IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BROOK BOGACZYK, nee Canterberry 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,	:	**No. 01-00337**
Plaintiffs	:	
vs.	:	**Civil Action - Law**
JAMES R. PATTERSON, M.D., SASHA CAVANAGH, M.D., SUSQUEHANNA HEALTH SYSTEM, d/b/a WILLIAMSPORT HOSPITAL AND MEDICAL CENTER, and SUSQUEHANNA PHYSICIANS SERVICES,	:	
Defendants	:	

OPINION AND ORDER

This matter came before the Court on plaintiffs' motion for post trial relief. The relevant facts follow.

Plaintiff Brooke Bogaczyk, nee Canterberry,[1] was expecting her first child. She was routinely seen by Dr. James Patterson, a second year resident in the Family Practice Residency Program at the Williamsport Hospital and Medical Center. On March 31, 2000, she saw Dr. Patterson, and he administered Cytotee to ripen her cervix because Mrs. Bogaczyk

1 On March 31, 2000 and April 1, 2000, this plaintiff's name was Brooke Canterberry. For the sake of consistency, however, the Court will refer to her as Mrs. Bogaczyk throughout this Opinion.

was past her due date. During the early morning hours on April 1, 200l, Mrs. Bogaczyk woke up bleeding. As she went into the bathroom, she noticed blood running down her legs and three blood clots. Plaintiff Neil Bogaczyk called the hospital, while Brooke Bogaczyk showered.

The plaintiffs arrived at the hospital around 2:30 a.m. Dr. Cavanaugh, a first year resident in the Family Practice Residency Program, was on call. One of the nurses called Dr. Cavanaugh and told her a patient of Dr. Patterson's had arrived. Dr. Cavanaugh asked the nurse to let Dr. Patterson know Mrs. Bogaczyk was at the hospital. Dr. Patterson, who was at home, paged Dr. Cavanaugh a few minutes later and asked her to evaluate Mrs. Bogaczyk. A fetal monitor was utilized to monitor and record the baby's heart rate and Mrs. Bogaczyk's contractions. Dr. Cavanaugh spoke to the Bogaczyks, who told her that Mrs. Bogaczyk woke up in a small puddle of blood. Dr. Cavanaugh reviewed the fetal monitor strip and noted the baby's heart rate was within the normal range and reassuring. She then performed a speculum exam and discovered a lime-sized clot inside Mrs. Bogaczyk's vagina, but did not see any active bleeding. Dr. Cavanaugh called Dr. Patterson to communicate her findings and check with him to see if it was okay to do a cervical exam. Dr. Cavanaugh asked Dr. Patterson if Mrs. Bogaczyk had a prior ultrasound that showed placenta previa. Dr. Patterson said

Mrs. Bogaczyk had an ultrasound that showed everything was fine and he felt the baby's head the day before, so he told her go ahead with a cervical exam.

The cervical exam showed that Mrs. Bogaczyk's cervix was dilated two centimeters and was about 75% effaced. When Dr. Cavanaugh took her hand out, there was blood on the glove, but it wasn't anything she thought was out of the ordinary. She called Dr. Patterson again to let him know Mrs. Bogaczyk was dilated two centimeters. Dr. Patterson said he was going to leave his house and come in to see Mrs. Bogaczyk.

Dr. Cavanaugh's examination of Mrs. Bogaczyk began at approximately 2:45 a.m. and was completed before 3:00 a.m.

At approximately 3:20 a.m. to 3:30 a.m. there were some abnormalities on the fetal heart tracings. Dr. Cavanaugh gave Mrs. Bogaczyk IV fluids and oxygen. Dr. Patterson called Dr. Cavanaugh from his cell phone while he was in his car on his way to the hospital. Dr. Cavanaugh described the situation to him and he told her to call Dr. Heilmann, their attending physician, and let him know what was going on. Dr. Cavanaugh called Dr. Heilmann and explained to him that the fetal tracings were showing large undulations, between ll0 and 150. Dr. Cavanaugh was on the phone for l0-15 minutes. While she was on the phone with Dr. Heilmann, the large undulations stopped and baby's heart rate returned to a base line above 120 with accelerations. Dr. Cavanaugh asked Dr. Heilmann if

she should call Dr. Lamade, the obstetrician on call. Since the heart rate came back to normal, Dr. Heilmann told Dr. Cavanaugh not to call Dr. Lamade and to just keep doing what she was doing and keep him posted.

