

Surgeon ignored residual nerve damage, patient alleged

Type:

Verdict-Defendant

State:

New York

Venue:

Suffolk County

Injury Type(s):

other-compartment syndrome
neurological-nerve damage/neuropathy(nerve damage, peroneal nerve)

Case Type:

Medical Malpractice - Failure to Diagnose, Failure to Treat, Post-Operative Care, Informed Consent

Case Name:

Jessica Mistretta, Inft. Under Age of 18 Yrs. by Her m/n/g, Veronica Mistretta & Veronia Mistretta, Indiv.
v. Wesley Carrion, M.D. & Stony Brook Orthopaedic Associates, P.C.

Date:

March 20, 2008

Parties

Plaintiff(s):

Jessica Mistretta (Female, 15 Years)

Plaintiff Attorney(s):

Joshua Siegel; Kasowitz, Benson, Torres & Friedman LLP; New York, NY, for Jessica Mistretta

Plaintiff Expert(s):

David Smith M.D.; Orthopedic Surgery; Princeton, NJ called by: Jessica Mistretta Louis Levy M.D.;
Neurology; Long Beach, NY called by: Jessica Mistretta

Defendant(s):

Wesley Carrion,

Stony Brook Orthopaedic Associates, P.C.

Defense

Attorney(s):

Shawn P. Kelly; Kelly, Rode & Kelly LLP; Mineola, NY, for Wesley Carrion, Stony Brook Orthopaedic
Associates, P.C.

Defendent

Expert(s):

Gail Chorney Pediatric Orthopedics; New York, NY for Wesley Carrion, Stony Brook Orthopaedic
Associates, P.C. Howard Dorfman Pathology; New York, NY for Wesley Carrion, Stony Brook

Orthopaedic Associates, P.C.

Facts:

On Nov. 20, 2001, plaintiff Jessica Mistretta, 15, underwent a derotational osteotomy. The procedure was performed by orthopedist Dr. Wesley Carrion, and it was intended to correct Jessica's malalignment syndrome--abnormal alignment of various components of the lower limbs.

Jessica subsequently reported that she was suffering pain that stemmed from her right leg. On Dec. 11, 2001, doctors determined that Jessica was suffering palsy of her right leg's peroneal nerve. The diagnosis was subsequently confirmed by an electromyography and nerve-conduction-velocity tests.

Jessica's pain continued. On Feb. 28, 2002, doctors determined that Jessica was suffering compartment syndrome, which is a pressurized condition of a muscle or muscles. The condition produces impingement of nerves and/or blood vessels, and it can threaten an associated limb. Jessica's mother, Veronica Mistretta, claimed that the condition was a product of untreated damage that occurred during the osteotomy.

Veronica Mistretta, acting individually and as Jessica's parent and natural guardian, sued Carrion and his practice, Stony Brook Orthopaedic Associates, P.C. The plaintiffs alleged that Carrion failed to timely address Jessica's postoperative pain, that he failed to obtain informed consent to the osteotomy, that his failures constituted medical malpractice and that his practice was vicariously liable for his actions.

Plaintiffs' counsel claimed that Jessica's compartment syndrome was a result of unaddressed compression of her right leg's peroneal nerve. He contended that her postoperative pain indicated that she could have been suffering nerve damage, and he claimed that Carrion should have ordered performance of a fasciotomy--the incision and division of fascia, which is a protective tissue that covers or binds bodily structures. He contended that the procedure would have relieved the compression of the peroneal nerve and prevented Jessica's development of compartment syndrome.

Jessica's mother also claimed that Carrion never disclosed that compartment syndrome could have resulted from the osteotomy.

Carrion's expert pediatric orthopedist opined that Jessica's postoperative complaints were a normal product of the extensive surgery that Carrion performed. The expert opined that Jessica's symptoms did not provide any indication that compartment syndrome could have developed. However, Carrion acknowledged that Jessica's peroneal-nerve palsy was most likely a result of compression of that nerve.

Injury:

Plaintiffs' counsel claimed that Jessica suffered compartment syndrome. On Feb. 28, 2002, Jessica underwent a peroneal-nerve exploration and microneurolysis procedure.

The plaintiffs' expert neurologist and expert orthopedic surgeon opined that Jessica suffers a permanent, residual disability that produces a limp and prevents Jessica's resumption of recreational activities. Prior to the original surgery, Jessica was a member of her high school's track team, basketball team and cheerleading squad.

Jessica's mother sought recovery of a total of \$2 million for Jessica's past and future pain and suffering. She also presented a derivative claim.

Carrion's expert muscular-skeletal bone pathologist opined that pathology slides that stemmed from follow-up surgery did not reveal any evidence of compartment syndrome.

Result:

The jury rendered a defense verdict.

Trial Information:

Judge:

Peter Mayer

Trial Length:

3 weeks

Trial Deliberations:

7 hours

Jury Vote:

6-0

Jury Composition:

1 male/ 5 female

Post Trial:

Judge Peter Mayer denied plaintiffs' counsel's motion to set aside the verdict.

Editor's Comment:

This report is based on information that was provided by defense counsel. Plaintiffs' counsel declined to contribute.
