

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR THE DUVAL COUNTY, FLORIDA

KONNOR LAGASSEE by and through his
Mother and next friend, BRITTANY LAGASSEE
and BRITTANY AND KRISTOPHER LAGASSEE,
Individually

CASE NO.

DIV.:

Plaintiffs

v.

KIMBERLY VAN SCRIVER, M.D.,
AVA E. PHOENIX, M.D.,
EVELYN K. BRADY, CNM, and

Defendants.

_____ /

COMPLAINT

COMES NOW the Plaintiffs, KONNOR LAGASSEE, by and through his mother and next friend, BRITTANY LAGASSEE, and BRITTANY AND KRISTOPHER LAGASSEE, individually, by and through their undersigned attorney, and sue the defendant and alleges:

1. That this is an action for damages that exceeds the sum of FIFTEEN THOUSAND AND ZERO CENTS (\$15,000.00) exclusive of costs and interest.
2. That this action is being brought pursuant to the provisions of Florida's Medical Malpractice Act due to the injuries cause to KONNOR LAGASSEE upon his birth on February 9, 2011.
3. That this action is being brought by KONNOR LAGASSEE, by and through his mother and next friend, BRITTANY LAGASSEE, and BRITTANY AND KRISTOPHER LAGASSEE, individually.

4. That at all times material to this cause the Defendant, KIMBERLY VAN SCRIVER, M.D., was a Board Certified Physician and Obstetrician, and is held to the standard of care reasonably to be expected of a similar health provider.

5. That at all times material to this cause the Defendant, KIMBERLY VAN SCRIVER, M.D., was an agent, servant, or employee of A PLACE FOR WOMEN OB/GYN.

6. That at all times material to this cause the Defendant, AVA E. PHOENIX, M.D., was a Board Certified Physician and Obstetrician, and is held to the standard of care reasonably to be expected of a similar health provider.

7. That at all times material to this cause the Defendant, AVA E. PHOENIX, M.D., was an agent, servant, or employee of A PLACE FOR WOMEN OB/GYN.

8. That at all times material to this cause the Defendant, EVELYN K. BRADY, CNM, was a Certified Nurse Midwife, and is held to the standard of care reasonably to be expected of a similar health provider.

9. That all times material to this cause the Defendant, EVELYN K. BRADY, CNM, was an agent, servant, or employee of A PLACE FOR WOMEN OB/GYN.

10. That all conditions precedent to the bringing of this cause have been met by Plaintiffs including, but not limited to:

- (a) The notice provisions set forth in Florida Statute, Section 766.106.
- (b) That Notice of Intent letters were sent on February 7, 2013 to Defendants Kimberly Van Scriver, M.D., Ava E. Phoenix, M.D. and Evelyn K. Brady, CNM, and all other statutorily required recipients of notice, with the appropriate accompanying Affidavit.
- (c) The claim was denied by the above referenced Defendants on May 16, 2013.

11. The undersigned attorney certifies that a reasonable investigation has been made as permitted by the circumstances to determine that grounds exist for a good faith belief there has been negligence in the care or treatment of the Plaintiff. The investigation gave rise to a good faith belief that grounds exist for an action against Defendants.

12. On or about July 12, 2010, Plaintiff, BRITTANY LAGASSE, initiated prenatal care at the offices of A PLACE FOR WOMEN OB/GYN.

13. That Defendant, KIMBERLY VAN SCRIVER, M.D., rendered obstetrical care to Plaintiff, BRITTANY LAGASSE, through February 9, 2011. On February 9, 2011, Plaintiff, BRITTANY LAGASSE, gave birth to Plaintiff, KONNOR LAGASSE.

14. Defendant, KIMBERLY VAN SCRIVER, M.D., in the exercise of reasonable care, knew or should have known that Plaintiff, BRITTANY LAGASSE, was, more likely than not, at risk of having complications during vaginal delivery. Despite such knowledge, Defendant, KIMBERLY VAN SCRIVER, M.D., failed to:

- (a) Appreciate the risk of the complication of shoulder dystocia;
- (b) Timely and properly manage KONNOR LAGASSE'S shoulder dystocia;
- (c) Perform the appropriate delivery technique, maneuvers and force to avoid injury to KONNOR LAGASSE;
- (d) Use the degree of skill and care required of an obstetrician when faced with a shoulder dystocia and as is possessed by average qualified members of the medical profession, taking into account advances in the profession;
- (e) Perform a timely cesarean section when it was obvious that there was a danger to the baby to allow the vaginal delivery to continue;

- (f) Provide the proper and appropriate obstetrical care and treatment to the patient;
- (g) Inform the patient of risks associated with a vaginal delivery, or risks involved in or associated with BRITTANY LAGASSEE'S condition and treatment of said condition; and
- (h) Failure to offer the patient delivery alternatives.

15. That Defendant, AVA E. PHOENIX, M.D., rendered obstetrical care to Plaintiff, BRITTANY LAGASSEE, through February 9, 2011. On February 9, 2011, Plaintiff, BRITTANY LAGASSEE, gave birth to Plaintiff, KONNOR LAGASSEE.

