

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR ALACHUA COUNTY, FLORIDA**

Steve Scofield, individually and as
parent and natural guardian of
Jessica I. Scofield, a minor, and
Jessica I. Scofield, individually,
Plaintiff,

CASE NO.: 2001-CA-003285

vs.

PAUL SIBLEY, M.D., and ALL
WOMEN'S HEALTH CENTER
OF GAINESVILLE, INC., a Florida
Corporation,
Defendants.

FILED
01 DEC 21 PM 3:25
CLERK OF DISTRICT COURT
& COUNTY COURT
ALACHUA COUNTY, FL

**MOTION TO STRIKE PLEADING AS SHAM AND
MOTION FOR ATTORNEY'S FEES AND COSTS**

The Defendant, PAUL SIBLEY, M.D., respectfully moves pursuant to Florida Rule of Civil Procedure 1.150 to strike the Complaint with prejudice and award costs and reasonable attorney's fees pursuant to Florida Statutes section 57.105. The Defendant states the following as grounds for his motion:

1. The Plaintiffs, Steve Scofield, individually and as parent and natural guardian of Jessica I. Scofield, a minor, and Jessica I. Scofield individually, filed a Complaint against the Defendant on November 21, 2001, alleging that "on or about September 30, 1997, the Defendant, Paul Sibley, M.D., negligently performed an unauthorized abortion procedure."



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2. The Complaint was signed by Milton H. Baxley, Attorney at Law.
3. Florida Statutes, Section 95.11(4)(b)(1997) provides: "an action for medical malpractice shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered, or should have been discovered with the exercise of due diligence..."
4. The Complaint, on its face, indicates the applicable statute of limitations has barred the action.
5. Additionally, on or about October 9, 1997, the Defendant, Paul Sibley, received a letter from Plaintiff's attorney, Milton H. Baxley, also the author of the Complaint. The letter is attached hereto as Exhibit B.
6. The letter stated that attorney Baxley had been retained to represent Steve Scofield, the Plaintiff, in making a claim for damages for an unlawful and unauthorized abortion performed on Jessica Scofield on September 30, 1997.
7. The letter further states that Plaintiff's minor daughter "Jessica was born on June 25, 1983 and was only 14 years of age at the time of the procedure."
8. As stated in the letter dated October 9, 1997, the Plaintiff, as well as attorney Baxley, was aware of the date of the medical procedure as well as the age of Jessica Scofield at the time of the medical procedure.

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9. As stated in the letter dated October 9, 1997, Plaintiff's minor daughter had access to the courts through her parent, Plaintiff Steve Scofield, who had retained attorney Baxley.

10. As stated in the letter dated October 9, 1999, the Plaintiff, Scott Scofield, as well as attorney Baxley is aware that Plaintiff does not have the capacity to sue on behalf of his minor child because the disability of her age is removed pursuant to Florida Statutes, Section 743.07 (1997).

11. As author of both the letter dated October 9, 1997 and the Complaint filed on November 21, 2001, attorney Baxley is aware that the date of the incident was September 30, 1997 and knows the Complaint is time barred for medical malpractice.

12. Additionally, the Complaint alleges that the Defendant "performed an unauthorized abortion procedure on said Jessica I. Scofield, a minor child..."

13. As author of the October 9, 1997 letter, wherein he states that he reviewed a copy of the records obtained from All Women's Health Center of Gainesville, Inc., attorney Baxley is aware of the falsity of this allegation in that the medical records of Jessica Scofield contain a Consent Form for Termination of Pregnancy, Anesthesia and Other Medical Services signed by Plaintiff, Jessica Scofield, dated September 30, 1997. (Exhibit A)

14. An Affidavit of the Defendant setting forth the fact that he discussed with attorney Baxley the Consent Form for Termination of Pregnancy, Anesthesia and Other

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Medical Services, signed by Plaintiff Jessica Scofield dated September 30, 1997 is attached hereto as Exhibit C.

15. Florida Statutes, Section 390.0111(3)(1997) requires only the voluntary and written consent of the pregnant woman.

16. The Complaint alleges that the Defendant committed a sexual battery on the Plaintiff Jessica Scofield by performing an unauthorized abortion procedure.

17. Florida Statutes Section 794.011(1)(h)(1997) provides that sexual battery does not include an act done for a bona fide medical purpose.

18. The Complaint fails to state a cause of action as a matter of law and a contemporaneous Motion to Dismiss is being filed.

19. The Complaint is known to be without a basis in law or fact by attorney Baxley and is filed in bad faith by attorney Baxley for the improper motives of harassment and attempt to coerce payment of money by abuse of judicial process.


20. The Defendant has been obligated to retain the undersigned attorney to defend this action and is obligated to pay that attorney a reasonable fee for his services.

WHEREFORE, the Defendant, PAUL SIBLEY, M.D. respectfully moves this Honorable Court for an order striking the Complaint with prejudice and for an order awarding

costs and reasonable attorneys fees against the Plaintiff and against attorney Baxley, jointly and individually.