Right after Dr. Cavanaugh got off the phone with Dr. Heilmann, Dr. Patterson arrived at the hospital. It was around 3:45 a.m. Dr. Patterson then took over Mrs. Bogaczyk's care. Dr. Patterson spoke to the Bogaczyks and got some historical information about Mrs. Bogaczyk's bleeding and contractions prior to her arrival at the hospital. Shortly after 4:00 a.m. Dr. Patterson did an ultrasound to make sure there was no placenta previa and to observe the baby. There wasn't a placenta previa and the baby's head was down low. Dr. Patterson also saw the baby's umbilical cord and the four chambers of the baby's heart on the ultrasound. Dr. Patterson then reapplied the fetal heart monitor, which he had removed to perform the ultrasound. The baby's heart rate was within the normal range of 120 to 150. Ten or fifteen minutes later, the baby's heart rate decreased so that the rate was between 90 and 110 beats, which was below the normal rate. Dr. Patterson reapplied oxygen and repositioned Mrs. Bogaczyk to try to increase the baby's heart rate. When these measures didn't help, Dr. Patterson had the nurses call Dr. Heilmann and Dr. Lamade. Dr. Lamade arrived approximately 25 minutes later. By that time, there was no fetal heart rate. Dr.

Lamade performed an emergency caesarian section. The baby was delivered but she had no heart tones and wasn't breathing. The doctors attempted to resuscitate the baby, but could not. A large amount of blood was found in the baby's trachea and stomach.

The baby's body and placenta were sent to Pathology so an autopsy could be performed. The autopsy results showed an approximate 25% abruption of the placenta, an extra placenta lobe with a clot behind it, and velementous insertion of the cord. Normally, the blood vessels would remain inside the umbilical cord until the cord attached to the middle of the placenta. With the velementous insertion, however, the cord just entered the membranes and the blood vessels spread out from there.

On or about March 6, 2001, the plaintiffs filed a lawsuit against Dr. Patterson, Dr. Cavanaugh, the Susquehanna Health System doing business as the Williamsport Hospital and Medical center and Susquehanna Physicians Services. The plaintiffs asserted theories of medical negligence, corporate negligence, vicarious liability and ostensible agency. In their answers to the plaintiffs' complaints, the defendants denied that Susquehanna Health System (hereinafter "SHS) does business as the Williamsport Hospital and Medical Center. The defendants further indicated that the Williamsport Hospital and Medical Center (hereinafter "the Hospital") is a non-

profit corporation and SHS is a corporation that provides management services for the Hospital.

The Court conducted a jury trial in this case on October 30, October 31, and November 3, 2003. During trial, the plaintiffs called Dr. Leslie Iffy as their expert witness. Dr. Iffy's main criticism of all the physicians is that they breached the standard of care by failing to call an obstetrician within 15 minutes of Mrs. Bogaczyk's arrival at the hospital. Dr. Iffy also criticized the doctors for failing to order blood tests to cross match blood in the event a transfusion was needed during the caesarian section and criticized Dr. Patterson for not immediately coming to the Hospital. Dr. Iffy believed all these breaches were substantial factors in causing the death of the baby. The plaintiffs' attorney asked Dr. Iffy about the Hospital's protocols, but he did not find that they deviated from the standard of care. Dr. Iffy did not directly criticize the Hospital or SHS. In fact, SHS was not mentioned during Dr. Iffy's testimony.

The parties entered a stipulation that Dr. Patterson and Dr. Cavanaugh were employed by Susquehanna Physician Services, which operated a family practice residency program at the Hospital. N.T., October 30-31, 2003, at pp. 214-215

The plaintiff did not present any testimony regarding: (1) the relationship between SHS and the Hospital;

(2) the relationship between SHS and Drs. Cavanaugh and Patterson; or (3) Dr. Heilmann's relationship to SHS, the Hospital or Susquehanna Physician Services.

After the plaintiffs rested their case, defense counsel moved for a nonsuit on the corporate liability claim against SHS, which the Court granted. N.T., October 30-31, 2003, at pp. 216-217.

