shelby County, Tennessee and were so at the time that this cause of action arose.
3. That the defendant, Jerry Edwards, M.D., is a physician duly licensed to practice his profession under the laws of the State of Arkansas.
4. That the defendant, Little Rock Family Planning Services, is a for profit corporation, duly organized and existing under the laws of the State of Arkansas.

1

5. That on or about February 2, 2000, plaintiff, Lashonda Dandridge Stokes, was approximately 18 weeks pregnant.

6. That plaintiff was referred to Dr. Jerry Edwards on February 17, 2000 for a late term abortion.

7. That thereafter, plaintiff scheduled an appointment through the staff at Little Rock Family Planning Services with Dr. Jerry Edwards.

8. That on or about February 17, 2000, plaintiffs arrived at Little Rock Family Planning Services at approximately 2:00 p.m. to begin the two-day procedure.

9. That upon their arrival, an ultra sound was performed on plaintiff, Lashonda Dandridge Stokes, to determine the gestational age of the fetus, blood tests were performed, and a five-minute counseling session was had with the plaintiff, Lashonda Dandridge Stokes.

10. That a drug was introduced into the cervix to promote dilation.

11. That plaintiff was given a prescription for analgesics and discharged home.

12. That on or about February 18, 2000, plaintiff Lashonda Dandridge Stokes, presented at the Family Planning Services at 10:00 a.m. where she was prepped and checked for dilation. That intravenous catheter was inserted by which plaintiff received sedation.

13. That upon awakening in the recovery room, the plaintiff was informed by the nurse that she was "bleeding too much", and that the Doctor would have to "patch her up."

14. That the plaintiff was transported by ambulance to the University Hospital of Arkansas.

15. That the defendant, Jerry Edwards, advised the plaintiff that her uterus had been cut and that she had lost an excessive amount of blood, that "their backs were against the wall with her hovering between life and death."

16. That an emergency hysterectomy was performed to stop the bleeding and plaintiff was discharged on February 22, 2000.

17. That the defendant, Jerry Edwards, was negligent in the following particulars:

a. Failed to safely perform a uterine abortion;

18. That the defendant, Little Rock Family Planning Services, was negligent in the following particulars:

a. Failed to properly supervise the performance of a uterine abortion by their servant, agent or employee, Dr. Jerry Edwards.

19. That the plaintiff, Lashonda Dandridge Stokes, has suffered irreparable damage in the loss of her uterus, and the ability to bear children in the future.

20. That the plaintiff, Lashonda Dandridge Stokes, had to undergo a major surgery under emergency conditions that she would not have otherwise experienced.

21. That the plaintiff, Lashonda Dandridge Stokes, incurred the expense of an additional 5 days hospitalization, with attendant costs.

22. That the plaintiff, Lashonda Dandridge Stokes, as a result of the negligence of the defendant, received a disfiguring abdominal scar, sustained as a result of the emergency surgery.

23. That the plaintiff, Lashonda Dandridge Stokes, incurred lost wages as a result of the emergency surgery.

24. That the plaintiff, Lashonda Dandridge Stokes, suffered and continues to suffer pain, extreme emotional stress, symptoms of induced early menopause secondary to the total abdominal hysterectomy.

25. That the plaintiff, Kelvin Stokes, suffered the loss of consortium and affections of his wife, Lashonda Dandridge Stokes, as a result of the emergency surgery, hospitalization, and

the emotional status of the plaintiff, Lashonda Dandridge Stokes.

WHEREFORE, the plaintiffs demand \$500,000.00 to settle this matter and demands a jury to try the issues joined herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Linda Kendall Garner", is written over a horizontal line.

LINDA KENDALL GARNER
Attorney for Plaintiffs
1374 Madison Avenue
Memphis, Tennessee 38104
(901) 274-9242

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

FILED B-11546
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAR 08 2001

JAMES W. McCORMACK, CLERK
By: _____ DEP. CLERK

LaSHONDA DANDRIDGE STOKES
and KELVIN STOKES,

Plaintiffs,

VS.

NO. 4:01CV00093 SMR

JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

MOTION TO APPEAR *PRO HAC VICE*

Bruce McMullen, attorney for defendants and an attorney licensed to practice in the State of Arkansas and in this Court, pursuant to the Local Rules of the United States District Court for the Eastern District of Arkansas, respectfully moves the Court to allow the admission *pro hac vice* of attorney Buckner Wellford. Mr. Wellford is an attorney at the firm of Thomason, Hendrix, Harvey, Johnson & Mitchell, 2900 One Commerce Square, 40 S. Main Street, Memphis, TN 38103.

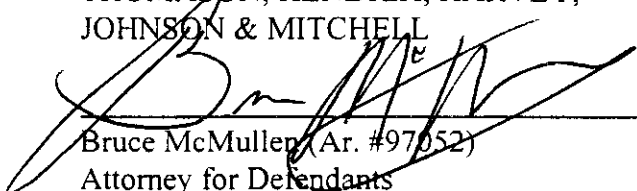
Attached to this Motion is a Certificate of Good Standing from the United States District Court for the Western District of Tennessee for Mr. Wellford.

The undersigned counsel certifies that the attorney, Buckner Wellford, has obtained and is familiar with the Local Rules of this Court, including the Guidelines of Professional Courtesy

and Conduct and the publication "Your Day in Court: The Federal Court Experience," and that there is no opposition to this Motion. A Consent Order is attached.

Respectfully submitted,

THOMASON, HENDRIX, HARVEY,
JOHNSON & MITCHELL



Bruce McMullen (Ar. #97052)

Attorney for Defendants

2900 One Commerce Square

40 S. Main Street

Memphis, TN 38103

(901)525-8721

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been mailed, postage pre-paid, to Ms. Linda Kendall Garner, 1374 Madison Avenue, Memphis, TN 38104, this 1 day of March, 2001.



Bruce McMullen

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
BW-41946
MAR 08 2001
By JAMES W. McCORMACK, CLE.
DEP CLEI

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

LaSHONDA DANDRIDGE STOKES
and KELVIN STOKES,

Plaintiffs,

VS.

NO. 4:01CV00093 SMR

JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR ADMISSION *PRO HAC VICE***

In support of the Motion to Appear *Pro Hac Vice* filed by the counsel of record for defendants, the defendants state as follows:

Attorney, Buckner Wellford, Thomason, Hendrix, Harvey, Johnson & Mitchell, 2900 One Commerce Square, 40 S. Main Street, Memphis, TN 38103, wishes to participate in this lawsuit.

Attached to the Motion to Appear *Pro Hac Vice* is a Certificate of Good Standing from the United States District Court for the Western District of Tennessee. Mr. Wellford has obtained and is familiar with the Local Rules of this Court, including the Guidelines of Professional Courtesy and Conduct, and the publication "Your Day in Court: The Federal Court Experience."

