IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ROSE NAGLE, a minor, by and through her parents Joanna and Thomas Nagle, Plaintiff	:	NO. 11 - 00,271
	:	CIVIL ACTION - LAW
vs.	:	
THE WILLIAMSPORT HOSPITAL, THE WILLIAMS-PORT HOSPITAL AND MEDICAL CENTER, SUSQUEHANNA REGIONAL HEALTHCARE ALLIANCE, SUSQUEHANNA HEALTH SYSTEM, THOMAS J. MARTIN, M.D., DAVID E. YOUNG, M.D., MARY BETH O'HARA, D.O., CICILY KNIGHT, R.N., CHERYL B. GIRIO, R.N., BETHANY MINIUM, R.N., CHERYL MOYER, R.N., LAURIE TATE, R.N., STACY R. SAUNDERS, R.N., TARA KOSER, R.N., and KATHERINE A. SHIPE, N.E., Defendants	:	First Motion for Partial Summary Judgment

OPINION AND ORDER

Before the court is a motion for partial summary judgment filed by Defendants Thomas Martin, M.D., David Young, M.D., Cheryl Moyer, R.N., Laurie Tate, R.N., Stacy Saunders, R.N. Katherine Shipe, N.E. and Tara Koser, R.N. on February 1, 2013. Argument on the motion was heard April 1, 2013. By agreement at that time, the claims against Defendants Martin, Young, Moyer, Shipe and Koser were dismissed, leaving only the claims against Defendants Tate and Saunders.

In their Complaint, Joanna and Thomas Nagle allege that the individually-named defendants failed to recognize the signs and symptoms of a strep infection which apparently developed shortly after Rose' birth and that, as a result of the failure to administer antibiotics in a timely fashion, Rose suffered a catastrophic brain injury. Plaintiffs plan to introduce the testimony of Dr. Harley Rotbart, a specialist in pediatric infectious diseases, to the effect that had antibiotics been given at the time of onset of moaning (the first outward sign of a strep infection) or within twelve hours thereafter, "the sepsis and meningitis would have either been

cured without any sequelae or reduced significantly in severity". In the instant motion, Defendants argue that Dr. Rotbart's opinion can be translated to mean that antibiotics given *after* twelve hours later would not have mitigated or avoided the brain injury, and consequently seek to dismiss from the action all defendants who rendered care to Rose only after the twelve hour window. Plaintiffs agree with Defendants' position to a point: they have agreed to dismiss certain defendants, those who cared for Rose more than 24 hours after the onset of moaning. With respect to Defendant Tate and Defendant Saunders, however, who cared for Rose during the overnight hours, between twelve and 24 hours after the onset of moaning, Plaintiffs argue that they will present sufficient evidence that their failure to diagnose Rose' condition and administer antibiotics increased the risk of harm.

Plaintiffs point to the opinions of two other experts, Dr. Marcus Hermansen, that "an earlier administration of antibiotics would have spared Rose of all her brain damage and she would be a normal, healthy infant today", and Dr. Daniel Adler, that "the initiation of emergent treatment was required and could have been well before it was", arguing that such opinions depict "an ongoing failure to diagnose and treat", and that implicit in these opinions is that "this ongoing failure increased the risk of harm." Neither of these experts provides an opinion of *when* the administration of antibiotics would have been required in order to avoid harm, however, and in fact, Dr. Hermansen states that "the amount of benefit achieved from earlier antibiotics is best addressed by an expert in infectious disease or pediatric neurology."

Plaintiffs are required to produce the testimony of an expert who states his opinion to a reasonable degree of medical certainty. *See* Griffin v. University of Pittsburgh Medical Center, 950 A.2d 996 (Pa. Super. 2008). They may not simply argue that their theory is "implicit" in the expert's testimony. The jury will be left to speculate whether treatment initiated between twelve and 24 hours after the onset of symptoms would have changed the outcome and by how much. Such speculation is not permissible, *see* Smith v. Bell Telephone Company, 153 A.2d 477 (Pa. 1959), and therefore, Plaintiffs' claims against these two defendants cannot proceed. See Cuthbert v. Philadelphia, 209 A.2d 261 (Pa. 1965)(it is the duty of the trial court to determine whether sufficient evidence has been introduced such that a jury is not left to speculate, before the issue can be submitted to the jury).

ORDER

AND NOW, this 9th day of April 2013, for the foregoing reasons, the motion for summary judgment with respect to Defendants Laurie Tate, R.N. and Stacy Saunders, R.N. is hereby GRANTED.

BY THE COURT,

Dudley N. Anderson, Judge

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