

XVII/42-1 MEDICAL MALPRACTICE FAILURE TO TIMELY DIAGNOSE AND TREAT HERPES ENCEPHALITIS IN 16-MONTH-OLD INFANT BLINDNESS, CEREBRAL PALSY, AND COGNITIVE DIFFICULTIES

Tsufit Feig, as m/n/g of Efrat Feig v. Norman Deutsch, M.D., P.C., Dr. Norman Deutsch, Kings Highway Hospital Center, and Dr. Norman Sobol 16692/89 4-week trial Verdict 3/30/00 Kings Supreme

Judge: William J. Garry

Verdict: \$13,000,000 v. Deft. Deutsch. Breakdown: \$1,000,000 for past pain and suffering; \$3,000,000 for medical expenses; \$1,000,000 for lost earnings; \$3,000,000 for custodial care; \$1,000,000 for therapeutic services; \$4,000,000 for future pain and suffering.

Defense verdict for Kings Highway and Dr. Sobol. A post-trial motion is pending.

Pltf. Atty: Thomas A. Moore of Kramer, Dillof, Tessel, Duffy & Moore, Manhattan

Deft. Atty: Warren J. Sanger of Bower, Sanger & Futterman, P.C., Manhattan, for Deutsch

Carl M. Erman of Amabile & Erman, P.C., Brooklyn, for Kings Highway Hospital

Andrew S. Kaufman of Kaufman, Borgeest & Ryan, Manhattan, for Dr. Sobol

Facts: On 9/24/85, the infant Pltf., age 16 months at the time, presented to Deft. Dr. Deutsch (100% liable), her pediatrician, for treatment of an upper respiratory infection. She was given Triaminic. Pltf. mother claimed that she called Dr. Deutsch two times during the following 9 days with continued complaints of illness. On 10/3/85, the infant was found unconscious at home at the bottom of a flight of stairs. She was brought to Kings Highway Hospital (defense verdict) at 12:40 PM and was attended by Deft. Sobol (defense verdict). A CAT scan was performed to rule out trauma. A spinal tap was later performed, which revealed findings consistent with possible viral encephalitis. The child was then transferred at approximately 5 PM to N.Y.U. Bellevue, where she was treated with Acyclovir (an anti-viral agent) for herpes encephalitis. She was treated for 1 year at the Rusk Institute and Kingsbrook Medical Center for convalescent care. At the time of trial the infant Pltf. had cerebral palsy, was blind, and wheelchair-bound. She had undergone several surgeries for multiple contractures of various joints. She requires full-time care for all activities of daily living, including bathing, eating, and dressing, and has minimal cognitive functioning.

Pltf. claimed that Dr. Deutsch failed to respond to Pltf.'s complaints of fever, irritability, and occasional loss of balance, and that he should have seen the child again prior to 10/3/85. Dr. Deutsch contended that he had never been advised by the child's mother that the child experienced any neurological symptoms, and argued that the other complaints, such as irritability, were nonspecific. Deft.'s expert testified that given that Pltf. had a low-grade fever, it was not necessary to see the infant again during the 9-day period before she was taken to the hospital.

Pltf. claimed that Dr. Sobol, who attended to the infant at Kings Highway Hospital, and the hospital staff, failed to obtain a proper history, and incorrectly misdiagnosed the child's condition as being the result of trauma, despite the absence of any bruises or marks, a negative CAT scan, and the presence of a fever, a history of viral illness, and the presence of herpetic lesion on the child's lip. Pltf. further contended that the infant should have been immediately treated with antibiotics and Acyclovir for possible encephalitis, and should have been immediately transferred to a tertiary care institution, where she could have received the proper care.

Defts. Sobol and Kings Highway Hospital argued that given the history of a possible fall, a trauma evaluation was appropriate, and contended that the 5-hour delay in transferring the child was not an unreasonable period of time in which to stabilize the child and arrange for an ambulance. Defts. also claimed that much of the infant's neurological impairment was inevitable by the time she arrived at the Kings Highway emergency room. Deft.'s expert in emergency room care testified that the infant Pltf. received proper and timely care. Demonstrative evidence: enlargements of medical records. Jury deliberation: 2 days. Carrier: MLM for Sobol and Kings Highway.

Pltf. Experts: Dr. Stuart Danoff, pediatrician, Norwalk, Connecticut; Dr. Leon Charash, pediatric neurologist, Hicksville; Les Seplaki, Ph.D., economist, New Jersey. Deft. Experts: Dr. Paul Edelson, pediatric infectious diseases, Manhattan; Dr. Anthony Mustalish, emergency medicine, Manhattan; Dr. Margaret Hammerschlag, pediatric infectious diseases, Downstate Medical Center, Brooklyn.