Pursuant to Local Rule 83.5(d), the undersigned attorneys respectfully request that the Court waive the requirement that this application "...shall designate a member of the Bar of these Courts who maintains an office in Arkansas for the practice of law with whom the Court and opposing counsel may readily communicate regarding the conduct of the case." Counsel of record, Bruce McMullen, who is filing this Motion and seeking the admission of Mr. Wellford for the limited purposes of this case, is an attorney duly licensed to practice law in the State of Arkansas and an attorney duly admitted to practice in this Court. The plaintiff, a Tennessee resident, initially filed the case in the United States District Court for the Western District of Tennessee, where venue was improper. The defendant, after engaging the undersigned counsel who have now familiarized themselves in all respects with the case, properly moved for a dismissal or transfer of the case to a Court where venue is proper. Acting upon that Motion, the United States District Court for the Western District of Tennessee transferred the case to this Court, where venue is proper.

Under the circumstances, it would be an unnecessary and redundant requirement, necessitating additional expense, for the defendants to be compelled to engage local counsel who "maintain an office in Arkansas" as opposed to permitting the undersigned attorneys, one of whom is already licensed in Arkansas and is licensed to practice in this Court, to continue with their representation.

A proposed Order granting the Motion for Admission *Pro Hac Vice* has been submitted to the Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

BW-4596
FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARK.

MAR 08 2001

JAMES W. McCORMACK, (DEP)

LaSHONDA DANDRIDGE STOKES
and KELVIN STOKES,

Plaintiffs,

VS.

NO. 4:01CV00093

JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

CERTIFICATE OF CONSULTATION

Proponents of this Motion, Buckner Wellford and Bruce McMullen, have discussed this matter with adverse counsel, Linda Kendall Garner, and have been advised that she makes no opposition to the Motion.

THOMASON, HENDRIX, HARVEY,
JOHNSON AND MITCHELL

By: 

Bruce A. McMullen (97052)
Attorney for Defendants
2900 One Commerce Square
40 South Main Street
Memphis, Tennessee 38103
(901) 525-8721

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAR 14 2001

JAMES W. McCORMACK, CLERK
By: *[Signature]* BW-41546
DEP CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

LaSHONDA DANDRIDGE STOKES
and KELVIN STOKES,

Plaintiffs,

VS.

NO. 4:01CV00093 SMR

JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

ORDER GRANTING MOTION FOR ADMISSION *PRO HAC VICE*

Upon Motion of Bruce McMullen, attorney for defendants and an attorney licensed to practice in the State of Arkansas and in this Court, for an Order allowing the admission *pro hac vice* of attorney Buckner Wellford, and upon the attached Certificate of Good Standing for Mr. Wellford from the United States District Court for the Western District of Tennessee advising that the plaintiff consents to the Motion, and the entire record in this cause, it appears to the Court that the Motion *Pro Hac Vice* is well-taken. IT IS THEREFORE,

ORDERED, ADJUDGED AND DECREED that attorney Buckner Wellford shall be allowed to participate as attorney for the defendants in the above-referenced cause of action, and the Motion for their admission *pro hac vice* is hereby granted.

Stephen M. Reasoner

JUDGE

DATE:

3/13/01

F I L E C O P Y

bt

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

March 15, 2001

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:01-cv-00093.

True and correct copies of the attached were mailed by the clerk to the following:

Linda Kendall Garner, Esq.
Attorney at Law
1374 Madison Avenue
Memphis, TN 38104

Buckner Wellford, Esq.
Thomason, Hendrix, Harvey, Johnson & Mitchell
One Commerce Square
40 South Main Street
29th Floor
Memphis, TN 38103-5529

Bruce A. McMullen, Esq.
Thomason, Hendrix, Harvey, Johnson & Mitchell
One Commerce Square
40 South Main Street
29th Floor
Memphis, TN 38103-5529

cc: press

James W. McCormack, Clerk

Date: 3/15/01

BTyree
BY: _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAR 16 2001

JAMES W. McCORMACK, C
By: _____ DEP.

LASHONDA DANDRIDGE STOKES
and KELVIN STOKES,

Plaintiffs,

NO. 4:01CV 00093 SMR

vs.

JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

MOTION TO APPEAR PRO HAC VICE

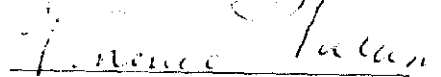
Terrence Tatum, an attorney licensed to practice in the State of Arkansas and in this Court, pursuant to the Local Rules of the United States District Court for the Eastern District of Arkansas, respectfully moves the Court to allow the admission pro hac vice of attorney Linda Kendall Garner. Ms. Linda Kendall Garner is an attorney sharing offices with Johnson, Odell and Kendall, 1374 Madison, Memphis, TN 38104.

Attached to this motion is a certificate of Good Standing from the United States District Court for the Western District of Tennessee for Ms. Kendall Garner.

The undersigned counsel certifies that the attorney, Linda Kendall Garner, has obtained and is familiar with the Local Rules of this Court, including the Guidelines of

and the publication "Your Day in Court: The Federal Court Experience, and that there is no opposition to this Motion. A Consent Order is attached.

Respectfully submitted,



TERRENCE TATUM Ark 96245

Movant for Admission

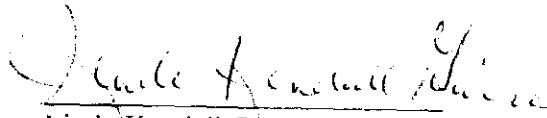
310 Mid Continent Plaza

West Memphis, Ark 72301

(870) 735- 2940

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of the foregoing has been mailed, to Buckner Wellford, Esq., 2900 One Commerce Square, 40 S. Main Street, Memphis, TN 38104, this the 13th day of March, 2001.



Linda/Kendall Garner

CERTIFICATE OF GOOD STANDING

UNITED STATES OF AMERICA

} SS.

WESTERN DISTRICT OF TENNESSEE

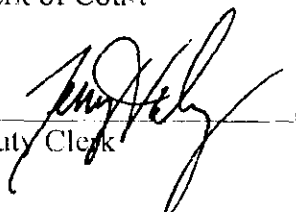
I, ROBERT R. DI TROLIO, Clerk of the United States for the Western District of Tennessee, Western Division,

DO HEREBY CERTIFY That **LINDA KENDALL GARNER** Was duly admitted to practice in said Court on July 31, 1992 and is in good standing as a member of the bar of said Court.

Dated at Memphis, Tennessee

on March 13, 2001.

ROBERT R. DI TROLIO
Clerk of Court

By 
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

MAR 16 2001

By: JAMES W. McCORMACK, CLERK
DEP CLERK

LASHONDA DANDRIDGE STOKES
and KELVIN STOKES,

Plaintiffs,

NO. 4:01CV 00093 SMR

vs.

