



VERDICT *of the* WEEK

MEDICAL MALPRACTICE

Childbirth — OB-GYN

Newborn's Quadriplegia Blamed on Delayed Birth

VERDICT (P) **\$111,700,000**

CASE Elizabeth Reden and John Reden, as Parents and Natural Guardians of Danielle Reden, an Infant, and Elizabeth Reden and John Reden, Individually v. John R. Wagner, M.D.; Karen Moriarty Morris, M.D.; Theodore L. Goldman, M.D.; and WGM Obstetrics and Gynecology P.C., No. 16543/99

COURT Suffolk Supreme

JUDGE Paul J. Baisley

DATE 1/26/2004

PLAINTIFF

ATTORNEY(S) Steven E. Pegalis, Pegalis & Erickson L.L.C., Lake Success, NY

FACTS & ALLEGATIONS In 1996, plaintiff Elizabeth Reden, 28, a payroll manager, began receiving prenatal care from Huntington-based WGM Obstetrics and Gynecology P.C. Reden's pregnancy was uneventful until Jan. 28, 1997 — five weeks prior to her delivery date — when she detected a change in fetal movement. She performed a fetal-kick-count test, but did not detect any movement.

Reden reported to WGM Obstetrics and Gynecology, where Dr. Karen Moriarty Morris performed a biophysical profile, which consists of a sonogram and a non-stress test. Reden achieved a score of 8, out of a possible 10, thus indicating that the fetus was normal. She failed to achieve a perfect score because the non-stress test was non-reactive. Morris claimed that she detected fetal movement in the sonogram, and thus determined that the non-stress-test's results were "not worrisome." She advised Reden to continue performing fetal-kick-count tests and to report any change in fetal movement.

On Feb. 2, Reden called the practice group's answering service to report that she had detected another absence of fetal movement. Another one of the practice group's doctors, Dr. John Wagner, subsequently called Reden and told her to meet him at Huntington [N.Y.] Hospital immediately.

Reden and her husband arrived at the hospital at approximately 3:40 p.m. Wagner examined Reden shortly thereafter. The external-fetal-heart-monitor's readings were essentially flat, but a Caesarean delivery was not performed until 7:15 p.m.

Although infant plaintiff Danielle Reden exhibited Apgar scores of 9, out of a possible 10, at one and five minutes after birth, she was acidotic and hypoglycemic. She was transferred to North Shore University Hospital at Glen Cove [N.Y.] the following day. She was later diagnosed with periventricular leukomalacia.

Elizabeth Reden and her husband, John, sued Morris and Wagner; their partner, Theodore Goldman; and their practice. They contended that Morris had improperly interpreted the infant's biophysical-profile score, and that Wagner was negligent for failing to perform a C-section within one hour of Elizabeth Reden's hospital admission on Feb. 2. They also claimed that all three doctors were negligent in their response to Reden's report of decreased fetal movement, and that the doctors allowed the infant's condition to worsen between Jan. 28 and Feb. 2.

Morris testified that she and her partners discussed Reden's condition on Jan. 31, at one of the firm's weekly meetings, in which the doctors' concerns were addressed. Morris claimed that she mentioned that Reden had reported a decrease in fetal movement, but that no follow-up action was taken.

Wagner testified that he did not recall whether Morris had discussed Reden's report of decreased fetal movement at the Jan. 31 staff meeting. Goldman contended that the issue was not discussed. He presumed that Morris should have known that such an issue should have been discussed. (*Editor's note:* Morris had

completed her obstetrical residency only seven months prior to the infant's birth.)

Wagner also testified that he performed an urgent C-section, but the hospital's records did not include any notation of such a delivery. Three months after the delivery, Morris dictated a "final hospital summary" report, in which she indicated that the C-section was performed urgently.

The defendants maintained that Reden had exhibited a normal biophysical-profile score. They also contended that the infant's good Apgar scores indicated that her problem was not acute. They contended that her periventricular leukomalacia was the result of a chronic problem caused by placental insufficiency. They further contended that the placental insufficiency created an in utero problem that developed several weeks prior to the infant's birth.

INJURIES/DAMAGES *loss of services; spastic quadriplegia*

Danielle Reden, now 6, suffers from spastic quadriplegia, a seizure disorder and cortical blindness. She takes anticonvulsant medication.

Reden is able to walk only a few steps at a time, with assistance. Her parents claimed that she will always require assistance in all aspects of daily living, that she will never be commercially employable, and that she will not be able to live independently.

The Redens' life-care-planning expert estimated that Danielle Reden will live another 74 years. She will require custodial care for the remainder of her life.

The plaintiffs' economic expert opined that Reden's undiscounted future care will cost between \$62 million and \$122 million. He also estimated that Reden's undiscounted lost earning capacity was between \$11 million and \$13 million.

The Redens asked the jury to award \$5 million for past pain and suffering and \$15 million for future pain and suffering.

Elizabeth and John Reden claimed loss of services, but they did not offer any proof to substantiate their claims. Thus, the loss-of-services claims were not before the jury.

RESULT The jury found that Morris was negligent for failing to follow-up on Elizabeth Reden's non-stress-test results on Jan. 28. The jurors also found that Morris was negligent for failing to report those results to Goldman and Wagner, and that Goldman and Wagner were negligent for failing to have instituted a process that would have led Morris to report such results. The jurors further found that Wagner was negligent for his actions on Feb. 2. Morris was found to be 50% liable for Danielle Reden's injuries; Goldman and Wagner were each assigned 25% liability.

The jury awarded Reden \$111.7 million.

DANIELLE REDEN	\$5,700,000 future lost earnings
	\$1,000,000 past pain and suffering
	\$10,000,000 future pain and suffering
	<u>\$95,000,000 future custodial care, equipment</u>
	\$111,700,000

DEMAND	\$6,000,000 (insurance-policy limit)
OFFER	\$2,000,000

TRIAL DETAILS Trial Length: 12 days
Trial Deliberations: 3 hours
Jury Poll: 6-0
Jury Composition: 1 male, 5 female

POST-TRIAL The parties reached a \$6 million settlement, according to the terms of a \$6 million/\$2 million high/low agreement, which was established after summations, but before the jury was charged.