

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 Respondent

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; M. Karlynn Hinman; 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 Respondent, *Dalley v. Utah Valley Regional Medical Center*, No. 880360.00 (Utah Supreme Court, 1988).
https://digitalcommons.law.byu.edu/byu_sc1/2320

This Brief of Respondent 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. **880360**

BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

JEANNA M. DALLEY,	:	
	:	Case No. 880360
Plaintiff-Appellant,	:	
	:	Category 14b
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.,	:	
	:	
Defendants-Respondents.	:	

BRIEF OF DEFENDANTS-RESPONDENTS

UTAH VALLEY REGIONAL MEDICAL CENTER and IHC HOSPITALS, INC.

CHARLES W. DAHLQUIST, II
M. KARLYNN HINMAN
SHERENE T. DILLON
KIRTON, McCONKIE & POELMAN
330 South 300 East
Salt Lake City, Utah 84111
Telephone: (801) 521-3680

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

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

ATTORNEYS FOR APPELLANT

[Additional counsel listed on inside cover]

WILLIAM W. BARRETT
HEINZ J. MAHLER
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

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

Attorneys for Respondent Southwick

IN THE SUPREME COURT OF THE STATE OF UTAH

JEANNA M. DALLEY,	:	
	:	Case No. 880360
Plaintiff-Appellant,	:	
	:	Category 14b
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.,	:	
	:	
Defendants-Respondents.	:	

BRIEF OF DEFENDANTS-RESPONDENTS

UTAH VALLEY REGIONAL MEDICAL CENTER and IHC HOSPITALS, INC.

CHARLES W. DAHLQUIST, II
M. KARLYNN HINMAN
SHERENE T. DILLON
KIRTON, McCONKIE & POELMAN
330 South 300 East
Salt Lake City, Utah 84111
Telephone: (801) 521-3680

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

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

ATTORNEYS FOR APPELLANT

[Additional counsel listed on inside cover]

WILLIAM W. BARRETT
HEINZ J. MAHLER
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

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

Attorneys for Respondent Southwick

LIST OF PARTIES

All parties to this proceeding are listed in the caption.

TABLE OF CONTENTS

	Page
JURISDICTION AND NATURE OF PROCEEDING	1
ISSUES PRESENTED	1
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. THE TRIAL COURT PROPERLY DETERMINED THAT THIS IS NOT A RES IPSA LOQUITUR SITUATION.	4
A. Appellant Presented No Foundation to Show that the Injury Would Not Have Occurred but for the Negligence of a Defendant.	4
B. Appellant Must Present Medical Evidence to Establish When the Burn Occurred.	6
C. The Appellant Has Identified No Instrument That Caused Injury and No Management or Control of Any Instrument.	7
D. The Appellant Has Not Established the Third Foundation Element.	7
II. RES IPSA LOQUITUR CANNOT BE APPLIED TO MULTIPLE DEFENDANTS IN THIS CASE.	8
III. THE TRIAL COURT CORRECTLY DENIED ANY CLAIM FOR MENTAL TRAUMA DAMAGES.	9
CONCLUSION	11
APPENDIX	
Ruling	
Order	

TABLE OF AUTHORITIES

	Page
<u>Freed Fin. Co. v. Stoker Motor Co.</u> , 537 P.2d 1039 (Utah 1975)	6-7
<u>Johnson v. Rogers</u> , 763 P.2d 221 (Utah 1988)	9, 10, 11
<u>Kim v. Anderson</u> , 610 P.2d 1270 (Utah 1980)	4
<u>Marsh v. Pemberton</u> , 10 Utah 2d 40, 347 P.2d 1108 (1959) overruled on other grounds	4
<u>Nixdorf v. Hicken</u> , 612 P.2d 352 (Utah 1980)	4, 6, 8
<u>Reiser v. Lohner</u> , 641 P.2d 93 (Utah 1982)	11
<u>Robinson v. Intermountain Health Care</u> , 740 P.2d 262 (Utah App. 1987)	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)	8
<u>Swan v. Lamb</u> , 584 P.2d 814 (Utah 1978)	4
<u>Restatement Second Torts</u> , § 313	9-10
Utah Code Annotated § 78-2-2(3)(i)	1

JURISDICTION AND NATURE OF PROCEEDING

This Court has jurisdiction under Utah Code Annotated § 78-2-2(3)(i) (1987). The trial court granted summary judgment and the Order of Dismissal was entered on August 18, 1988. (R. 223-25) The Plaintiff filed her notice of appeal August 30, 1988. (R. 228-29)

ISSUES PRESENTED

1. Did the trial court properly determine that the plaintiff-appellant required expert medical testimony to support her claims?