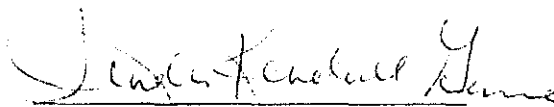
JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

CERTIFICATE OF CONSULTATION

Proponents of the Motion, Linda Kendall Garner, has discussed this matter with adverse counsel, Buckner Wellford, and has been advised that he makes no opposition to the motion..

Respectfully submitted,



Linda Kendall Garner, 013573
Attorney for plaintiffs
1374 Madison Avenue
Memphis, TN 38104
(901) 274-9242

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKAN

MAR 21 2001

By: JAMES W. McORMACK, C
DEPT

LASHONDA DANDRIDGE STOKES
and KELVIN STOKES,

Plaintiffs,

NO. 4:01CV 00093 SMR

vs.

JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

ORDER GRANTING MOTION FOR ADMISSION PRO HAC VICE

Upon Motion of Terrence Tatum, an attorney licensed to practice in the State of Arkansas and in this Court, for an Order allowing the admission pro hac vice of Linda Kendall Garner, and upon the attached Certificate of Good Standing for Ms. Kendall Garner from the United States District Court for the Western District of Tennessee and a Certificate of Consultation advising that the defendant consents to the Motion, and the entire record in this cause, it appears to the Court that the Motion Pro Hac Vice is well taken. IT IS THEREFORE,

ORDERED, ADJUDGED AND DECREED that attorney Linda Kendall Garner shall be

allowed to participate as attorney for the plaintiffs in the above referenced cause of action, and the Motion for her admission pro hac vice is hereby granted.

Stephen M. Reasoner

JUDGE

DATE: 3/20/01

THIS DOCUMENT ENTERED ON DOCKET SHEET IN
COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP
ON 3/22/01 BY CMC

bt

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

March 22, 2001

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:01-cv-00093.

True and correct copies of the attached were mailed by the clerk to the following:

Linda Kendall Garner, Esq.
Attorney at Law
1374 Madison Avenue
Memphis, TN 38104

Buckner Wellford, Esq.
Thomason, Hendrix, Harvey, Johnson & Mitchell
One Commerce Square
40 South Main Street
29th Floor
Memphis, TN 38103-5529

Bruce A. McMullen, Esq.
Thomason, Hendrix, Harvey, Johnson & Mitchell
One Commerce Square
40 South Main Street
29th Floor
Memphis, TN 38103-5529

cc: press and Robbie

James W. McCormack, Clerk

Date: 3/22/01

BTyree
BY: _____

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

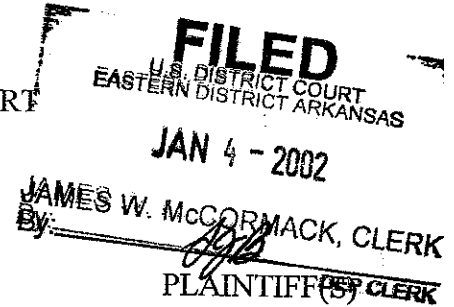
LASHJONDA DANDRIDGE STOKES
AND KELVIN STOKES

VS.

NO.4:01CV00093 SMR

JERRY EDWARDS, ET AL.

DEFENDANT(S)



INITIAL SCHEDULING ORDER¹

The following deadlines and proposals are in effect:

- (1) **Rule 26(f) Conference Deadline:** **February 7, 2002**

The parties are **JOINTLY RESPONSIBLE** for holding their Rule 26(f) conference on or before the above date.

- (2) **Rule 26(f) Report Due Date:** **February 21, 2002**

Consult FRCP 26(f) and Local Rule 26.1 for information to be included in the Rule 26(f) Report. The report shall be filed with the Clerk of the Court. A copy of Local Rule 26.1 is attached.

- (3) **Rule 16(b) Telephone Conference:** **Friday, March 1, 2002 @ 10:15 a.m.**

- (4) A telephone conference will be held on this date to resolve any conflicts or issues in the Rule 26(f) Report and this Order. One attorney should be designated to set up the call and when all are on the line, contact the Court at **501-604-5110**. If the parties agree on all issues in the Rule 26(f) Report and the Initial Scheduling Order, advise the Court prior to the above date, and the telephone conference will be cancelled.

- (5) **Proposed Trial Date:** **Week of July 22, 2002**

¹This Initial Scheduling Order is issued pursuant to Local Rule 16.1 and the Federal Rules of Civil Procedure **EFFECTIVE AS OF DECEMBER 1, 2000.**

(6) **Final Scheduling Order:** **Will be issued around March 15, 2002**

A Final Scheduling Order will be issued confirming the trial date, setting deadlines, and resolving any disputes presented to the Court. It shall be the responsibility of plaintiff, or plaintiff's attorney, to serve immediately a copy of the Initial Scheduling Order upon defendants who enter an appearance after the entry of this Order; and it shall be the responsibility of any party filing a new claim after the date of the Initial Scheduling Order to serve immediately a copy of the Order on new defendants.

(7) **Sanctions:**

If a party, or a party's attorney, fails to obey a scheduling order or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party, or a party's attorney, is substantially unprepared to participate in the conference, or if a party, or a party's attorney, fails to participate in good faith, the judge, upon motion or upon the judge's own initiative, may make such orders with regard thereto as are just, and, among others, any of the orders provided in Rule 37(b)(2)(B),(C),(D). In lieu of, or in addition to, any other sanction, the judge shall require the party, or the party's attorney, or both, to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

AT THE DIRECTION OF THE COURT
JAMES W. MCCORMACK, CLERK

By: Shirley Bowling
Courtroom Deputy Clerk

Date: 1-4-02

sjb

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

January 4, 2002

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:01-cv-00093.

True and correct copies of the attached were mailed by the clerk to the following:

Buckner Wellford, Esq.
Thomason, Hendrix, Harvey, Johnson & Mitchell
One Commerce Square
40 South Main Street
29th Floor
Memphis, TN 38103-5529

Bruce A. McMullen, Esq.
Thomason, Hendrix, Harvey, Johnson & Mitchell
One Commerce Square
40 South Main Street
29th Floor
Memphis, TN 38103-5529

Linda Kendall Garner, Esq.
Attorney at Law
1374 Madison Avenue
Memphis, TN 38104

James W. McCormack, Clerk

Date: 1-4-02

BY: sg/2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

FILED B7-415-57-03479/td

U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JAN 30 2002

LaSHONDA DANDRIDGE STOKES
and KELVIN STOKES,

JAMES W. McCORMACK, CLERK
By: _____
DEP CLERK

Plaintiffs,

VS.

NO. 4:01CV 00093 SMR

JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

**ANSWER OF JERRY EDWARDS, M.D. AND LITTLE ROCK FAMILY
PLANNING SERVICES TO COMPLAINT FOR MEDICAL MALPRACTICE**

JURISDICTION

1. Admitted.
2. Admitted on information and belief.
3. Admitted.
4. Admitted.
5. Admitted.

6. Admitted that the plaintiff arranged an appointment with Dr. Edwards on February 17, 2000 for an elective pregnancy termination at which time the plaintiff gave a history and indicated she was approximately 18 weeks pregnant.

