

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SHAKIYA STURGIS a/n/f of)
DARNAYA STURGIS,)
)
Plaintiff,)
)
v.)
)
BAYSIDE HEALTH ASSOCIATION,)
CHARTERED and MACKIE BANKS,)
CNM,)
)
Defendants.)

C.A. No. 04C-06-139 MMJ

ORDER

Upon Plaintiff's Motion for a New Trial

Submitted: December 23, 2006

Decided: March 6, 2007

1. Plaintiff filed a complaint alleging injuries resulting from medical negligence. Specifically, plaintiff claimed that the infant suffered a brachial plexus/shoulder dystocia injury as a result of the medical negligence committed by the defendant nurse midwife during delivery. At the conclusion of the trial, the jury found in favor of defendants.

2. Plaintiff has moved for a new trial on the grounds that the Court erred in granting defendants' motion to preclude plaintiff's standard of care expert from

testifying that the nurse midwife's use of excess traction was the only possible cause of the baby's brachial plexus injury. In a pre-trial ruling considering defendants' *Daubert* motion, the Court found that plaintiff's expert opinion on this issue was not supported by scientific evidence to a reasonable degree of medical probability.

3. Superior Court Civil Rule 59(a) provides:

A new trial may be granted as to all or any of the parties and on all or part of the issues in an action in which there has been a trial for any of the reasons for which new trials have heretofore been granted in the Superior Court.

4. The Court has considered: the arguments of counsel during the initial hearing on the *Daubert* motion; the evidence presented at trial, including expert testimony regarding the scientific literature and other bases for the medical experts' opinions; and the parties' submissions on the motion for new trial. The Court finds that there is no reason to revisit the pre-trial ruling limiting plaintiff's expert to opinions properly supported by well-recognized scientific principles, which are sufficiently established to have gained general acceptance in the particular field at issue.¹

¹Del. R. Evid. 702; *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999); *Daubert v. Merrell Dow Pharmaceuticals*, 526 U.S. 579 (1993); *M.G. Bancorporation, Inc. v. LeBeau*, 737 A.2d 513 (Del. 1999).

THEREFORE, Plaintiff's Motion for New Trial of Shakiya Sturgis a/n/f of Darnaya Sturgis, is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Mary M Johnston _____