16. Defendant, AVA E. PHOENIX, M.D., in the exercise of reasonable care, knew or should have known that Plaintiff, BRITTANY LAGASSEE, was, more likely than not, at risk of having complications during vaginal delivery. Despite such knowledge, Defendant, AVA E. PHOENIX, M.D., failed to:

- (a) Appreciate the risk of the complication of shoulder dystocia;
- (b) Timely and properly manage KONNOR LAGASSEE'S shoulder dystocia;
- (c) Perform the appropriate delivery technique, maneuvers and force to avoid injury to KONNOR LAGASSEE;
- (d) Use the degree of skill and care required of an obstetrician when faced with a shoulder dystocia and as is possessed by average qualified members of the medical profession, taking into account advances in the profession;
- (e) Perform a timely cesarean section when it was obvious that there was a danger to the baby to allow the vaginal delivery to continue;

- (f) Provide the proper and appropriate obstetrical care and treatment to the patient;
- (g) Inform the patient of risks associated with a vaginal delivery, or risks involved in or associated with BRITTANY LAGASSEE'S condition and treatment of said condition; and
- (h) Failure to offer the patient delivery alternatives.

17. That Defendant, EVELYN K. BRADY, CNM, rendered obstetrical care to Plaintiff, BRITTANY LAGASSEE, through February 9, 2011. On February 9, 2011, Plaintiff, BRITTANY LAGASSEE, gave birth to Plaintiff, KONNOR LAGASSEE.

18. That in of May, 2012 Plaintiff BRITTANY LAGASSEE became aware that her son had sustained injury that would not resolve on its own and that he would require surgery. At this time, Plaintiff BRITTANY LAGASSEE became aware that PLAINTIFF KONNOR LAGASSEE suffered from brachial plexus birth palsy that would require surgery and that any further improvement in his condition would be limited because his injury was considered permanent. At and around this time Plaintiff BRITTANY LAGASSEE became aware that traction on the infant's brachial plexus bundle of nerves used by the doctor at delivery was the cause of the permanent injury and that despite surgical intervention, the injury would be permanent. This was Plaintiff BRITTANY LAGASSEE'S first knowledge of the nature and cause of injury to KONNOR LAGASSEE.

19. Defendant, EVELYN K. BRADY, CNM, in the exercise of reasonable care, knew of should have known that Plaintiff, BRITTANY LAGASSEE, was, more likely than not, at risk of having complications during vaginal delivery. Despite such knowledge, Defendant, EVELYN K. BRADY, CNM, failed to:

- (a) Appreciate the risk of the complication of shoulder dystocia;
- (b) Timely and properly manage KONNOR LAGASSEE'S shoulder dystocia;
- (c) Perform the appropriate delivery technique, maneuvers and force to avoid injury to KONNOR LAGASSEE;
- (d) Use the degree of skill and care required of a certified nurse midwife when faced with a shoulder dystocia and as is possessed by average qualified members of the medical profession, taking into account advances in the profession;
- (e) Offer or suggest a timely cesarean section when it was obvious that there was a danger to the baby to allow the vaginal delivery to continue;
- (f) Provide the proper and appropriate obstetrical care and treatment to the patient;
- (g) Inform the patient of risks associated with a vaginal delivery, or risks involved in or associated with BRITTANY LAGASSEE'S condition and treatment of said condition; and
- (h) Failure to offer the patient delivery alternatives.

20. As a direct and proximate result of the negligence of the Defendants, KIMBERLY VAN SCRIVER, M.D., AVA E. PHOENIX, M.D., and EVELYN K. BRADY, CNM, Plaintiff KONNOR LAGASSEE suffered from severe and permanent injuries to the brachial plexus nerve.

CLAIM OF KONNOR LAGASSEE

21. That as a direct and proximate result of the negligence of Defendants, KIMBERLY VAN SCRIVER, M.D., AVA E. PHOENIX, M.D., and EVELYN K. BRADY, CNM, and the resulting injury to Plaintiff, KONNOR LAGASSEE, Plaintiff KONNOR LAGASSEE has sustained the following damages

- (a) Severe and permanent personal injuries;
- (b) Significant physical disabilities and impairments for the remainder of his life;
- (c) Great expense for his medical, surgical, and hospital care and treatment;
- (d) Great pain of body and anguish of mind;
- (e) Has been and will continue to be unable to pursue normal activities;
- (f) His ability to enjoy life has been permanently adversely affected;
- (g) His future earning capacity has been diminished and/or lost.

All losses are either permanent or continuing in nature and Plaintiff will suffer said losses in the future.

WHEREFORE, Plaintiff, KONNOR LAGASSEE, by and through his mother and next best friend, BRITTANY LAGASSEE, demands a judgment against Defendants KIMBERLY VAN SCRIVER, M.D., AVA E. PHOENIX, M.D., and EVELYN K. BRADY, CNM, for damages and demands a trial by jury.

CLAIMS OF BRITTANY AND KRISTOPHER LAGASSEE

22. That as a direct and proximate result of the negligence of the Defendants, KIMBERLY VAN SCRIVER, M.D., AVA E. PHOENIX, M.D., and EVELYN K. BRADY,

CNM, and the resulting injury to Plaintiff, KONNOR LAGASSE, Plaintiffs BRITTANY AND KRISTOPHER LAGASSE have sustained the following damages:

- (a) Plaintiffs, BRITTANY AND KRISTOPHER LAGASSE, have lost and have had severely restricted the benefit of the society, companionship, and consortium of their son all to their great damage;
- (b) Great expense for the medical, surgical, and hospital care and treatment of KONNOR LAGASSE;
- (c) Future support and services;
- (d) Earnings of Plaintiff.

All losses are either permanent or continuing in nature and Plaintiff will suffer said losses in the future.

WHEREFORE, Plaintiffs, BRITTANY AND KRISTOPHER LAGASSE, demand a judgment against Defendants KIMBERLY VAN SCRIVER, M.D., AVA E. PHOENIX, M.D., and EVELYN K. BRADY, CNM, for damages and demand a trial by jury.

Dated this 14th day of Nov. 2013.

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