7. Admitted.

8. Admitted that the plaintiff was initially evaluated at the Little Rock Family Planning Services Clinic on February 17, 2000, at which time she completed a lengthy questionnaire, was questioned extensively by a nurse counselor at the clinic about her medical

history and her desires, and that she completed a detailed consent form pertaining to the elective pregnancy termination. Admitted that the most effective mechanism for pregnancy termination at this point for the plaintiff was a procedure where matchstick size sticks called "laminaria" are inserted into the vagina in order to dilate the cervix, which is a necessary predicate for the surgical dilation and extraction scheduled for the following day and which was covered in detail in the consent form that the plaintiff signed.

9. Admitted that an ultrasound was performed on the plaintiff, that blood tests were performed, but denied that a "five minute counsel session" took place. It is averred to the contrary that the plaintiff filled out a lengthy questionnaire and spoke at length to a clinic employee about this procedure, although the defendants do not recall the precise time frame of the conversation between the plaintiff and the clinic employee in question and demand strict proof if their interests are to be affected.

10. Admitted that the laminaria is inserted into the cervix as described in Paragraph 8 and that the purpose of this insertion was to dilate the cervix as a prerequisite for the surgical evacuation and extraction.

11. Admitted that following the insertion of a laminaria the patient was instructed to return to the Clinic the following day for the completion of the procedure.

12. Admitted that the plaintiff appeared at the offices of the Family Planning Services Clinic on February 18, 2000 at which time she underwent the surgical evacuation and extraction procedure.

13. The allegations concerning what the plaintiff was told in the recovery room are neither admitted nor denied, these defendants demanding strict proof if their interests are to be affected, but it is acknowledged that Dr. Edwards recognized promptly after the procedure that the plaintiff had bleeding complications and that, following unsuccessful efforts to control the

bleeding, Dr. Edwards contacted an ambulance and arranged for the plaintiff to be transported to the hospital.

14. Admitted.

15. Denied that Dr. Edwards use the term "cut" when referring to this complication, but acknowledged that Dr. Edwards recognized and made no attempt to hide the fact that a bleeding complication had occurred during this procedure, which is a known risk of the procedure. Denied that Dr. Edwards made the statement that "their backs were up against the wall with her hovering between life and death," although it is acknowledged that this was a significant complication that required hospitalization and that Dr. Edwards appropriately recognized that fact.

16. Admitted that the plaintiff underwent a hysterectomy at the hospital, which purpose, as the defendants understand it, was to control the bleeding in this case and that the plaintiff was discharged on February 22, 2000.

17. Denied.

18. Denied.

19. Denied, and the defendants aver that the plaintiff indicated on the Clinic questionnaire that she did not desire to have any more children.

20. Admitted that the plaintiff underwent a surgical procedure, a hysterectomy, performed following the complications associated with the pregnancy termination, but it is averred that the necessity to undergo this procedure did not occur as a result of a negligent act or omission on the part of the defendants.

21. The allegations as to how long the plaintiff was admitted to the hospital and what expenses she incurred are neither admitted nor denied, these defendants demanding strict proof if their interests are to be affected.

22. Denied that the plaintiff sustained any injuries whatsoever as a proximate result of the negligent act or omission on the part of the defendants.

23. Denied that the plaintiff incurred lost wages or lost earning capacity as the result of any negligent act or omission on the part of the defendants.

24. Denied that the plaintiff sustained any of the alleged damages in this numbered paragraph of the Complaint as a proximate result of any negligent act or omission on the part of the defendants.

25. The allegations concerning the loss of consortium of the plaintiff, Kelvin Stokes, are neither admitted nor denied, these defendants demanding strict proof if their interests are to be affected.

AND NOW, having fully answered the Complaint, these defendants assert the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

The plaintiff, having sustained a complication expressly spelled out in the informed consent document, and there being no evidence that the defendant departed from the recognized standard of acceptable professional practice in the manner by which he performed this procedure that led to the complication, has no cause of action against these defendants for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The defendant physician would further allege that if the plaintiff sustained any injury or damage as a result of medical treatment administered by him, such injury or damage was the result of and caused by known and unknown bodily processes or some other cause having nothing whatsoever to do with and not caused by any negligence on his part. Further, he alleges that the injuries and damages sustained by the plaintiff, if any, were the result of and caused by

an inherent risk or reaction in and to the medical procedure itself and that such risk was not serious and substantially certain to occur and that the injuries and damages sustained, if any, were an unfortunate, remote, but present hazard in such medical practice, treatment or procedure and were not caused by or due to any negligent act on the part of the defendant physician.

FOURTH AFFIRMATIVE DEFENSE

The defendant physician says further that in all the medical attention, treatment and procedures performed by him, he acted according to his best medical judgment.

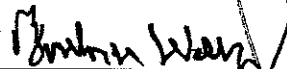
FIFTH AFFIRMATIVE DEFENSE

The defendant physician further answers that all the medical practices, treatment and procedures administered by him were acceptable practices, treatments and procedures and were appropriate for the physical condition of the plaintiff and that at no time was he guilty of any negligence or malpractice; on the contrary, the defendant physician performed each and every act of medical practice, treatment and attention in a proper and efficient manner and in a recognized and approved form accepted and followed by a significant segment of the medical profession under the facts and circumstances applicable to this case.

The defendants demand a jury to try the issues when joined.

Respectfully submitted,

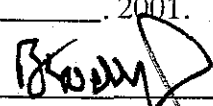
THOMASON, HENDRIX, HARVEY,
JOHNSON & MITCHELL



Buckner Wellford (9687)
Bruce McMullen (18126)
Attorneys for Defendants
2900 One Commerce Square
40 S. Main Street
Memphis, TN 38103
(901)525-8721

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of the foregoing has been mailed, postage prepaid, to Linda Kendall Garner, Attorney at Law, 1374 Madison Avenue, Memphis, TN 38104, this the 24 day of Jan, 2001.



Buckner Wellford

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

C03479/41546

FILED

U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

APR 25 2002

JAMES W. McCORMACK, CLERK
By: _____
DEP CLERK

LaSHONDA DANDRIDGE STOKES
and KELVIN STOKES,

Plaintiffs,

VS.

NO. 4:01CV 00093 SMR

JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

MOTION FOR SUMMARY JUDGMENT

The defendants, pursuant to Fed. R. Civ. P. 56, move for summary judgment on the grounds that the plaintiffs, after being given a reasonable opportunity, have failed to demonstrate a material, disputed issue of fact and that these defendants are entitled to summary judgment as a matter of law.

In support of this Motion, the defendants enclose a Statement of Material, Undisputed Facts and a Memorandum of Law.

