

1988

Jeanna M. Dalley v. Utah Valley Regional Medical Center; IHC Hospitals, Inc., dba Utah Valley Regional Medical Center; Howard R. Francis, M.D.; Kent R. Gammett, M.D.; Provo Obstetrics And Gynecology Clinic; And James P. Southwick, M.D. : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Charles W. Dahlquist; Sherene T. Dillon; Kirton, McConkie & Bushnell; Attorneys for Respondents. S. Rex Lewis; Leslie W. Slauch; Howard, Lewis & Petersen; Attorneys for Appellant.

Recommended Citation

Brief of Appellant, *Dalley v. Utah Valley Regional Medical Center*, No. 880360.00 (Utah Supreme Court, 1988).
https://digitalcommons.law.byu.edu/byu_sc1/2318

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

DOCUMENT

KFU

45.9

.S9

DOCKET NO.

BRIEF

880360

IN THE SUPREME COURT OF THE STATE OF UTAH

JEANNA M. DALLEY,	:	
Plaintiff-Appellant,	:	Case No. 880360
vs.	:	
	:	Category 14b
UTAH VALLEY REGIONAL MEDICAL	:	
CENTER; IHC HOSPITALS, INC.,	:	
dba UTAH VALLEY REGIONAL	:	
MEDICAL CENTER; HOWARD R.	:	
FRANCIS, M.D.; KENT R.	:	
GAMMETT, M.D.; PROVO	:	
OBSTETRICS AND GYNECOLOGY	:	
CLINIC; and JAMES P.	:	
SOUTHWICK, M.D.,	:	
Defendants-Respondents.	:	

BRIEF OF APPELLANT

APPEAL FROM THE SUMMARY JUDGMENT OF THE
FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH
THE HONORABLE GEORGE E. BALLIF, PRESIDING

S. REX LEWIS and
LESLIE W. SLAUGH, for:
HOWARD, LEWIS & PETERSEN
120 East 300 North
Provo, Utah 84601

ATTORNEYS FOR APPELLANT

CHARLES W. DAHLQUIST and
SHERENE T. DILLON, for:
KIRTON, McCONKIE & BUSHNELL
330 South 300 East
Salt Lake City, UT 84111-2599

ATTORNEYS FOR RESPONDENT UTAH VALLEY REGIONAL MEDICAL CENTER
AND IHC HOSPITALS, INC.

[Additional counsel listed on List of Parties]

IN THE SUPREME COURT OF THE STATE OF UTAH

JEANNA M. DALLEY,	:	
Plaintiff-Appellant,	:	Case No. 880360
vs.	:	
	:	Category 14b
UTAH VALLEY REGIONAL MEDICAL	:	
CENTER; IHC HOSPITALS, INC.,	:	
dba UTAH VALLEY REGIONAL	:	
MEDICAL CENTER; HOWARD R.	:	
FRANCIS, M.D.; KENT R.	:	
GAMMETT, M.D.; PROVO	:	
OBSTETRICS AND GYNECOLOGY	:	
CLINIC; and JAMES P.	:	
SOUTHWICK, M.D.,	:	
Defendants-Respondents.	:	

BRIEF OF APPELLANT

APPEAL FROM THE SUMMARY JUDGMENT OF THE
FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH
THE HONORABLE GEORGE E. BALLIF, PRESIDING

S. REX LEWIS and
LESLIE W. SLAUGH, for:
HOWARD, LEWIS & PETERSEN
120 East 300 North
Provo, Utah 84601

ATTORNEYS FOR APPELLANT

CHARLES W. DAHLQUIST and
SHERENE T. DILLON, for:
KIRTON, McCONKIE & BUSHNELL
330 South 300 East
Salt Lake City, UT 84111-2599

ATTORNEYS FOR RESPONDENT UTAH VALLEY REGIONAL MEDICAL CENTER
AND IHC HOSPITALS, INC.

