

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BROOK BOGACZYK, nee Canterbury :  
And NEIL BOGACZYK, as :  
Administrators Ad prosequendum of :  
The Estate of Amaya Sage Bogaczyk, :  
Deceased and in their own right :  
As Husband and Wife and Parents :  
And Natural Guardians of Amaya :  
Sage Bogaczyk, deceased, :  
Plaintiffs :  
vs. : NO. 01-00337  
: :  
: CIVIL ACTION  
JAMES R. PATTERSON, M.D., :  
SASHA CAVANAGH, M.D., :  
SUSQUEHANNA HEALTH SYSTEM d/b/a :  
WILLIAMSPORT HOSPITAL AND MEDICAL :  
CENTER, and SUSQUEHANNA PHYSICIAN :  
SERVICES, :  
Defendants :

ORDER

AND NOW, this \_\_\_\_day of October 2003, the Court GRANTS the Defendants' Motion in Limine regarding the scope of recoverable damages.

Pennsylvania does not recognize a cause of action for a parent's loss of a child's consortium. Jackson v. Tastykake, 437 Pa.Super. 34, 648 A.2d 1214 (1994). Therefore, Plaintiffs will be precluded from presenting any evidence in support of such a claim at trial.

The loss of life itself also is not compensable in Pennsylvania. Incollingo v. Ewing, 444 Pa. 299, 282 A.2d 206 (1971).

Plaintiffs cannot recover on a claim for loss of services, because such a claim is not made in Plaintiffs Fourth Amended Complaint and neither the Bunin Associates report nor other appropriate evidence supports such a claim.

Plaintiffs cannot recover for medical expenses because there is no evidence that Plaintiffs incurred additional medical expenses as a result of Defendants' failure to perform a c-section earlier.

Plaintiffs cannot recover for Amaya Sage Bogaczyk's pain and suffering, because she was stillborn. See Nye v. Commonwealth, Department of Transportation, 331 Pa.Super. 209, 213-214, 480 A.2d 318, 321 (1984)(decedent's estate cannot recover for pain and suffering if the decedent is not conscious at any time between the time on injury and the time of death). Plaintiffs also have not produced any expert medical testimony in response to Defendants' motion in limine to support a claim of pain and suffering allegedly endured by the stillborn baby. Similarly, Plaintiffs cannot recover for Amaya Sage Bogaczyk's loss of life's pleasures. Willinger v. Mercy Catholic Medical Center, 482 Pa. 444, 446, 393 A.2d 1188, 1190 (1978)(compensation for the loss of life's amenities is recoverable only if the victim survives the accident giving rise to the cause of action).

Plaintiffs have not pled a cause of action for negligent infliction of emotional distress in their Fourth

Amended Complaint. Absent such a cause of action, Plaintiffs cannot recover damages for mental suffering, grief or distress of mind as a result of the death of their baby. Gaydos v. Domabyl, 301 Pa. 523, 152 A. 542 (1930). Even if such a cause of action was pled, Plaintiffs have failed to show a physical injury or physical manifestation of their emotional distress. Paves v. Corson, 765 A.2d 1128, 1134 (Pa.Super. 2000), rev'd on other grounds, 569 Pa. 171, 801 A.2d 546 (Pa. 2002); Strain v. Ferroni, 405 Pa.Super. 349, 358, 592 A.2d 698, 703 (1991); Boarts v. McCord, 354 Pa.Super. 96, 103-104, 511 A.2d 204, 208 (1986); but compare Krysmalski v. Tarasovich, 424 Pa.Super. 121, 622 A.2d 298, 305 (1993).

Plaintiff Brook Bogaczyk has no right of recovery in her own right for physical pain and suffering and emotional distress. Plaintiff Brook Bogaczyk did not sustain a physical injury as a result of Defendants' alleged negligence. Plaintiffs claim Brook Bogaczyk suffered bleeding. Defendants, however, did not cause the bleeding. Plaintiff Brook Bogaczyk was bleeding prior to her arrival at the hospital. Plaintiffs have offered no medical testimony in opposition to Defendants' motion in limine to establish that Defendants' delay in performing a c-section caused any injury to Brook Bogaczyk. Plaintiffs also assert that Brook Bogaczyk suffered from hypertension. Again, Plaintiffs have failed to offer medical testimony in opposition to Defendants' motion in

limine that her hypertension was caused by Defendants' failure to treat her bleeding. To the contrary, Dr. Iffy's report indicates the hypertension was "pregnancy induced."

By The Court,

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Kenneth D. Brown, Judge

cc: Samuel Rosenthal/Adam Wilf, Esquire  
Robert Seiferth, Esquire  
David Bahl, Esquire  
Work File  
Gary Weber, Esquire (Lycoming Reporter)