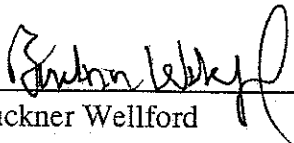
Respectfully submitted,

THOMASON, HENDRIX, HARVEY,
JOHNSON & MITCHELL

Buckner Wellford
Buckner Wellford (9687)
Bruce McMullen (18126)
Attorneys for Defendants
2900 One Commerce Square
40 S. Main Street
Memphis, TN 38103

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of the foregoing has been mailed, postage prepaid, to Linda Kendall Garner, Attorney at Law, 1374 Madison Avenue, Memphis, TN 38104, this the 22 day of April, 2002.


Buckner Wellford

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C03479/41546

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

APR 25 2002

JAMES W. McCORMACK, CLERK
By: _____
DEP CLERK

LaSHONDA DANDRIDGE STOKES
and KELVIN STOKES,

Plaintiffs,

VS.

NO. 4:01CV 00093 SMR

JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF DEFENDANT JERRY EDWARDS, M.D.**

The defendants, Jerry Edwards, M.D. and the Little Rock Family Planning Services and in support of their Motion for Summary Judgment, submit the following Memorandum of Law and Argument:

FACTS

On February 17, 2000, LeShonda Dandridge Stokes came to the Little Rock Family Planning Services to get an abortion performed by Dr. Jerry Edwards. See Complaint at Par. 6. The plaintiff was prepped for the procedure and an ultrasound was performed, as well as blood tests, and drugs administered to promote dilation. See Complaint at pars. 8-10. Ms. Stokes was discharged home in satisfactory condition after the first day. See Complaint at par. 11. The following morning, February 18, 2000, the plaintiff had the abortion performed which led to some bleeding complications. See Complaint at 12. The plaintiff underwent an emergency hysterectomy to stop the bleeding. This rendered the plaintiff unable to bear children in the

future. See Complaint at pars. 15, 19. With respect to the defendant, Dr. Edwards, the plaintiff states that he was negligent in failing to safely perform the abortion and that the plaintiff incurred expenses, lost wages and pain and suffering as a result of this procedure. See Complaint at pars. 17, 20-24.

Kelvin Stokes, the husband of LaShandra Dandridge Stokes, makes a claim for loss of consortium as a result of the emergency surgery, hospitalization and emotional condition of the plaintiff, LaShandra Dandridge Stokes. See Complaint at par. 25

LAW AND ARGUMENT

The applicable elements for a claim of medical malpractice against a health care provider in the State of Arkansas are governed by A.C.A. § 16-114-206. The statute reads as follows:

Burden of Proof.

- (a) In any action for medical injury, the plaintiff shall have the burden of proving:
1. The degree of skill or learning ordinarily possessed and used by members of the profession of the medical care provider in good standing engaged in the same type of practice with specialty in the locality in which he practices or in a similar locality;
 2. That the medical care provider failed to act in accordance with the standard; and
 3. That as a proximate result thereof, the injured person suffered injuries which would not otherwise have occurred.

Federal Rule of Civil Procedure 56 governs summary judgments. Rule 56(a) provides that a party against whom a claim is asserted may move with or without supporting affidavits for summary judgment in the party's favor. Rule 56(c) states that:

[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Rule 56(e) states that:

[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Rule 56(f) addresses situations where the non-moving party cannot offer affidavits or other competent proof in opposition to a properly supported motion for summary judgment.

That rule provides as follows:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

The Eighth Circuit has adopted the reasoning employed by the United States Supreme Court in a series of 1986 cases considered to encourage the use of summary judgments. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Celotex Corporation v. Catrett, 477 U.S. 317 (1986); and Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corporation, 475 U.S. 574 (1986). As the court noted in Holloway v. Lockhart, 813 F.2d 874 (8th Cir. 1987) "summary judgment is appropriate only when there is no genuine issue of material fact, so that the dispute may be decided purely on legal grounds. The Holloway court continued in stating that "this may occur when a plaintiff cannot demonstrate that a genuine fact issue exists. See Celotex Corp. v. Catrett, 477 U.S. 317 (1986). An issue is material if it involves a dispute "over facts that might effect the outcome of the suit governing law . . . Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). "As a general rule, summary judgment is proper "only after the non-movant has had adequate time for discovery. Iverson v. Johnson Gas Co., 172 F.3d 524 (8th Cir. 1999) quoting

In re TMJ Litigation, 113 F.3d at 1490 (8th Cir. 1997). In Webb v. Lawrence County, 144 F.3d 1131, 1135 (8th Cir. 1998) the court held that “although we view the facts in a light most favorable to the non-moving party, in order to defeat a motion for summary judgment, the non-movant cannot simply create a factual dispute; rather, there must be a genuine dispute over those facts that could actually affect the outcome of the lawsuit.

To avoid summary judgment, the non-moving party must come forth with specific facts that there is no genuine issue for trial and must do more than simply show that there is doubt as to a material fact. Matsushita Electric Industry Co. v. Zenith Radio Corporation, 475 U.S. 547, 586-587 (1986). Failure of the non-movant to carry this burden mandates summary judgment against it. See Webb v. Lawrence County, 144 F.3d 1131, 1134-35 (8th Cir. 1998). Summary judgment must be entered against the party who fails to make a showing sufficient to establish the existence of an essential element to the parties’ case and on which the party bears the burden of proof at trial. In such a situation, there is no genuine issue as to any material fact, since complete failure of proof concerning any central element of the non-moving parties’ case necessarily renders all other facts immaterial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). When this occurs, as in this case, the moving party is entitled to summary judgment.

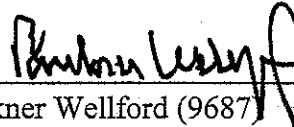
In this case, the plaintiff has had a substantial amount of time to produce an expert, but has failed to do so. Although appropriate to submit affirmative evidence with a Motion for Summary Judgment, Rule 56 does not require the defendant to do so. On the other hand, the plaintiff is required to plead and prove specific facts demonstrating that there is a genuine issue for trial as is required by the Celotex trilogy. In a case like the one at hand, an expert is required in Arkansas to prove medical malpractice under the A.C.A. 16-114-206. The plaintiff has not identified an expert. Therefore, the plaintiff cannot meet the burden of proof under A.C.A. 16-114-206. As a result, summary judgment should be granted to the defendant.

CONCLUSION

In light of the foregoing, it is the request of the defendants that they be dismissed from this case with prejudice, through summary judgment.

Respectfully submitted,

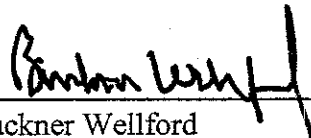
THOMASON, HENDRIX, HARVEY,
JOHNSON & MITCHELL



Buckner Wellford (9687)
Bruce McMullen (18126)
Attorneys for Defendants
2900 One Commerce Square
40 S. Main Street
Memphis, TN 38103
(901)525-8721

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of the foregoing has been mailed, postage prepaid, to Linda Kendall Garner, Attorney at Law, 1374 Madison Avenue, Memphis, TN 38104, this the 22 day of April, 2002



Buckner Wellford

BW-41546/C03479/td

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

LaSHONDA DANDRIDGE STOKES
and KELVIN STOKES,

Plaintiffs,

VS.

JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

APR 25 2002

JAMES W. McCORMACK, CLERK
By: _____
DEP CLERK

NO. 4:01CV 00093 SMR

**STATEMENT OF MATERIAL, UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule C-10 of the Rules of District Court for the Eastern District of Arkansas, Defendants, in support of their Motion for Summary Judgment, submit this Statement of Material, Undisputed Facts.

1. The plaintiffs filed this medical malpractice action on November 29, 2000. See Complaint.
2. On February 17, 2000, LeShonda Dandridge Stokes came to the Little Rock Family Planning Services to have an elective pregnancy termination performed by Dr. Jerry Edwards. See Complaint at par. 6.
3. The plaintiff was prepped for the procedure. An ultrasound was performed, blood tests were taken, and medications were administered to promote cervical dilation. See Complaint at pars. 8-10.
4. Ms. Stokes was discharged home in satisfactory condition after the first day. The

12.

5. The Complaint alleges that Dr. Edwards, through his employer, Little Rock Family Planning Services, departed from the recognized standard of acceptable professional practice by causing a bleeding complication during an elective pregnancy termination procedure performed on the plaintiff on February 17-18, 2000. See Complaint at pars. 6, 8-13.

6. The Complaint alleges that Dr. Edwards was negligent by failing to safely perform a uterine abortion. See Complaint at par. 17.

7. The Complaint alleges that Little Rock Family Planning Services was negligent in failing to properly supervise the performance of a uterine abortion by their servant, agent or employee, Dr. Edwards. See Complaint at par. 18.

8. The plaintiff's alleged injuries include a hospitalization and hysterectomy performed in an effort to control a bleeding complication, as well as the lost opportunity to have additional children, lost earning capacity and loss of consortium on the part of the plaintiff's husband, Kelvin Stokes. See Complaint at pars. 14-16, 19, 20-25.

9. In the plaintiffs' Rule 26 (a) Initial Disclosures of Plaintiff, on November 7, 2001, the plaintiffs identified only one prospective expert, Dr. Melinda Miller Thrasher, an ObGyn who practices with the Greater Atlanta Women's Health Center. The plaintiffs have not provided a written report under Fed. R. Civ. P. 26 (a) (2) (b) outlining the expected opinions of this expert and have not even unequivocally identified this expert in any manner as an expert expected to offer specific testimony establishing the grounds of negligence and causation described in the Complaint. See Rule 26(a) Initial Disclosures of Plaintiff, attached as Exhibit 1 to this Statement of Material, Undisputed Facts.

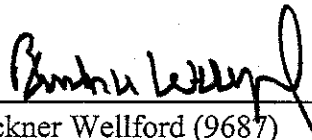
10. In the responses to interrogatories and document production requests issued by the

plaintiffs, Dr. Edwards described the circumstances surrounding his treatment of the plaintiff and disclaimed any negligence whatsoever. See Defendants' Responses to Interrogatories at 8 and 10, attached as Exhibit 2 to this Statement of Material, Undisputed Facts. Dr. Edwards filed his responses to interrogatories and document production on November 21, 2001. Dr. Edwards' deposition was taken by the plaintiff on March 12, 2002.

11. After 16 months, the plaintiffs have failed to demonstrate a material, undisputed issue of fact as the negligence of Dr. Edwards, nor have they demonstrated that the plaintiff suffered any injury as a proximate result of negligence on the part of Dr. Edwards.

Respectfully submitted,

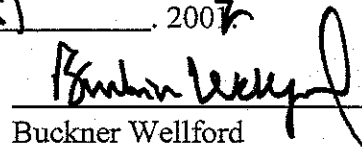
THOMASON, HENDRIX, HARVEY,
JOHNSON & MITCHELL



Buckner Wellford (9687)
Bruce McMullen (18126)
Attorneys for Defendants
2900 One Commerce Square
40 S. Main Street
Memphis, TN 38103
(901)525-8721

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of the foregoing has been mailed, postage prepaid, to Linda Kendall Garner, Attorney at Law, 1374 Madison Avenue, Memphis, TN 38104, this the 27 day of April, 2002.


Buckner Wellford

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

LASHONDA DANDRIDGE STOKES
and KELVIN STOKES,

Plaintiffs,

NO. 4:01CV 00093 SMR

vs.

JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

RULE 26(a) INITIAL DISCLOSURES OF PLAINTIFF

Comes now the plaintiffs, Lashonda and Kelvin Stokes, by and through their attorney, Linda Kendall Garner and identifies the following information and description of documents in compliance with Federal Rules of Civil Procedure 26(a).

INITIAL DISCLOSURES OF WITNESSES

Pursuant to Rule (a)(1)(A), Lashonda and Kelvin Stokes (hereinafter referred to as Plaintiffs, identifies the following individuals who are believed to have discoverable information relevant to disputed facts alleged with particularity in the pleadings.

1. Lashonda Stokes: 3777 Alma Drive, Memphis, TN. 38127, (901) 353-3789. Has knowledge of all claims alleged in the complaint.
2. Kelvin Stokes: 4021 Newton, Memphis, TN. Has knowledge of all claims alleged in the complaint.

3. Nekisha Stoke: 3777 Alma Drive, Memphis, TN. 38127, (901) 353-3789. Has knowledge relevant to the extreme emotional stress of the plaintiff, Lashonda Stokes.
4. Mary Dandridge: 3777 Alma Drive, Memphis, TN. 38127, (901) 353-3789.
5. Tonitha Mabon 3677 Brookmeade, Memphis, TN. 38109. (901) 358-1245.

INITIAL DISCLOSURE OF DOCUMENTS

The Plaintiffs identify the following categories of documents pursuant to their obligation under Rule 26(a)(1)(B).

- A. Plaintiff's Medical Records generated at Little Rock Family Planning Services.
- B. Plaintiff's Medical Records generated at the University Hospital of Arkansas.
- C. Plaintiff's Medical Records generated at the Peabody Health Care.

DAMAGES

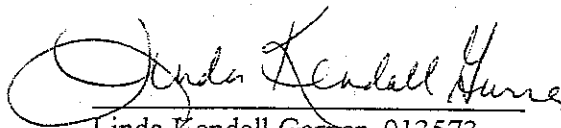
- A. The cost of the emergency surgery and resulting hospitalization at the University Hospital of Arkansas. The medical bills are approximately \$34,000.00.
- B. The loss of the ability to bear children and the pain and suffering associated with that loss.

EXPERT TESTIMONY

Pursuant to Rule 26(A)(1) the plaintiffs identify the following person who may be used at trial to present evidence under Rule 702.