[Additional counsel listed on List of Parties]

LIST OF PARTIES

All of the parties are listed in the caption. The attorneys representing the various defendants are as follows:

CHARLES W. DAHLQUIST and
SHERENE T. DILLON, for:
KIRTON, McCONKIE & BUSHNELL
330 South 300 East
Salt Lake City, Utah 84111-2599

Attorneys for Respondent Utah Valley Regional
Medical Center and IHC Hospitals, Inc.

WILLIAM W. BARRETT
KIPP AND CHRISTIAN, P.C.
City Centre #330
175 East 400 South
Salt Lake City, Utah 84111

Attorneys for Respondents Francis, Gammett, and
Provo Obstetrics & Gynecology Clinic

EILLIOTT J. WILLIAMS and
ELIZABETH KING BRENNAN, for:
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place #1100
P.O. Box 45000
Salt Lake City, Utah 84145

Attorneys for Respondent Southwick

TABLE OF CONTENTS

LIST OF PARTIES	i
TABLE OF AUTHORITIES	iii
JURISDICTION AND NATURE OF PROCEEDINGS	1
ISSUES PRESENTED	1
STATEMENT OF THE CASE	2
A. <u>Nature of the Case.</u>	2
B. <u>Course of Proceedings.</u>	2
C. <u>Statement of Facts.</u>	3
SUMMARY OF ARGUMENT	5
ARGUMENT	5
POINT I	
EXPERT TESTIMONY WAS NOT REQUIRED TO ESTABLISH THAT A BURN TO AN UNRELATED PART OF THE BODY DURING AN OPERATION DOES NOT OCCUR WITHOUT NEGLIGENCE.	5
POINT II	
RES IPSA LOQUITUR MAY BE APPLIED AGAINST MULTIPLE DEFENDANTS.	8
POINT III	
PLAINTIFF MAY RECOVER FOR EMOTIONAL INJURIES. . .	9
CONCLUSION	9
APPENDIX	
A. Ruling (R. 219-21)	12
B. Order (R. 223-25)	13

TABLE OF AUTHORITIES

Cases Cited:

<u>Beaudoin v. Watertown Memorial Hospital</u> , 32 Wis.2d 132, 145 N.W.2d 166 (1966).	7
<u>Schaffner v. Cumberland County Hospital System, Inc.</u> , 77 N.C. App. 689, 336 S.E.2d 116 (1985), <u>review denied</u> , 316 N.C. 195, 341 S.E.2d 578 (1986).	7, 8
<u>Johnson v. Rogers</u> , 763 P.2d 771 (Utah 1988).	9
<u>Reiser v. Lohner</u> , 641 P.2d 93 (Utah 1982).	9
<u>Talbot v. Dr. W. H. Groves' Latter-day Saints Hospital, Inc.</u> , 21 Utah 2d 73, 440 P.2d 872 (1968).	8, 9
<u>Wiles v. Myerly</u> , 210 N.W.2d 619 (Iowa 1973).	7
<u>Hill v. Highland Hospital</u> , 530 N.Y.S.2d 381 (App. Div. 1988).	7
<u>Kim v. Anderson</u> , 610 P.2d 1270 (Utah 1980).	6
<u>Carranza v. Tucson Medical Center</u> , 135 Ariz. 490, 662 P.2d 455 (Ct. App. 1983).	8
<u>Marsh v. Pemberton</u> , 10 Utah 2d 40, 347 P.2d 1108 (1959), <u>overruled on other grounds</u> , <u>Swan v. Lamb</u> , 584 P.2d 814 (Utah 1978).	5
<u>Nixdorf v. Hicken</u> , 612 P.2d 348 (Utah 1980).	6

Statutes and Rules Cited:

Utah Code Ann. § 78-2-2(3)(i) (1987).	1
---	---

Other Authorities Cited:

W. Keeton, D. Dobbs, R. Keeton, & D. Owen, <u>Prosser and Keeton on the Law of Torts</u> § 39 (5th ed. 1984).	6
Prosser, <u>Law of Torts</u> § 39 (4th ed. 1971).	6