The defense attorney also moved for a directed verdict in favor of SHS on the plaintiffs' ostensible agency theory. This motion was based on the fact that the plaintiffs never named the Hospital as a party, the plaintiffs didn't present any testimony regarding the relationships between SHS and the physicians, especially Dr. Heilmann, and Dr. Heilmann's testimony that although he has staff privileges at the Hospital, he works for the residency program. During argument on this motion, the plaintiffs' attorney produced a federal antitrust case involving SHS and the Hospital and several pages of printouts from SHS' website. The plaintiffs' attorney also noted that SHS was listed in or referred to in the medical records, which had been introduced in plaintiff's case-in-chief as Exhibit 1. The plaintiffs' attorney wanted the Court to take judicial notice of the antitrust case and allow the plaintiffs to present the website pages in rebuttal. The Court read the case and reviewed the website pages. The Court found that the issue in the antitrust case was

different, so collateral estoppel did not apply. All the website pages presented to the Court were from 2003. None of them showed whether SHS held out itself as doing business as the Hospital in 2000 or whether SHS held out Dr. Heilmann as one of their doctors in 2000. The Court granted the motion.

The defendants called Dr. Bolognese as their expert witness. Dr. Bolognese disagreed with Dr. Iffy. Dr. Bolognese testified that the standard of care did not require an obstetrician to be called until the baby's heart rate fell below the normal range. When the baby's heart rate fell below the normal range, Dr. Patterson called Dr. Lamade or had one of his nurses call him. In Dr. Bolognese's opinion, the appropriate medical treatment when Mrs. Bogaczyk came to the Hospital was to examine her and monitor her and the baby's condition. He also reviewed the fetal monitor tracings and did not see a non-reassuring pattern justifying obstetric consultation and intervention until after 4:00 a.m. when the baby's heart rate was 90 to 110. On cross-examination, Dr. Bolognese admitted he would have immediately came to the Hospital and would not have left Mrs. Bogaczyk in the care of a first year resident for an hour and one-half, but it was not a substantial factor in causing the baby's death because Dr. Cavanaugh did everything she should have done.

On November 3, 2003, the jury returned a verdict in favor of the defendants. The jury found Dr. Cavanaugh was not

negligent. Although the jury found Dr. Patterson was negligent, it did not find that the negligence was a substantial factor in causing the death of the Bogaczyk's baby.

The plaintiffs filed a motion for post trial relief seeking a new trial. Although the motion has numerous subparts, they can be grouped into four (4) general areas: (1) the Court erred in failing to strike Dr. Heilmann's opinion testimony that the baby's death was caused by a velementous insertion of the cord and/or in failing to instruct the jury to disregard such testimony; (2) the Court erred in granting the defendants' non-suit on corporate liability and by failing to instruct the jury on corporate liability as requested in the plaintiffs' points for charge; (3) the Court erred in granting the defendants' motion for a directed verdict on the issue of ostensible agency and by failing to instruct the jury on ostensible agency as requested in the plaintiffs' points for charge; and (4) the verdict was against the weight of the evidence.

With respect to Dr. Heilmann's testimony, the plaintiffs assert that their attorney objected to defense counsel's attempt to have Dr. Heilmann establish that the baby's death was caused by a velementous insertion and that counsel asked that the witness' response be stricken. The plaintiffs claim that the Court sustained the objection, but

never ruled on counsel's motion to strike. The plaintiffs also claim the Court erred in failing to provide a cautionary instruction to the jury. The plaintiffs' recollection of Dr. Heilmann's testimony and counsel's response thereto isn't completely accurate.[2] Dr. Heilmann testified that blood would not enter the amniotic sac and get into the baby's trachea and stomach in the case of placental absorption. N.T., Oct. 30-31, 2003 at pp. 374-375. The plaintiffs' attorney did not object to this testimony. Id. Dr. Heilmann then notes two unusual things in this case, there was an extra lobe of placenta (a succenturiate lobe) and velamentous insertion and explained them in response to defense counsel's question about how blood would get into the amniotic sac. N.T., Oct. 30-31, 2003, at pp. 376-377. Again, the plaintiffs' attorney did not object. When defense counsel went on to ask if Dr. Heilmann had an opinion as to what happened in this case, the plaintiffs' attorney objected before Dr. Heilmann made any response. N.T., October 30-31, 2003, at p. 378. The plaintiffs' attorney did not make a motion to strike or make a request that the Court give the jury a cautionary instruction. The Court sustained the objection. The defense counsel then moved on to factual questions about whether the velamentous insertion of the cord and the succenturiate lobe were sent to