Melinda Miller Thrasher, M.D.
Greater Atlanta Women's Health Center

Respectfully submitted,

A handwritten signature in cursive script, reading "Linda Kendall Garner". The signature is written in dark ink and is positioned above the printed name and address.

Linda Kendall Garner, 013573

Attorney for plaintiffs

1374 Madison Avenue

Memphis, TN 38104

(901) 274-9242

BW-415

BW-41546/C03479/td

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

LaSHONDA DANDRIDGE STOKES
and KELVIN STOKES,

Plaintiffs,

VS.

NO. 4:01CV 00093 SMR

JERRY EDWARDS and the
LITTLE ROCK FAMILY PLANNING
SERVICES,

Defendants.

**DEFENDANTS' ANSWERS TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

The defendants respond to the plaintiffs' Interrogatories and Requests for Production of Documents (the parties held their Rule 26 meeting in this case on August 21, 2001, and these discovery responses are being submitted within twenty (20) days of that meeting), as follows:

INSTRUCTIONS

The defendants agree to supplement discovery responses as required by the Federal Rules of Civil Procedure, and to identify and otherwise describe documents in a reasonable manner as required by the Federal Rules of Civil Procedure as opposed to these "Instructions."

INTERROGATORY NUMBER 1: State the name, address, and job title, if applicable, and telephone number of each individual who is responsible for the truth and accuracy of the answers to these Interrogatories. If more than one individual is responsible, state for which question(s) he or she is supplying the answers under oath thereto.

RESPONSE: Dr. Jerry Edwards, Medical Director, Little Rock Family Planning Services, 4 Office Park Driver, Little Rock, AR72211.

INTERROGATORY NUMBER 2: State the name, address and telephone number of each individual assisting in the preparation of Responses to these Interrogatories, and identify which Interrogatory each individual assisted in answering.

RESPONSE: Dr. Edwards's attorneys, whose address and telephone number is listed below, have assisted him in preparing responses to these Interrogatories.

INTERROGATORY NUMBER 3: State the name of the nurse(s) assigned to the care and treatment of Lashonda Dandridge Stokes on February 18, 2000, at Little Rock's Family Planning Services, and state the name(s) of their employer(s).

RESPONSE: Jonette Miles, Medical Assistant; Linda Frye, Registered Nurse, Celeste Jones, Registered Nurse and Charge Nurse; Kristin Kimbrow, Registered Nurse and Recovery Room Nurse. All of these individuals were employed as of the date and time of the circumstances giving rise to this Complaint by Little Rock Family Planning Services, P.A.

INTERROGATORY NUMBER 4: State the nature of the employment relationship between Dr. Jerry Edwards and Little Rock Family Planning Services.

RESPONSE: Dr. Edwards is the owner of Little Rock Family Planning Services and the Medical Director.

INTERROGATORY NUMBER 5: State the names and addresses, and/or registered agents of the professional liability insurance carrier(s) of Dr. Jerry Edwards and the Little Rock Family Planning Services.

RESPONSE: This information has been provided in response to Rule 26 Disclosures

INTERROGATORY NUMBER 6: State the qualifications, including state licensures and medical specialties of Dr. Jerry Edwards.

RESPONSE: Dr. Edwards' Curriculum Vitae is attached to these interrogatory

INTERROGATORY NUMBER 7: State whether Dr. Jerry Edwards employ [sic] any advertisement, i.e., media (whether TV or radio or print), brochures or otherwise to promote his professional practice, if so, state the method of such advertisement.

RESPONSE: Little Rock Family Planning Services advertises in the Yellow Pages, through a web site, and through clinic brochures.

INTERROGATORY NUMBER 8: State, and describe in detail, the procedure and instruments utilized to extract the uterine content of Ms. Lashonda Dandridge Stokes on February 18, 2000.

RESPONSE: The operative note in this case, a copy of which is included in the medical records of the Little Rock Family Planning Services, accurately describes the procedure and instrumentation used in this case.

INTERROGATORY NUMBER 9: State the amount of blood loss experienced by Lashonda Dandridge Stokes during and after the abortion procedure at the Little Rock Family Planning Services Clinic.

RESPONSE: Ms. Stokes lost approximately 1200 cc.s of blood during and after this procedure at the Little Rock Family Planning Services Clinic.

INTERROGATORY NUMBER 10: State the circumstances which necessitated the transfer of Lashonda Dandridge Stokes from Little Rock Family Planning Services to the University Hospital of Arkansas.

RESPONSE: The transfer of this patient was necessitated by excessive post-operative bleeding which I diagnosed upon the completion of the procedure and which continued, despite efforts to suture the laceration.

INTERROGATORY NUMBER 11: State the rationale for Lashond Dandridge Stokes

RESPONSE: I was not the surgeon who performed this procedure at the University of Arkansas facility and cannot respond to this Interrogatory.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NUMBER 1: Please produce the complete medical records of Lashonda Dandridge Stokes from February 17-18, 2000, which were generated at Little Rock Family Planning Services.

RESPONSE: These medical records will be provided under separate cover.

REQUEST NUMBER 2: Please produce copies of the brochures or other advertisements, which promote or outline the services offered or engaged in by the Clinic and/or Dr. Jerry Edwards.

RESPONSE: Sample clinic brochures and advertisements will be provided under separate cover.

REQUEST NUMBER 3: Please provide copies of insurance policies provider(s), which were in effect for the period of February 18, 2000, on Dr. Jerry Edwards and/or the Little Rock Family Planning Services.

RESPONSE: This information has been provided as a part of the defendants' Rule 26 Disclosures.

REQUEST NUMBER 4: Please produce copies of standards of care, policies and procedures that govern the performance of abortions at the Little Rock Family Planning Services.

RESPONSE:

REQUEST NUMBER 5: Please provide copies of the informed consent document relative to the performance of abortions at the Little Rock Family Planning Services.

RESPONSE: The informed consent documents relating to this patient are as reflected in

Jerry Edwards, M.D.

STATE OF ARKANSAS)

COUNTY OF _____)

SWORN to and SUBSCRIBED before me this the _____ day of _____,
2001.

Notary Public

My Commission Expires:

Respectfully submitted,

THOMASON, HENDRIX, HARVEY,
JOHNSON & MITCHELL

Buckner Wellford (9687)
Bruce McMullen (18126)
Attorneys for Defendants
2900 One Commerce Square
40 S. Main Street
Memphis, TN 38103
(901)525-8721

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of the foregoing has been mailed, postage prepaid, to Linda Kendall Garner, Attorney at Law, 1374 Madison Avenue, Memphis, TN 38104, this the ____ day of _____. 2001.

Buckner Wellford

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

MAY 16 2002

JAMES W. McCORMACK, I
By: *[Signature]* DEF

LaSHONDA DANDRIDGE STOKES, et. al.

PLAINTIFFS

vs.

No. 4:01CV00093 SMR

JERRY EDWARDS, et. al.