IN THE SUPREME COURT OF THE STATE OF UTAH

JEANNA M. DALLEY,	:	
Plaintiff-Appellant,	:	Case No. 880360
vs.	:	
	:	Category 14b
UTAH VALLEY REGIONAL MEDICAL	:	
CENTER; IHC HOSPITALS, INC.,	:	
dba UTAH VALLEY REGIONAL	:	
MEDICAL CENTER; HOWARD R.	:	
FRANCIS, M.D.; KENT R.	:	
GAMMETT, M.D.; PROVO	:	
OBSTETRICS AND GYNECOLOGY	:	
CLINIC; and JAMES P.	:	
SOUTHWICK, M.D.,	:	
Defendants-Respondents.	:	

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

The trial court dismissed plaintiff's complaint on the defendants' motions for summary judgment. The Order of dismissal was entered on August 18, 1988. (R. 223-25.) This is an appeal as of right from that ruling. Plaintiff filed her notice of appeal on August 30, 1988. (R. 228-29.) This Court has jurisdiction pursuant to Utah Code Ann. § 78-2-2(3)(i) (1987).

ISSUES PRESENTED

1. Is it within the common knowledge of laymen that a patient undergoing an elective cesarian section operation does not become seriously burned on her lower right leg during the course of the operation in the absence of negligence?

2. Where several defendants jointly operate on a patient and control all aspects of the operation, and where the patient

is burned by an unknown instrumentality during the course of the operation, may all of the defendants be held liable for the resulting injuries?

3. May a patient who has suffered a physical injury also recover for the resulting mental trauma?

STATEMENT OF THE CASE

A. Nature of the Case.

This is a medical malpractice action for physical and mental injuries suffered by plaintiff as a result of the defendants' negligence.

B. Course of Proceedings.

Plaintiff filed her complaint on January 28, 1987, seeking recovery for injuries resulting from defendants' negligence during surgery which occurred on February 5, 1985. (R. 1-3.) Defendant Southwick filed a Motion for Summary Judgment on April 18, 1988. (R. 69-71.) Defendants Francis, Gammett, and Provo Obstetrics and Gynecology Clinic filed a Motion for Summary Judgment; or, in the Alternative, for Partial Summary Judgment on May 23, 1988. (R. 100-02.) The hospital defendants filed their Motion for Summary Judgment of Defendants' [sic] Utah Valley Regional Medical Center and IHC Hospitals, Inc. on June 10, 1988. (R. 160-62.) Each of the motions for summary judgment asserted that plaintiff could not prevail on her medical malpractice claim without an expert witness on the issue of

negligence, and also that the claims for emotional injury were not recognized in Utah.

On June 14, 1988, plaintiff filed a Motion in Limine seeking a determination that "a person who enters a hospital operating room for the purpose of a cesarean section does not emerge therefrom with a full thickness burn on the lower right leg without someone being negligent." (R. 172-73.)

All of the motions were argued before the trial court on July 22, 1988. (R. 232-33.) On August 1, 1988, the trial court issued its ruling granting the defendants' motions for summary judgment. (R. 219-21; copy attached in Appendix "A".) A formal Order granting the defendants' motions and denying plaintiff's Motion in Limine was entered on August 18, 1988. (R. 223-25; copy attached in Appendix "B".) Plaintiff filed her Notice of Appeal on August 30, 1988. (R. 228-29.)

C. Statement of Facts.

On February 5, 1985, plaintiff underwent an elective cesarean section operation at Utah Valley Regional Medical Center. (R. 2 para. 4-5; R. 17 para. 3-4; R. 30 para. 4-5; R. 35 para. 1, 3.) Her attending physician was Dr. Francis (Deposition of Jeanna M. Dalley (R. 239) ("Dalley Deposition") at page 9), and he was assisted by Dr. Gammett and some nurses. (Dalley Deposition at 10.) Dr. Southwick was the anesthesiologist. (R. 85, 73.)