2 In fairness to the plaintiffs' attorney, he did not have a copy of the transcript when he filed the motion for post-trial relief or brief in

pathology for analysis. Since the plaintiffs' attorney did not move to strike or make a request for a cautionary instruction, these issues are waived. See Tagnani v. Lew, 493 Pa. 371, 426 A.2d 595 (1981) (where objection was sustained but no requests for cautionary instructions made, the issue was waived and the trial court could not grant a new trial on that issue); Kaplan v. O'Kane, 835 A.2d 735, 741 n.4 (Pa.Super. 2003); Wagner v. York Hospital, 415 Pa.Super. 1, 16, 608 A.2d 496, 503 (1992) (appellant's allegation that it was error for exhibits to go to the jury without a cautionary instruction that the exhibits were not conclusive evidence of appellees' damages was waived because appellate failed to request this instruction when the exhibits went out with the jury). Even if the plaintiffs' counsel had made such a request, the Court would have denied it, since Dr. Heilmann never said a word in response to defense counsel's question.

The plaintiffs also contend the Court erred in granting a non-suit on their claim for corporate liability. In Thompson v. Nason Hospital, 527 Pa. 330, 591 A.2d 703 (1991), the Pennsylvania Supreme Court adopted the corporate negligence theory and stated that a hospital has the following duties: (1) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; (2) a duty to select and retain only competent physicians; (3) a duty to

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support of that motion.

oversee all persons who practice medicine within its walls as to patient care; and (4) a duty to formulate, adopt and enforce adequate policies to ensure quality care for the patients. These duties are non-delegable. Unless a hospital's negligence is obvious, a plaintiff must produce expert testimony that the hospital deviated from an accepted standard of care and the deviation was substantial factor in causing the harm to the plaintiff. Welsh v. Bulger, 548 Pa. 504, 514, 698 A.2d 581, 585-586 (1997).

This issue and the ostensible agency issue are complicated by the fact that the plaintiffs did not sue the Hospital, but rather sued SHS claiming it did business as the Hospital.

The plaintiffs did not present any evidence regarding the facilities or equipment used in the care and treatment of Mrs. Bogaczyk and her baby. The plaintiffs' attorney questioned their expert, Dr. Iffy, about the Hospital protocols. Dr. Iffy stated the protocols were scant, but he didn't think he would consider it a deviation from standard practice. N.T., October 30-31, 2003, at p. 87. Although Dr. Iffy testified the physicians deviated from the standard of care by failing to call in an obstetrician to perform a c-section, he did not offer expert testimony regarding the

actions or inactions of the institution itself.[3] Under a theory of corporate negligence, a corporation is held directly liable for its own negligent acts. Welsh v. Bulger, 584 Pa. at 513, 698 A.2d at 585. Since the plaintiffs did not introduce testimony to establish SHS was negligent, the Court granted the defendants' motion for a non-suit and denied the plaintiffs' proposed points for charge on this claim.

The plaintiffs also claim the Court erred in granting the defendants' motion for a directed verdict on their ostensible agency claims against SHS. Under the doctrine of ostensible agency, a hospital may be held liable for the negligent acts or omissions of an independent doctor if the plaintiff proves that: (1) the patient looked to the hospital rather than the individual physician for care and (2) the hospital held out the physician as its employee. Capan v. Divine Providence Hospital, 287 Pa.Super. 364, 430 A.2d 647, 649 (Pa.Super. 1980). A holding out occurs when the hospital acts or omits to act in some way which leads the patient to a reasonable belief she is being treated by the hospital or one of its employees. Id.

As with the corporate negligence issue, this issue is complicated by the fact that the plaintiffs did not name the Hospital as a separate defendant. Instead, the plaintiffs

3 In addition to not providing expert testimony, the plaintiffs did not offer evidence on the relationship between SHS and the Hospital.

sued SHS doing business as the Hospital. In their answers to the plaintiffs' complaints, the defendants informed the plaintiffs that SHS did not do business as the Hospital and that the Hospital was a separate corporation. See Answer to Second Amended Complaint filed on October 1, 2001 and Answer to Fourth Amended Complaint filed on January 3, 2002. Despite the fact that the defendants filed these answers before the expiration of the statute of limitations in this case, the plaintiffs did not amend their complaints to add the Hospital as a defendant. The Court also does not believe the plaintiffs conducted any discovery on the issue of the relationship between SHS and the Hospital.

During their case-in-chief, the plaintiffs did not present any testimony regarding Dr. Heilmann's relationship to the Hospital or SHS or the relationship between SHS and the Hospital.[4] The defendant's made a motion for a directed verdict. During argument on that motion, the plaintiffs' attorney presented the Court with a copy of the consent form signed by Mrs. Bogaczyk, a copy of a federal antitrust case from the Middle District of Pennsylvania involving SHS and copies of four items from SHS' website.

