

MEDICAL MALPRACTICE

Medication — Failure to Monitor — Wrongful Death

Child who stepped on nail died from failure to monitor antibiotic

VERDICT (P) \$30,000,000

NET \$27,600,000

CASE Christina Marie Wallace, as Personal Representative of the Estate of Nathan Oliver Swilley, deceased v. Vivek S. Desai, Ayodeji B. Otegbeye, M.D., and Central Florida Pediatric Intensive Care Specialists, Florida Hospital and Children's First Home Health Care, No. CI002-2410

COURT Orange County Circuit court, FL

JUDGE Donald E. Grincewicz

DATE 7/29/2004

PLAINTIFF
ATTORNEY(S) Anthony J. Caggiano, Ward & Caggiano, P.A., Orlando, FL

DEFENSE
ATTORNEY(S) Vance R. Dawson and Juan Ruiz, Rissman, Weisberg, Barrett, Hurt, Donahue & McLain, Orlando, FL (Central Florida Pediatric Intensive Care Specialists, Dr. Ayodeji B. Otegbeye, Dr. Vivek S. Desai). Names Withheld (Children's First Home Health Care, Florida Hospital)

FACTS & ALLEGATIONS On April 14, 2001, plaintiff's decedent Nathan O. Swilley, 10, stepped on a nail in his yard. His mother, Christina Wallace, took him to Florida Hospital in Apopka on April 15 and 17. His wound was cleaned and treated on both visits and he was sent home each time.

On April 18, Nathan was seen by orthopedic surgeon Adam

Fenichel, who recommended admission to Florida Hospital in Orlando for debridement and antibiotic treatment. Fenichel referred the child to Dr. Vivek S. Desai for admission.

On April 25, Nathan was discharged and Desai and Dr. Ayodeji B. Otegbeye prescribed the IV antibiotic Gentamicin, as well as Zosyn and Motrin. Otegbeye ordered home health care nursing to come to Nathan's house to administer the antibiotics. The order was arranged and managed by Florida Hospital Orlando and Children's First Home Health Care, Orlando.

Because these antibiotics have the potential to cause kidney damage, the blood needs to be monitored carefully for signs of toxicity. However, Nathan's blood was never monitored after his discharge. At the time of discharge, Otegbeye was not informed that the home healthcare nurses would not be going to Nathan's home on a daily basis. He didn't learn of this arrangement until after Nathan was readmitted to Florida Hospital on May 8.

At the April 25 discharge, Wallace was instructed to make follow-up visits for her son with Dr. Fenichel and Dr. Otegbeye in one week. She made the one week appointment with Dr. Fenichel, but not with Dr. Otegbeye.

However, on May 5, Nathan suffered from a high fever, vomiting and diarrhea. On May 6, Wallace called Desai, who told her that the symptoms sounded like the flu, but that if Nathan felt no better, to call their office the next day.

Wallace called Otegbeye and Desai's office on May 7, but no one returned her call. A home healthcare nurse told Wallace that Nathan needed to be seen by a pediatrician at the latest tomorrow. Consequently, on the morning of May 8, Wallace took Nathan to his pediatrician, who advised that Nathan be readmitted to the hospital. Wallace informed personnel at the family clinic that she couldn't bring Nathan to the hospital until her other children got out of school and she could arrange for someone to look after them.

Wallace arrived at Florida Hospital with Nathan at 9:40 p.m. Nathan was admitted and treated by Otegbeye. His kidneys were failing. Renal failure was confirmed. Otegbeye consulted Dr. Abdollah Iravani, a pediatric nephrologist, to arrange for treatment. Iravani performed hemodialysis, to eliminate the toxic Gentamicin levels. As a result, Nathan developed dialysis disequilibrium syndrome (DDS), an unavoidable complication of dialysis, causing brain swelling and death.

Wallace, as personal representative of Nathan's estate, sued Children's First Home Health Care, Florida Hospital, Desai, Otegbeye and their practice, Central Florida Pediatric Intensive Care Specialists, Orlando.

Wallace claimed that Florida Hospital and Children's First, both of which arranged and managed Nathan's care, were negligent for failing to monitor doses and blood levels. The claims against them settled for undisclosed amounts several months before trial.

Against Desai and Otegbeye, Wallace claimed that they were negligent for prescribing the antibiotics and then for failing to monitor the doses and blood levels for possible kidney and liver toxicity.

At trial, plaintiff expert nephrologist Steven Alexander testified that as a direct result of hemodialysis, Nathan developed DDS. Alexander further testified that while he, Alexander, may have used a different dialysis regimen, this complication can occur even when dialysis is performed perfectly. Alexander also said that Nathan's condition was so grave on admission that it would be unfair to blame his demise on Dr. Iravani who did his best under difficult circumstances.

The defense for Desai and Otegbeye argued that Wallace was at fault for not bringing Nathan to the hospital before May 8. It also claimed that she was negligent for missing the one-week follow-up visit after Nathan's April 25 discharge, and they therefore should not be held responsible for the resulting toxicity. Their defense further contended that the doctor at the family clinic was at fault for not calling an ambulance to take Nathan to the hospital.

INJURIES/DAMAGES *Death*

Wallace did not claim economic damages, only past and future pain and suffering for the loss of her child.

RESULT The jury found Otegbeye 59% at fault, Desai 33% at fault and settling defendant Children's First 8% at fault. It found \$30 million in damages, which nets out at \$27.6 million as per the fault apportionment. Otegbeye is responsible for \$17.7 million; Desai is responsible for \$9.9 million.

SWILLEY ESTATE \$4,000,000 past pain and suffering
\$26,000,000 future pain and suffering
 \$30,000,000

DEMAND Up through the trial, the plaintiff offered to settle for the policy limits of \$1 million for each of the doctors.

OFFER None reported.

TRIAL DETAILS Trial Length: 9 days
 Jury Deliberations: 5 hours
 Jury Composition: 4 male, 2 female

**PLAINTIFF
 EXPERT(S)** Steven Alexander, M.D., nephrology,
 Palo Alto, CA

Allison Brent, M.D., pediatric emergency
 medicine, St. Petersburg, FL

Daniel Levin, M.D., pediatric critical care,
 Hanover, NH

**DEFENSE
 EXPERT(S)** Albert Saltiel, M.D., pediatric critical care,
 St. Petersburg, FL

POST-TRIAL Post-trial motions denied. The defense appealed, but subsequently resolved all claims prior to the scheduled appellate, oral argument, including all potential bad faith claims against the liability insurer for failing to settle within the physicians' policy limits when it had the opportunity to do so.