During the course of the operation, a burning smell became apparent in the operating room, and at least two nurses asked

"what's burning." (Deposition of Terry Peebles (R. 241) ("Peebles Deposition") at 9, 17.; Deposition of Kimberly Gallagher (R. 240) ("Gallagher Deposition") at 12.) After the surgery and while still in the operating room, it was discovered that plaintiff had two black burns on her lower right leg, one about the size of a dime, the other about the size of a half-dollar. (Dalley Deposition at 19; Peebles Deposition at 12; Gallagher Deposition at 11-12.) The sores had not been present immediately before the surgery. (Gallagher Deposition at 7; see also Dalley Deposition at 22, 25, 46.)

Dr. Francis examined the sores while plaintiff was in the hospital and said they appeared to be burns. (Dalley Deposition at 24.) Dr. Gammett examined the sores a few days after the operation and stated that they were not normal. (Dalley Deposition 21-22.) Several nurses also examined the sores. (Dalley Deposition at 23.) None of the nurses or doctors prescribed any treatment for the sores. (Dalley Deposition at 28-29.)

Although the smaller sore healed itself, the larger sore broke open and appeared blistered. (Dalley Deposition at 28.) Skin grafts were eventually required on the larger sore (id.), which are resulted in scarring at the site of the donor skin. (R. 31.) Plaintiff also suffered significant emotional injuries as a result of the physical injuries and the defendants' treatment of her. (Dalley Deposition at 31-32.) Plaintiff commenced this action to recover for those injuries.

SUMMARY OF ARGUMENT

While expert testimony is generally required in a medical malpractice case to establish the standard of care and a breach thereof, an exception to that rule exists where the propriety of the treatment received is within the common knowledge and experience of laymen. It is within the common knowledge and experience of laymen that a person does not receive a burn to her lower leg during a routine cesarean section operation unless someone was negligent. Expert testimony on this issue was not required. Plaintiff was entitled to rely on the doctrine of *res ipsa loquitur*, even though there were multiple defendants.

Subsequent to the trial court's dismissal of this action, this Court has recognized a cause of action to recover for negligently inflicted emotional injury. The trial court's dismissal of plaintiff's claims for emotional injury was error.

ARGUMENT

POINT I

EXPERT TESTIMONY WAS NOT REQUIRED TO ESTABLISH THAT A BURN TO AN UNRELATED PART OF THE BODY DURING AN OPERATION DOES NOT OCCUR WITHOUT NEGLIGENCE.

The nature of medical treatment is such that it is beyond the understanding and knowledge of the average citizen. Unfavorable results can occur even where the best of care was given. As a general rule, therefore, expert testimony is required in a medical malpractice case to establish whether the defendants breached the applicable standard of care. Marsh v.

Pemberton, 10 Utah 2d 40, 347 P.2d 1108 (1959), overruled on other grounds, Swan v. Lamb, 584 P.2d 814, 817 (Utah 1978). Certain exceptions to this general rule have been widely recognized:

[O]rdinarily, expert testimony is necessary as to the standard of skill and care required of a physician because that is usually outside the knowledge and experience of lay persons. However, there is a well-recognized exception to that rule: when the impropriety of treatment complained of is of such a nature that lay persons could judge from common knowledge and experience that such an injury would not happen if there had been proper skill and care, expert testimony is not necessary.

Kim v. Anderson, 610 P.2d 1270, 1271 (Utah 1980) (citing Prosser, Law of Torts, sec. 39 (4th ed. 1971), other citations omitted). See also Nixdorf v. Hicken, 612 P.2d 348, 352 (Utah 1980).

The opinions in Kim and Nixdorf state that a typical example of injuries within the exception to the rule is where medical supplies or equipment is left in the patient. The opinions do not, however, limit the exception to only forgotten instrument cases. Prosser, cited in Kim, gives other examples of cases within the exception to the rule as follows:

When an operation leaves a sponge or implement in the patient's interior, or removes or injures an inappropriate part of his anatomy, or when a tooth is dropped down his windpipe, or the patient suffers a serious burn from a hot water bottle, or when instruments are not sterilized, the thing speaks for itself without the aid of any expert's advice.