The consent form was the only item presented by the

4 Since the jury did not find any liability against either Dr. Cavanaugh or Dr. Patterson, the issue of either of those doctors being the ostensible agent of SHS or the Hospital is moot. The jury did not rule upon Dr. Heilmann's negligence because the plaintiffs did not sue Dr. Heilmann directly; their only claim relating to Dr. Heilmann was that SHS was

plaintiffs that they had introduced into evidence. The Court did not find the consent form especially helpful to the plaintiffs. The defendants asserted that SHS was a management company. The consent form was consistent with the defendant's assertion. The first sentence of that form states: "I consent to admission or treatment within the Hospitals and other entities managed by Susquehanna Health System (SHS)." Moreover, the consent form specifically advised Mrs. Bogaczyk that the physicians providing care to her "may not be the employees or agents of SHS."

With respect to the federal decision in HealthAmerica Pennsylvania Inc. v. Susquehanna Health System, 278 F.Supp.2d 423 (M.D.Pa. 2003), the plaintiffs wanted the Court to preclude the defendants from denying SHS did business as the Hospital on the basis of collateral estoppel. For collateral estoppel to apply, however, the plaintiffs must prove the following four elements: (1) the issue decided in the previous adjudication was identical with the one presented in the later action; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication; and (4) the party against whom it is asserted has had a full and fair opportunity to litigate the issue in question in the prior adjudication. Murphy v. Duquesne Univ. of the Holy

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responsible for his actions under an ostensible agency theory.

Ghost, 565 Pa. 571, 599, 777 A.2d 418, 435 (2001); Krosnoski v. Ward, 836 A.2d 143, 148 (Pa.Super. 2004); Nelson v. Heslin, 806 A.2d 873, 877 (Pa.Super. 2002). The Court did not believe collateral estoppel applied because it found that the issues presented in the HealthAmerica case were different from the issues presented in this medical negligence case. The issue in the HealthAmerica case was whether the defendants were violating antitrust laws by conspiring to fix prices in Lycoming County. The Court found that even though the various entities had a unique organizational form, they were sufficiently akin to a corporate parent and its subsidiaries that they were legally incapable of conspiring to fix prices for managed care organizations. The issue was not whether SHS was responsible for the medical decisions being made by the physicians who had privileges at the Hospital. In fact, the HealthAmerica decision sets forth various provisions of the Alliance Agreement, which established SHS in 1994, including the provision that the Boards of Directors of the respective Providence Health System (PHS) and North Central Pennsylvania Health System (NCPHS) **Affiliates retain authority and responsibility for mission and values, governance, credentialing, medical staff issues and quality assurance of the Affiliates**. 278 F.Supp.2d at 428(emphasis added). The Williamsport Hospital and Medical Center is an affiliate of

NCPHS. 278 F.Supp.2d at 428 n.3.

In sum, the Court found that collateral estoppel did not apply because the issue in HealthAmerica was not identical to the issue presented in this case and because language in HealthAmerica supported the defendants' assertion that SHS made the financial management decisions, but the Hospital retained authority and responsibility for the medical decisions.

There also were problems with the website pages. First, as previously mentioned, the plaintiffs did not introduce this evidence in their case-in-chief. Second, the website pages the plaintiffs provided to the Court at the argument on the defendants' motion for a directed verdict were last revised in 2003. While those pages might show whether or not SHS was holding itself out as doing business as the Hospital in 2003, the plaintiffs did not have any evidence to show what the circumstances were three year earlier on April 1, 2000, the date of this incident. The plaintiffs' counsel wanted to call witnesses from SHS on the ostensible agency issue, but counsel did not know who those witnesses would be. The Court does not believe it was erroneous for the Court to decide this issue without allowing the plaintiffs to present witnesses from SHS in rebuttal under these circumstances. To allow the plaintiffs to do so would have resulted in delay and the re-opening of discovery toward the end of this trial. The

Court would have had to stop the trial and let counsel try to determine things such as who was responsible for the website and/or advertising in 2000, what the website and/or advertising content was then, and whether the individuals with this type of information were even available to testify. Neither counsel had any idea how long it would take to determine the names of these potential witnesses and locate them.