VERIFICATION

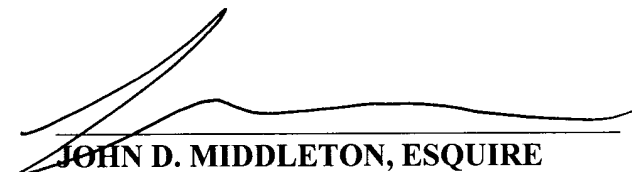
Under penalties of perjury, I declare that I have read the foregoing Motion to Strike Pleading as Sham and Motion for Attorneys Fees and Costs and that the facts stated in it are true. I make this verification pursuant to Florida Rule of Civil Procedure 1.150(b) and Florida Statutes section 92.525(2).



PAUL SIBLEY, M.D.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Milton H. Baxley, II, Esquire, 1929 N.W. 12th Terrace, Gainesville, Florida 32609, on this 20th day of December, 2001.



JOHN D. MIDDLETON, ESQUIRE
Florida Bar #224553
303 State Road 26
Melrose, FL 32666
Phone: 352/475-1611
Fax: 352/475-5968

All Women's Health Center of Gainesville, Inc.

1135 N.W. 23rd Avenue, Suite 101N, Gainesville, FL 32609 • (352) 378-9191

**CONSENT FORM FOR TERMINATION OF PREGNANCY,
ANESTHESIA AND OTHER MEDICAL SERVICES**

I, Jessica Scofield, hereby request, authorize and consent to the performance of a termination of pregnancy on Jessica Scofield to be performed under the direction of physician, Paul L. Sibley, M.D., licensed by the State of Florida.
Name of Patient or Legal Representative
Name of Patient
Name of Doctor

The nature, purpose and general details of the abortion procedure have been explained to me, and I have also been advised of its inherent risks and hazards.

I am aware of the alternative methods of treatment. However, because of my personal circumstances, I am electing to undergo the termination of pregnancy (abortion).

In the event that an unforeseen or unexplained situation arises with regard to my condition, I hereby authorize, request and consent to the administration and performance of any additional medical or surgical treatment deemed necessary and reasonable by the above named doctor or his associate, under the circumstances for the best interests of my health, with the exception of:

NONE

(If no exception - state "None")

I consent to the administration of blood and/or blood substitutes and/or such medications, treatments and therapies as may be deemed advisable, in the judgment of the attending physician, in order to maintain the best interests of the patient in regard to her health and life.

I consent to the examination and disposal by the Center of all products of conception which may be removed in accordance with the procedures used for the termination of the pregnancy.

I am suffering from no mental, emotional or physical disability which would affect my ability to make a knowledgeable, intelligent and rational decision to terminate my pregnancy.

I am not acting under any mental or physical form of coercion in making this decision, and do so voluntarily of my own free will and accord. I have not been coerced or otherwise influenced by any employee of this Center regarding my decision to terminate my pregnancy.

I acknowledge that no assurance or guarantee has been offered to me as to the results that may be obtained.

I hereby acknowledge that I have read all of the above and that I fully understand the meaning of the statements made.

[Signature]

Witness

Jessica Scofield

Signature of Patient

9-30-97

Date

You and your doctor are considering terminating your pregnancy. A common method of doing this is to dilate or widen the opening of the uterus or "womb" and remove the contents of the womb by means of suction. Complications from abortion are uncommon in the hands of trained medical personnel; however, complications do sometimes occur. Because of this fact your doctor can make no guarantee as to the result that might be obtained from this operation. However, the complication rate for this type of abortion is less than the complication rate for continuing the pregnancy.

As in any surgical procedure, bleeding and infection are potential complications of abortion procedures. These complications could cause prolonged illness, the need for blood transfusions, and permanent disability. Perforation or puncture of the wall of the uterus is a rare complication of abortion. This complication could cause pelvic bleeding and infection and even bleeding and infection in the belly. Blood clots in the legs, pelvis, and lungs are other rare complications of abortion. Some of the complications of this operation can require further major surgery; some could potentially result in sterility or the permanent inability to become pregnant again; and very rarely, some of the complications can even be fatal.

Further, I understand that the decision to terminate my pregnancy is an emotional issue, as well as a medical one. I have been informed and understand that the termination of my pregnancy can result in an adverse psychological reaction at a later date. I do not hold the Center or any employee thereof, responsible for any psychological reaction resulting from the termination of pregnancy or other treatment offered by the Center, and hereby represent and warrant that they have done nothing to create, aggravate or otherwise cause such a reaction. I understand there has been a study that has indicated that having an abortion could increase the risk of breast cancer. The annual risk of breast cancer for a 40 year old woman might increase from 0.4 to 0.6 per 1,000 women. The alternative to abortion is to allow your pregnancy to continue; however, as mentioned, this too has the risk of complications. Although the complications listed are rare, it is necessary that you be made aware of them.

I CERTIFY: I have read or have had read to me the contents of this form; I understand the risks and alternatives involved and have no further questions regarding the procedure.

DATE: 9-30-97 SIGNED: Jessie Scyfield
(BY PATIENT OR PERSON LEGALLY AUTHORIZED TO CONSENT FOR PATIENT)

WITNESS: McDonald

I understand that the physician performing the procedure may or may not be an employee or agent of the Center. I further understand that the physician is engaged by the Center to perform services by his own methods and the performance of professional services are not controlled or subject to control by the Center.