W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on

the Law of Torts § 39 at p. 256-57 (5th ed. 1984)(emphasis added, footnotes omitted).

For example, in Schaffner v. Cumberland County Hospital System, Inc., 77 N.C. App. 689, 336 S.E.2d 116 (1985), review denied, 316 N.C. 195, 341 S.E.2d 578 (1986), the patient's right hand was burned during ear surgery, apparently by sparks from a malfunctioning machine used to cauterize blood vessels. The plaintiff did not present any expert testimony to establish that the burn was a result of negligence. The court stated:

While undoubtedly risks are inherent in the medical treatment plaintiff received, a jury, based on common knowledge and experience, could reasonably conclude that a burn on a portion of her body not involved in the surgery was not among those risks, and that, but for the negligence of some person(s) in control of her person and the instrumentalities used in her treatment, she would not have been injured.

Id. at 118-19.

Similarly, in Wiles v. Myerly, 210 N.W.2d 619 (Iowa 1973), the plaintiff suffered burns on his buttocks following vascular surgery. The Court stated:

Common knowledge and experience teach us that in the ordinary course of events one undergoing surgery does not sustain an unusual injury to a healthy part of his body not within the area of the operation in the absence of negligence.

Id. at 626. See also Beaudoin v. Watertown Memorial Hospital, 32 Wis.2d 132, 145 N.W.2d 166, 169 (1966)(burn to buttocks during a D & C operation); Hill v. Highland Hospital, 530 N.Y.S.2d 381 (App. Div. 1988)(anesthesiologist may be held

liable under res ipsa loquitur); Carranza v. Tucson Medical Center, 135 Ariz. 490, 662 P.2d 455 (Ct. App. 1983) (burn on leg following heart surgery).

In the instant case, it is also within the common knowledge of man that a patient does not develop serious burns on the lower leg during a cesarean section operation, unless someone has been negligent. Plaintiff was entitled to rely on the doctrine of res ipsa loquitur.

POINT II

RES IPSA LOQUITUR MAY BE APPLIED AGAINST MULTIPLE DEFENDANTS.

The defendants claimed before the trial court that plaintiff could not recover absent proof specifically linking her injuries to a particular defendant. The inability to provide such proof, however, is one of the very reasons for the existence of the res ipsa loquitur doctrine. The majority of courts addressing the issue have held that res ipsa loquitur may be applied to invoke an inference of negligence against multiple defendants. Schaffner v. Cumberland County Hospital System, Inc., 77 N.C. App. 689, 336 S.E.2d 116, 120-21 (1985), review denied, 316 N.C. 195, 341 S.E.2d 578 (1986) (citations omitted).

The dictum in Talbot v. Dr. W. H. Groves' Latter-day Saints Hospital, Inc., 21 Utah 2d 73, 440 P.2d 872, 874 (1968), cited by the defendants to the trial court, does not establish a contrary rule. The plaintiff in that case was under the care of

the various defendants at different times, which was a critical factor in the Court's decision:

In this case the plaintiff asks the court to extend the doctrine of res ipsa loquitur to a situation where a number of people had control or partial control of the plaintiff during surgery and thereafter, and where his injury may have occurred by the act or omission of any one of them, and outside the observation of the others.

Id. (emphasis added).

In the instant case, in contrast, plaintiff's injury occurred in the operating room, and each of the defendants was present at the time it occurred. The application of res ipsa loquitur is proper under such circumstances.

POINT III

PLAINTIFF MAY RECOVER FOR EMOTIONAL INJURIES.

