



STORAGE NAME: h3543.CJS

DATE: 4/3/2015

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 3543; Relief/Roy Wright & Ashley Wright/North Brevard County Hospital District
Sponsor: Avila
Companion Bill: CS/SB 60 by Judiciary, Simpson
Special Master: Parker Aziz

Basic Information:

Claimants: Roy Wright and Ashley Wright, individually and as parents and natural guardians of Tucker Wright

Respondent: North Brevard County Hospital District d/b/a Parrish Medical Center

Amount Requested: \$395,000

Type of Claim: Local equitable claim; result of a settlement agreement.

Respondent's Position: North Brevard County Hospital District will not oppose, obstruct or delay the passage of the claims bill or direct its representatives, agents or lobbyist to oppose, obstruct delay the passage of said claims bill but do not admit liability.

Collateral Sources: None reported.

Attorney's/Lobbying Fees: The bill limits the total award of attorney's fees, lobbying fees, costs, and other similar expenses to no more than 25% of the total amount awarded by the bill.

Prior Legislative History: This is the first time House Bill 3543 by Representative Avila and Senate Bill 60 by Senator Simpson have been introduced to the Legislature.

Procedural Summary: On June 12, 2012, Roy and Ashley Wright filed a medical malpractice suit against North Brevard County Hospital District d/b/a Parrish Medical Center in the 18th Judicial Circuit Court, in and for Brevard County, Florida. Prior to trial, the case was settled in mediation on October 18, 2013.

Pursuant to the settlement, the District paid its sovereign immunity limit of \$200,000, and the parties agreed that the plaintiffs could seek an additional \$395,000 through an uncontested claim bill. Under the settlement agreement, the plaintiffs' net recovery to date (after satisfying medical liens

and legal expenses and attorneys' fees) is approximately \$106,086.65. They have paid approximately \$65,790.15 to their attorneys in fees and costs.

As ordered by the Honorable Judge George W. Maxwell, III, the net settlement proceeds have been divided 25% to Roy and Ashley Wright as the parents of Tucker Wright for the expenses incurred in caring for Tucker Wright in his disability and 75% to the Tucker Wright Trust to which Roy and Ashley Wright are co-trustees and will manage the funds until Tucker Wright reaches the age of majority.

Facts of Case: On June 24, 2009, Ashley Wright was seen by Dr. Vidya Haté at Parrish Medical Center for obstetrical care related to her pregnancy. Again on July 8, 2009, Mrs. Wright was seen by Dr. Vidya Haté for obstetrical care related to her pregnancy. Mrs. Wright had a history of gestational diabetes that was being controlled through diet and exercise because she had adverse reactions after self-administering prescribed insulin.

As of June 24, 2009, Mrs. Wright measured five foot and three inches tall and weighed 230 pounds. Mrs. Wright's body mass index (BMI) at the time of her initial consultation with Dr. Haté was 40, which is considered a high body mass index. A patient, like Mrs. Wright, with a history of gestational diabetes and a high BMI would typically be classified as a patient with a high risk pregnancy.

On July 15, 2009, around 10:30 P.M., approximately a month before her due date, Mrs. Wright presented to Parrish Medical Center following a spontaneous rupture of her membranes. She was admitted by Dr. Perez who subsequently gave her a sonogram to determine the size of her unborn fetus. Dr. Perez determined that the estimated weight of her unborn fetus was 7 pounds and 14 ounces, plus or minus three pounds.

Dr. Vidya Haté visited Mrs. Wright the next day at 12:30 P.M. while Mrs. Wright was in the labor and delivery suite. Dr. Haté conducted a vaginal examination and ordered Midwife Cara Starkey, R.N., to advise her as soon as Mrs. Wright was either dilated or started to push. Dr. Haté then returned to her office in another building that was located approximately three minutes away, by car, to see other patients.

At 3:20 P.M., notes indicate that Mrs. Wright began pushing, but there is no note of a call being made to Dr. Haté. At 3:45 P.M., notes indicate that Mrs. Wright's cervix was fully dilated, but there is no note of a call being made to Dr. Haté. At 4:00 P.M., the end of Midwife Starkey's scheduled shift, Dr. Haté called Midwife Starkey asking her to stay past her shift since Mrs. Wright was close to delivery, and Dr. Haté had more patients to see at her office. Dr. Haté told Midwife Starkey that she would be there at 4:30 P.M. However, Dr. Haté did not arrive at 4:30 P.M.