DATE: 9-30-97 SIGNED: Jessie Scyfield
(BY PATIENT OR PERSON LEGALLY AUTHORIZED TO CONSENT FOR PATIENT)

WITNESS: McDonald



MILTON H. BAXLEY II

ATTORNEY AT LAW
500 EAST UNIVERSITY AVENUE
SUITE E

GAINESVILLE, FLORIDA 32601

MILTON H. BAXLEY II
PERSONAL INJURY AND WRONGFUL DEATH
TRIAL PRACTICE
GENERAL PRACTICE

CERTIFIED CIRCUIT COURT MEDIATOR

October 9, 1997

MAILING ADDRESS:
500 EAST UNIVERSITY AVENUE
SUITE E
GAINESVILLE, FLORIDA 32601

(352) 375-1616
FAX: (352) 335-8448

Paul L. Sibley, M.D.
All Women's Health Center of Gainesville, Inc.
1135 N.W. 23rd Avenue, Suite N
Gainesville, Florida 32609

Re: Jessica Ilene Scofield, a minor

Dear Dr. Sibley:

I have been retained to represent Mr. Steve Scofield, individually, and as father and natural guardian of Jessica Ilene Scofield, a minor, in making a claim for damages against you and All Women's Health Center of Gainesville, Inc. The claims arise out of an unlawful and unauthorized abortion performed on Jessica Scofield by you, on September 30, 1997, at the facilities of All Women's Health Center of Gainesville, Inc., located at 1135 N.W. 23rd Avenue, Suite N, Gainesville, Florida.

As you were advised, prior to the abortion procedure, Jessica was born on June 25, 1983, and was only 14 years of age at the time of the procedure. She is an unmarried and unemancipated child, who lives with her father, Steve Scofield. From reviewing a copy of the records obtained from All Women's Health Center of Gainesville, Inc., it is obvious that you did not advise Mr. Scofield, or obtained his consent, before performing the abortion on Jessica.

Please have your liability insurance carrier contact me within ten (10) days, so that we may discuss the claims. In the event that you do not have any liability insurance coverage, then I request that either you or your attorney contact me within ten (10) days.

Very truly yours,

Milton H. Baxley II

MHB:kr
cc: Mr. Steve Scofield

Exhibit B

IN THE **CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT,**
IN AND FOR **ALACHUA COUNTY, FLORIDA**

Steve Scofield, individually and as
parent and natural guardian of
Jessica I. Scofield, a minor, and
Jessica I. Scofield, individually,
Plaintiff,

CASE NO.: 2001-CA-003285

vs.

PAUL SIBLEY, M.D., and ALL
WOMEN'S HEALTH CENTER
OF GAINESVILLE, INC., a Florida
Corporation,
Defendants.

AFFIDAVIT OF PAUL L. SIBLEY, M.D.

After being duly sworn, the undersigned deposes and says:

1. My name is Paul L. Sibley, M.D. I am a defendant in this lawsuit.
2. On September 30, 1997, Jessica Scofield was a patient of mine.
3. On September 30, 1997, Jessica Scofield terminated her pregnancy through an abortion procedure performed by me.
4. On September 30, 1997, prior to the abortion procedure, Jessica Scofield signed a Consent Form for Termination of Pregnancy, Anesthesia and Other Medical Services, which was made a part of her medical records at All Women's Health Center of Gainesville, Inc. (Exhibit A).
5. On September 30, 1997, prior to the abortion procedure, I reviewed the Consent Form for Termination of Pregnancy, Anesthesia and Other Medical Services, signed by Jessica Scofield.
6. On or about October 9, 1997, I received the attached letter from Milton H. Baxley, II, in which he asserts that Jessica Scofield was born on June 25, 1983 and was 14 years of age at the time of the procedure (Exhibit B).

Exhibit C

7. In his letter dated October 9, 1997, Mr. Baxley states that he has been retained to represent Steven Scofield, individually, and as father and natural guardian of Jessica Ilene Scofield, a minor.

8. In his letter dated October 9, 1997, Mr. Baxley further states he has obtained and reviewed the medical records of Jessica Scofield received from All Women's Health Center of Gainesville, Inc.

9. Additionally, on October 17, 1997, I had an extensive conversation with Mr. Baxley about the September 30, 1997, termination of pregnancy by Jessica Scofield, including the fact that Jessica Scofield had signed a consent form, which I reviewed prior to terminating her pregnancy through an abortion procedure.

FURTHER AFFIANT SAYETH NAUGHT.



PAUL L. SIBLEY, M.D.


STATE OF FLORIDA
COUNTY OF Alachua

Sworn to and subscribed before me, the undersigned authority, by PAUL L. SIBLEY, M.D. who is [] personally known to me or [] who did produce himself as identification, on this 19 day of December, 2001.

(SEAL)



NOTARY PUBLIC - STATE OF FLORIDA

 Jennifer Pittman
My Commission CC917665
Expires March 12, 2004