Defendants moved for summary judgment against plaintiff's claims for emotional injury on the ground that such claims were barred by Reiser v. Lohner, 641 P.2d 93 (Utah 1982). In Johnson v. Rogers, 763 P.2d 771 (Utah 1988), the Court reexamined the issue of recovery for negligently inflicted emotional injuries, and abandoned the anachronistic rule of Reiser. Plaintiff stated a valid claim for emotional injuries, and should be allowed to present that claim to a jury.

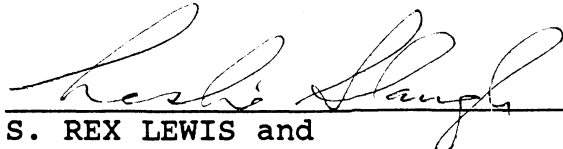
CONCLUSION

It is within the common knowledge and understanding of laymen that a patient does not suffer a burn to a remote portion of her body during a cesarean section operation unless someone

was negligent. Plaintiff was entitled to rely on the doctrine of res ipsa loquitur to raise an inference of negligence.

The trial court's Order of dismissal should be reversed, and the case remanded with instructions to grant plaintiff's Motion in Limine.

DATED this 29th day of December, 1988.


S. REX LEWIS and
LESLIE W. SLAUGH, for:
HOWARD, LEWIS & PETERSEN
Attorneys for Appellant

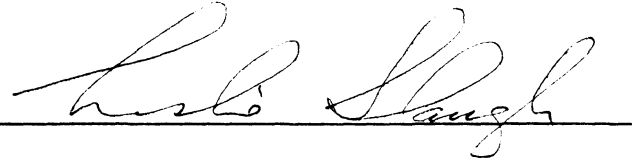
MAILING CERTIFICATE

I hereby certify that four true and correct copies of the foregoing were mailed to the each of following, postage prepaid, this 29th day of December, 1988.

CHARLES W. DAHLQUIST and
SHERENE T. DILLON, for:
KIRTON, McCONKIE & BUSHNELL
330 South 300 East
Salt Lake City, Utah 84111-2599

WILLIAM W. BARRETT
KIPP AND CHRISTIAN, P.C.
City Centre #330
175 East 400 South
Salt Lake City, Utah 84111

EILLIOTT J. WILLIAMS and
ELIZABETH KING BRENNAN, for:
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place #1100
P.O. Box 45000
Salt Lake City, Utah 84145



A handwritten signature, appearing to read "Rusty Stang", is written in cursive over a horizontal line.

APPENDIX "A"

Ruling (R. 219-21)

FILED
1988 AUG 11 PM 1:55
CLERK

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

JEANNA M. DALLEY,)	Case Number:CV 87-206
Plaintiff,)	
vs.)	RULING
UTAH VALLEY REGIONAL)	
HOSPITAL, et al.,)	
Defendants.)	

This matter is before the court on defendants' motions for summary judgment. Plaintiff opposes the motions, and all parties have filed memo of points and authorities in support of their respective positions. The court having carefully considered the motions and the accompanying memo, and having heard oral argument, now enters its:

RULING

Defendants' motions for summary judgment are well taken and are hereby granted.

The motions are based on two grounds: First the doctrine of *res ipsa loquitur* does not apply here; second, there is no cause of action for negligent infliction of emotional distress.

To apply the doctrine of res ipsa loquitur requires the establishment of evidentiary foundation. The elements of the evidentiary foundation are: (1) the accident was of a kind which, in the ordinary course of events, would not have happened had the defendant(s) used due care, (2) the instrument or thing causing the injury was at the time of the accident under the management and control of the defendant(s), and (3) the accident happened irrespective of any participation at the time by plaintiff.

Nixdorf v. Hicken, 612 P.2d 352-53 (Utah 1980). It is undisputed that plaintiff, nor defendant(s), cannot identify the offending instrumentality to say nothing of management or control thereof.

In addition, in medical malpractice cases, plaintiff is required to produce expert medical testimony, except in exceptional cases (of which this may be one if an instrumentality could be found) to establish that the outcome was more likely the result of negligence than some other cause. Robinson v.