DEFENDANTS

ORDER

On April 25, 2002, Defendants filed a Motion For Summary Judgment (Doc. No. 11). Plaintiffs have not filed a response in compliance with Local Rule 7.2(b). If Plaintiffs wish this Court to consider their response when ruling on this motion, they must file a response by May 24, 2002.

IT IS SO ORDERED this 15TH day of May, 2002.

[Signature: Stephen M. Pearson]

UNITED STATES DISTRICT JUDGE

THIS DOCUMENT ENTERED ON
DOCKET SHEET IN COMPLIANCE
WITH RULE 58 AND/OR 79(a) FRCP
ON 5/16/02 BY *[Signature]*

bt

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

May 16, 2002

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:01-cv-00093.

True and correct copies of the attached were mailed by the clerk to the following:

Buckner Wellford, Esq.
Thomason, Hendrix, Harvey, Johnson & Mitchell
One Commerce Square
40 South Main Street
29th Floor
Memphis, TN 38103-5529

Bruce A. McMullen, Esq.
Thomason, Hendrix, Harvey, Johnson & Mitchell
One Commerce Square
40 South Main Street
29th Floor
Memphis, TN 38103-5529

Linda Kendall Garner, Esq.
Attorney at Law
1374 Madison Avenue
Memphis, TN 38104

press

James W. McCormack, Clerk

Date: 5/16/02

BY: BTyree

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
MAY 31 2002
JAMES W. MCCORMACK, CLE
By: *[Signature]* DEP CLE

LaSHONDA DANDRIDGE STOKES, et. al.

PLAINTIFFS

vs.

No. 4:01CV00093 SMR

JERRY EDWARDS, et. al.

DEFENDANTS

ORDER

On April 25, 2002, Defendants filed a Motion For Summary Judgment (Doc. No. 11). On May 16, 2002, this Court entered an Order (Doc. No. 14) advising Plaintiffs that they had not filed a response in compliance with Local Rule 7.2(b). The Order further advised Plaintiffs that if they wished this Court to consider their response when ruling on the motion, they had to file a response by May 24, 2002. No such response was filed. For the reasons stated below, the motion is granted.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *See* Fed. R. Civ. P. 56(c). This plain language "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).



Once the motion is made, the plaintiff must offer “sufficient probative evidence [that] would permit a finding in [his] favor on more than mere speculation, conjecture, or fantasy.” *See Gregory v. City of Rogers*, 974 F.2d 1006, 1010 (8th Cir. 1992) (quoting *Barnes v. Arden Mayfair, Inc.*, 759 F.2d 676, 681 (9th Cir 1985). “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which [a] jury could reasonably find for the plaintiff.” *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

Plaintiffs’ complaint alleges medical malpractice. In Arkansas, medical malpractice suits are governed by statute. *See Ark. Code Ann. § 16-114-201 et. seq.* The burden of proof is outlined in Ark. Code Ann. § 16-114-206:

- (a) In any action for medical injury, the plaintiff shall have the burden of proving:
 - (1) The degree of skill and learning ordinarily possessed and used by members of the profession of the medical care provider in good standing, engaged in the same type of practice or specialty in the locality in which he practices or in a similar locality;
 - (2) That the medical care provider failed to act in accordance with the standard; and
 - (3) That as a proximate result thereof, the injured person suffered injuries which would not otherwise have occurred

See Ark. Code Ann. § 16-114-206.

Arkansas law “is well settled that expert testimony is required when the asserted negligence does not lie within the jury’s comprehension as a matter of common knowledge, when the applicable standard of care is not a matter of common knowledge, and when the jury must have the assistance of experts to decide the issue of negligence.” *See Watts v. St. Edward Mercy Med. Ctr.*, 49 S.W.3d 149, 152 (Ark. Ct. App. 2001). Examples of negligence which are within the comprehension of the jury are a surgeon’s failure to sterilize his instruments or to remove a sponge from an incision before closing it. *See id.* “On the other hand, when the applicable standard of care is not a matter of common knowledge the jury must have the

assistance of expert witnesses in coming to a conclusion upon the issue of negligence.” *See id.* (citations omitted).

In this case, Plaintiffs claims of negligence are based on an abortion performed by Separate Defendant Edwards. Plaintiffs claim that the abortion was negligently performed causing damages. In support of this claim, Plaintiffs initially disclosed, pursuant to Rule 26(a)(2)(A) of the Federal Rules of Civil Procedure, that Dr. Melinda Miller Thrasher would provide expert testimony. However, this disclosure failed to include the expert’s written report as required by Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure. As noted above, despite this Court’s warning order, Plaintiffs have not responded to this motion. Therefore, this Court has also been provided with no affidavit or deposition testimony from Dr. Thrasher.

Summary judgment is appropriate. Plaintiffs bear the burden of proof in establishing the required standard of care and that Defendants failed to meet the required standard of care. This type of case is beyond the common knowledge of the jury. Therefore, expert testimony is required. Plaintiffs’ complaint was filed on November 29, 2000, and then transferred to this Court on February 16, 2001. Plaintiffs provided their initial disclosures on November 7, 2001. Plaintiffs have had more than adequate time to at least procure an affidavit from Dr. Thrasher. Plaintiffs did not even bother to ask for more time in the face of this Court’s warning order. Plaintiffs have provided this Court with no evidence that would present a fact issue proper for jury determination.

Therefore, for the reasons stated above, Defendants Motion For Summary Judgment is GRANTED. Plaintiffs complaint is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED this 31ST day of May, 2002.

THIS DOCUMENT ENTERED ON
DOCKET SHEET IN COMPLIANCE
WITH RULE 58 AND/OR 79(a) FRCP



bt

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

May 31, 2002

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:01-cv-00093.

True and correct copies of the attached were mailed by the clerk to the following:

Buckner Wellford, Esq.
Thomason, Hendrix, Harvey, Johnson & Mitchell
One Commerce Square
40 South Main Street
29th Floor
Memphis, TN 38103-5529

Bruce A. McMullen, Esq.
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Linda Kendall Garner, Esq.
Attorney at Law
1374 Madison Avenue
Memphis, TN 38104

press and post

James W. McCormack, Clerk

Date: 5/31/02

BTyree
BY: _____

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAY 31 2002

JAMES W. McCORMACK, CLE
By: *[Signature]* DEP CLE

PLAINTIFFS

LaSHONDA DANDRIDGE STOKES, et. al.

vs.

No. 4:01CV00093 SMR

JERRY EDWARDS, et. al.

DEFENDANTS

JUDGMENT

Pursuant to an Order in this matter this date, it is Considered, Ordered and Adjudged that this case be, and it hereby is, dismissed with prejudice.

DATED this 31st day of May, 2002.

Stephen M. Reames

UNITED STATES DISTRICT JUDGE

THIS DOCUMENT ENTERED ON
DOCKET SHEET IN COMPLIANCE
WITH RULE 58 AND/OR 79(a) FRCP
ON 5/31/02 BY *[Signature]*

bt

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