

Missouri Lawyers WEEKLY

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Family of unborn child wins wrongful death lawsuit

Covering physician failed to follow up on testing



Genevieve Nichols

A St. Louis County jury awarded \$150,000 to the parents of a stillborn child in a wrongful death lawsuit against the mother's doctors and their employer.

Linda Thelen, 39, was 38 weeks pregnant with son Travis when she went on a routine weekly doctor visit. She'd had a normal pregnancy but also had gestational diabetes. Testing found that she had a low amniotic fluid index.

Thelen's primary obstetrics and gynecology physician, Dr. Richard Muckerman, became aware of the test results when he came into the office late at night to take care of some paperwork before he left town the next day. He informed the on-call doctor, Dr. Christopher Ahlering, of the test results and told him to have Thelen come in the next day to conduct a nonstress test. The testing revealed that the baby was not in distress. Ahlering recommended that Thelen should come back in three days for a follow-up when Muckerman would be back in town, but when Muckerman returned on Oct. 20, 2004, the baby was already dead because of a cord accident. The cord accident occurred because the baby was suffering from fetal thrombotic vasculopathy, which causes the placenta to die around the fetus.

According to the defense's expert testimony from Dr. Frederick Kraus, forensic placental pathologist, the baby wouldn't have lived. Kraus has seen babies live for at most 24 hours with fetal thrombotic vasculopathy when the placenta was 5 percent to 10 percent dead. In this case, 50 percent of the

All three parties agreed that it was appropriate for Ahlering to conduct the nonstress test but disagree how the situation should have been handled after its results.

The plaintiffs argue that immediate action should have been taken to deliver the baby.

"The thrust of our argument is that the doctors didn't include the patient in the discussion and give her a chance to tell them to deliver the baby," said Genevieve Nichols, the plaintiff's attorney from Coffey and Nichols. "The patient didn't know that something serious was wrong. All she knew was that she had an abnormal test result. Linda and Tim tried fertility for five years before she got pregnant. There's no way that she would have taken the chance to wait on Dr. Muckerman to come back to deliver the baby."

Both defendants argued that the low amniotic fluid index did not lead to the conclusion that the baby was in distress and suffering from fetal thrombotic vasculopathy.

"Both doctors were practicing the standard of care," said Kirk Wittner, attorney for Ahlering. "They were testing the patient twice a week. Sometimes testing provides difficult scenarios, which aren't particularly clear. There was no real indication that the baby was suffering from FTV. Expert testimony proved that. The doctors had no reason to think that they should deliver the baby."

The parties also disagreed whether the baby would have lived if he had been delivered.

placenta was dead.

The plaintiff's argued that there was no proof that the baby's life was compromised.

"He was fine at the time they did the stress test," Nichols said. "If they would have intervened before the point oxygen was cut off, the baby would have been OK. They don't know when that actually occurred."

The jury concluded that only Ahlering was liable and awarded the Thelens \$75,000 for past non-economic damages and \$75,000 for future noneconomic damages.

All attorneys speculated that Muckerman was not held liable because he was not physically present.

"Ultimately, I think the jury was obviously sympathetic to the plaintiffs, and although I did not have a chance to speak to any of them, I surmise that they found against Dr. Ahlering simply be-

cause he was actually present in the office when the plaintiff was there for her nonstress test, while Dr. Muckerman had already left and had not been present when the plaintiff was in the office," said Muckerman's attorney, J. Thaddeus Eckenrode. "The jury must have felt that some doctor should have actually seen the patient, and Dr. Ahlering, unfortunately, was the only one of the two who had that opportunity."

Eckenrode said the case is a warning to on-call physicians.

"This case points out the risks inherent in covering another physician's patients and practice," he said, "and yet that is [a] daily issue that all physicians encounter in the practice of medicine since no doctor can be there for his/her patients 24/7, and everyone of them ultimately covers for someone else from time to time."

— Angela Riley

■ \$150,000 jury verdict

MEDICAL MALPRACTICE

■ **Court:** St. Louis County Circuit Court

■ **Case Number/Date:** 2105CC-03872/July 1, 2008

■ **Judge:** John A. Ross

■ **Plaintiffs' Experts:** Dr. Fred Duboe, Chicago (obstetrics and gynecology); Dr. Marc Jacobs, San Francisco (perinatologist)

■ **Defendants' Experts:** Dr. Frederick Kraus, St. Louis (forensic placental pathologist); Dr. Harry Farb, Minnesota (perinatologist); Dr. Michael Paul, St. Louis (perinatologist)

■ **Caption:** Linda Thelen, individually and as plaintiff ad litem for Travis Thelen and Timothy Thelen v. St. John's Mercy Health System d/b/a St. John's Mercy Hospital, St. Louis Women's Healthcare Group PC, Dr. Richard Muckerman, Dr. George Ahlering and Dr. Christopher Ahlering

■ **Plaintiff's Attorneys:** Mary Coffey and Genevieve Nichols, Coffey & Nichols, St. Louis

■ **Defendant's Attorneys:** Kirk J. Wittner and Howard Wittner, Wittner, Spewak, Maylack & Spooner, St. Louis; J. Thaddeus Eckenrode and Lisa Howe, Eckenrode-Maupin, Clayton