Between 4:30 P.M. and 4:54 P.M., Midwife Starkey realized that the infant, Tucker Wright, had encountered shoulder dystocia. "[S]houlder dystocia occurs when the fetal anterior shoulder impacts against the maternal symphysis following delivery of the vertex" or "from impaction of the posterior shoulder on the sacral promontory." In layman's terms, after the infant's head has been delivered, the infant's shoulder lodges against the mother's pubic bone and requires medical assistance in order to dislodge the shoulder to facilitate birth. Before Dr. Haté arrived, but after 4:30 P.M., Midwife Starkey attempted to perform the McRoberts Maneuver to dislodge Tucker's shoulder. The only medical professionals present at the time were Midwife Starkey and nurse Donna Hayashi. Midwife Starkey attempted to rotate the infant's shoulders away from the pelvis while nurse Hayashi applied supra-pubic pressure. Mrs. Wright's sister and husband were asked to rotate her legs. It was later documented in the nurse's notes that during the delivery Midwife Starkey relieved the shoulder dystocia using the McRoberts Maneuver, applying supra-pubic pressure, and rotating the head on the perineum. In her deposition, Midwife Starkey stated that nurse Donna Hayashi wrote the nurse's notes that indicated Midwife Starkey rotated Tucker's head. However, Midwife Starkey's signature appears at the bottom of the nurse's notes. Rotating the head

on the perineum is not a method of relieving should dystocia or part of the McRoberts Maneuver because the rotation could damage the brachial plexus nerves that control the use of the baby's arm, a condition known as Erb's Palsy.

Tucker Wright was delivered at 4:54 P.M. weighing 8 pounds and 12 ounces. Dr. Haté arrived at 5:15 P.M. after Tucker had been delivered.

As a result of Midwife Starkey's negligence (improperly performing the McRoberts Maneuver and rotating Tucker's head during delivery), Tucker suffered damaged and ruptured brachial plexus nerves and was diagnosed with Erb's Palsy after his birth. Tucker was subsequently seen by Dr. John Grossman, M.D., who opined that Tucker sustained an Erb's Palsy injury during the birthing process. Dr. Grossman further opined that the damaged the nerves in Tucker's brachial plexus caused him to have limited use of his right arm. In Tucker's initial examination, Dr. Grossman found that most of Tucker's impairments were to his shoulder and elbow. However, Tucker's bicep muscle was totally paralyzed, and he was unable to supinate his arm, holding it constantly in pronation. Dr. Grossman diagnosed the injury as severe.

Tucker has undergone two surgical procedures to release the nerves in his brachial plexus in order to restore some of the lost use in his right arm. Dr. Grossman performed one of the surgeries during which time determined that two of Tucker's nerves were completely ruptured and three were stretched and injured. During the course of that surgery, Dr. Grossman removed the ruptured and damaged nerves and replaced them with nerves from Tucker's leg. Tucker has also received botulinum toxin shots in his shoulder in order to facilitate the effectiveness of the surgeries. The procedures have met some success, but according to Dr. Grossman, Tucker will never have full use of his right arm. Additionally, Dr. Grossman opines that Tucker's right hand will permanently lack fine motor skills and that due to the impairment of his upper extremity his right arm will be shorter and smaller. Tucker Wright is unable to rotate or otherwise use his right arm as other people do and is not likely to ever rotate or use his right arm as other people do.

Tucker Wright's medical expenses as of October 16, 2014, are \$320,016.91.

Parrish Medical Center does not admit to liability despite the settlement of this matter. Additionally, Parrish Medical Center does not maintain professional liability coverage for the monies being claimed in the claim bill. However, Parrish Medical Center does have a dedicated trust fund for the payment of expenses associated with professional liability claims, including indemnity payments to plaintiffs in medical malpractice litigation. Parrish Medical Center has already set aside funds to satisfy the full amount of the bill should it be passed by the Florida Legislature. As such, the passage of the bill by the Legislature will have no impact on the operations of North Brevard County Hospital District d/b/a Parrish Medical Center.

I find that Midwife Cara Starkey as the attending midwife during Mrs. Wright's labor and Tucker Wright's delivery owed a duty to Mrs. Wright and Tucker commensurate to that required by her status as midwife. I find that the Petitioners' met their burden by showing that Midwife Starkey's actions during the course of Tucker's delivery were sufficient to prove by a preponderance of the evidence that she breached her duty of care and that breach was the proximate cause of the injuries sustained by Tucker Wright.

I find the damages to be appropriate and based on competent and substantial evidence. Because settlement agreements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature or its committees, or on the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then the agreements can be given effect, at least at the Special Master's level of consideration. I find that the settlement agreement in this case is reasonable and equitable in light

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of the negligence surrounding Tucker Wright's birth and his resulting permanent injury and recommend that the settlement be given effect by the Legislature.

Recommendation: The bill should be amended to correctly spell Nurse Starkey's name. I respectfully recommend that House Bill 3543 be reported **FAVORABLY**.

Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Avila, House Sponsor
Senator Simpson, Senate Sponsor
Eva Davis, Senate Special Master