Intermountain Health Care Inc., 740 P.2d 262 (Utah App. 1987).

Here, plaintiff has failed to establish sufficient foundation for the application of res ipsa loquitur, and has failed to produce expert medical testimony, and since this is not an exceptional case, res ipsa loquitur does not apply. Even assuming the jury would infer negligence by some body, if they believe that plaintiff had no burn when she arrived at the hospital, the failure to show what instrumentality caused the

burn, and which defendant(s) controlled that instrumentality would still leave us without any specific culpable party or parties. Therefore, the application of res ipsa loquitur in this matter is inappropriate.

The failure to show what caused the injury also precludes maintaining an action for negligent infliction of emotional distress.

Based on the foregoing analysis, defendants' motions for summary judgment are hereby granted.

DATED in Provo, Utah this 1st day of August, 1988.



GEORGE E. BALLIF, JUDGE.

APPENDIX "B"

Order (R. 223-25)

FILED
FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, STATE OF UTAH

1988 AUG 18 PM 12:17

WILLIAM F. HUSCH, CLERK
DEPUTY

Charles W. Dahlquist (0798)
Sherene T. Dillon (4820)
KIRTON, McCONKIE & BUSHNELL
Attorneys for Defendants
Utah Valley Regional Medical Center and
IHC Hospitals, Inc., dba
Utah Valley Regional Medical Center
330 South Third East
Salt Lake City, Utah 84111-2599
Telephone: (801) 521-3680

IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH COUNTY
STATE OF UTAH

JEANNA M. DALLEY,	:	
	:	<u>O R D E R</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
UTAH VALLEY REGIONAL MEDICAL	:	Civil No. 87-206
CENTER, I.H.C. HOSPITALS, INC.	:	
dba UTAH VALLEY REGIONAL	:	
MEDICAL CENTER, HOWARD R.	:	
FRANCIS, M.D., KENT R.	:	
GAMMETTE, M.D., PROVO OBSTETRICS	:	
AND GYNECOLOGY CLINIC, and JAMES	:	Judge George E. Ballif
P. SOUTHWICK, M.D.,	:	
	:	
Defendant.	:	

The defendants' Motions for Summary Judgment and the plaintiff's Motion in Limine having come on for hearing before the Honorable George E. Ballif, the plaintiff being represented by S. Rex Lewis; defendant James P. Southwick, M.D. being represented by attorney Elizabeth King Brennan; defendants Dr. Howard R. Francis, M.D. and Kent R. Gammette, M.D. and Provo

Obstetrics and Gynecology Clinic being represented by William W. Barrett; and defendants Utah Valley Regional Medical Center and IHC Hospitals, Inc. being represented by Charles W. Dahlquist, II, the Court having heard full argument on the motions pending and, in addition, having reviewed, in camera, the records of a subsequent patient at Utah Valley Regional Medical Center whom the plaintiff had claimed received a burn on the leg in a similar manner, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to the Ruling of the Court dated August 1, 1988, the Motions for Summary Judgment of each of the defendants is hereby granted, the plaintiff's Motion in Limine is denied, and this matter is hereby dismissed with prejudice as to all defendants, the parties to bear their own respective costs.

DATED this 17th day of August, 1988.

BY THE COURT:


GEORGE E. BALLIF
District Judge

CERTIFICATE OF MAILING

Pursuant to Rule 2.9 of the Rules of Practice in the District Courts of the State of Utah, I hereby certify that on the 4+L day of August, 1988, I mailed a true and correct copy of the foregoing Order by first class mail to the following:

S. Rex Lewis
HOWARD, LEWIS & PETERSON
120 East 300 North
P.O. Box 778
Provo, Utah 84603

Elizabeth King Brennan
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, #1100
P.O. Box 45000
Salt Lake City, Utah 84145

William W. Barrett
KIPP & CHRISTIAN
City Centre I, #330
175 East 400 South
Salt Lake City, Utah 84111

Sandra A. Fisher