The Court also notes that several of the web pages attached to the plaintiffs' motion for post trial relief were not provided to the Court during trial. The web pages that plaintiffs' counsel provided to the Court as Plaintiffs' Exhibit 10 totaled nine pages and covered four topics. There were four pages entitled "About Susquehanna Health System," which were last revised February 12, 2003. "Careprovider. . . The Choice Is Yours" was a single page that was last revised on January 1, 2003. The pages entitled "Facilities" and "Medical Staff" each consisted of two pages and were last revised June 5, 2003. The pages in Exhibit B to the plaintiffs' post trial motion entitled "General Information," "Our Doctors," "Timothy M. Heilmann MD," "The Williamsport Hospital and Medical Center Family Practice Residency Program" and "Meet Our Faculty" as well as the article from the Williamsport Sun-Gazette were not provided to the Court during the trial. When these pages did not look familiar to the

Court, it compared the pages in Exhibit B to the pages in Exhibit 10 retained by the court reporter. The Court is not in any way suggesting that the plaintiffs' counsel was attempting to mislead the Court or anything of that nature. Instead, the Court believes plaintiffs' counsel either inadvertently did not provide those pages to the Court during trial or he failed to keep copies of Exhibit 10 for his records and reprinted the web pages he believed he had provided to the Court and attached them to his motion.[5] Regardless of the reason for the discrepancy, since this information was not provided to the Court during trial, the Court does not believe it can form the basis to grant a new trial.

Since the plaintiffs did not introduce sufficient evidence to show that SHS did business as the Hospital and the Hospital held out Dr. Heilmann as its employee or to show that the plaintiff looked to SHS (as opposed to the Hospital) for treatment and SHS held out Dr. Heilmann as its employee, the Court granted the defendants' motion for a directed verdict. With the ostensible agency claim no longer a part of the case, there was no need to instruct the jury on the ostensible agency theory.

The plaintiffs also claim the verdict was against

5 Since all the web pages attached as Exhibit B are dated November 11, 2003 (approximately one week after the verdict), it appears likely that the

the weight of the evidence. Based on the arguments in the plaintiffs' brief, the Court believes this issue relates solely to Dr. Patterson's liability.

A new trial will not be granted on weight of evidence issues unless the verdict is so contrary to the evidence as to shock one's sense of justice; a mere conflict in testimony will not suffice as grounds for a new trial. Daniel v. William R. Drach Co., 849 A.2d 1265, 1267 (Pa.Super. 2004); Nemirovsky v. Nemirovsky, 776 A.2d 988, 993 (Pa.Super. 2001). The test is not whether the court would have reached the same result, but rather after due consideration of the evidence found credible by the fact-finder and viewing the evidence in the light most favorable to the verdict winner, whether the fact-finder could have reasonably reached its conclusion. See Daniel, supra; Turney Media Fuel Inc. v. Toll Bros. Inc., 725 A.2d 836, 841 (Pa.Super. 1999).

The plaintiffs contend the jury's finding that Dr. Patterson's negligence was not a substantial factor in cause the death of the Bogaczyk baby is against the weight of the evidence. The Court cannot agree. This case was primarily a battle of the experts. The plaintiffs' expert, Dr. Leslie Iffy, testified that the failure to call an obstetrician within fifteen minutes of Mrs. Bogaczyk's arrival at the Hospital so that a c-section could be performed breached the

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latter scenario occurred.

standard of care and was a substantial factor in causing the baby's death. The defense expert, Dr. Ronald Bolognese, testified that although he would not have waited to depart for the Hospital and would not have called a first year resident to evaluate Mrs. Bogaczyk, Dr. Patterson appropriately called an obstetrician when the baby's heart rate fell below the normal range at approximately 4:20 a.m. and neither Dr. Patterson nor Dr. Cavanaugh breached the standard of care by failing to call an obstetrician earlier. N.T., November 3, 2003, at pp. 85, 102-104. The jury as the fact-finder was free to accept the credibility of all, part or none of these doctors' testimony. It appears the jury accepted the testimony of Dr. Bolognese and rejected the testimony of Dr. Iffy. Based on Dr. Bolognese's testimony, the jury reasonably concluded that Dr. Patterson was negligent for failing to immediately come to the Hospital, but that failure was not a substantial factor in causing the baby's death because Dr. Cavanaugh appropriately handled Mrs. Bogaczyk's care during Dr. Patterson's absence.

ORDER

AND NOW, this ___ day of December 2004, for the reasons set forth in the foregoing Opinion, the Court DENIES the plaintiffs' Motion for Post Trial Relief.

By The Court,

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Kenneth D. Brown, Judge

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