2. Did the trial court properly determine that the doctrine of res ipsa loquitur could not apply because of the absence of a required evidentiary foundation?

3. Did the trial court properly dismiss claims for alleged mental trauma?

STATEMENT OF THE CASE

The plaintiff-appellant Jeanna M. Dalley ("Ms. Dalley") alleged claims for medical malpractice and mental trauma because of an injury she claims to have suffered during the course of an elective cesarean section procedure which took place at Utah Valley Regional Medical Center ("Utah Valley") on February 5, 1985. Utah Valley is a division of IHC Hospitals, Inc. ("IHC"). After the procedure, Ms. Dalley was noted to have two black marks on her lower right leg, both of which were identified by some witnesses as a burn. Ms. Dalley said that the marks had not been present before she entered the operating

room. Ms. Dalley also alleges that persons in the operating room smelled burning.

Dr. Howard R. Francis, Ms. Dalley's attending physician, examined the marks one day after the procedure, agreed that it was a burn, but opined that it was an old injury. Dr. Francis wrote:

6 Feb. 85 . . . Does have what appears to be a 4-5 day old burn rt calf - pt did not know about it. It is asymptomatic.

See Frances Affidavit at ¶ 6, R. 114. [Medical Records, p. 22]

Dr. Francis's statement in the medical records is the only medical evidence in the record which evaluates the burn and the time of its occurrence. In his affidavit, Dr. Francis stated:

Based upon my observation of Jeanna Dalley's leg on February 6, 1985, it is my belief that the burn was incurred by her prior to her admission to the hospital.

I am not aware of any instrumentality which was near the patient's legs during the time of the surgery in question that could have caused or resulted in the burn on the patient's lower right leg.

(R. 114, emphasis added.)

Dr. Gammett, who assisted Dr. Francis, stated by affidavit:

I have no knowledge as to whether the burn on the patient's lower right leg was incurred prior to hospitalization. In addition, I have no knowledge or reason to believe that the burn was incurred during Jeanna Dalley's hospitalization.

See also Gammett Affidavit at ¶ 5. (R. 118.)

Ms. Dalley offered no medical expert testimony about the time that the burn had been incurred or what had caused it, relying on the theory of res ipsa loquitur.

SUMMARY OF ARGUMENT

Although Ms. Dalley contends that a layman has common knowledge that a patient should not get burned in an operating room, that proposition misstates the fundamental problem in this case: whether the burn predated the operating room procedure. Only expert medical testimony could establish the age of the burn. The only medical evidence in the record is Dr. Francis's statements that one day after surgery the burn appeared to be 4 to 5 days old. The doctrine of res ipsa loquitur cannot apply when the injury in question apparently happened at a time earlier than the events alleged and could have had a variety of causes. The trial court correctly assessed the need for expert medical testimony. Ms. Dalley's failure to establish an evidentiary foundation for res ipsa loquitur and her failure to demonstrate causation justified summary judgment and demonstrate the doctrine's inapplicability to the facts and to multiple defendants. Ms. Dalley has left a record bereft of the medical evidence necessary to prove her case. The trial court correctly held that mental or emotional trauma damages were not justified.

ARGUMENT

I. THE TRIAL COURT PROPERLY DETERMINED THAT THIS IS NOT A RES IPSA LOQUITUR SITUATION

Ms. Dalley correctly acknowledges the need for expert testimony in medical malpractice cases. Kim v. Anderson, 610 P.2d 1270, 1271 (Utah 1980); 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). She incorrectly tries to except herself from the general rule applicable in the overwhelming majority of situations by arguing that her burn is entitled to res ipsa loquitur analysis.

Ms. Dalley must establish an evidentiary foundation comprised of three elements in order to apply res ipsa loquitur. First, she must show that the accident or injury is of a type which would not have happened in the ordinary course had defendant(s) exercised due care. Second, the instrument or thing causing the injury must have been under the management or control of defendant(s) at the time of the accident. Third, the accident must have happened irrespective of plaintiff's participation. Nixdorf v. Hicken, 612 P.2d 352, 353 (Utah 1980).

Ms. Dalley has failed to establish these elements.

A. Appellant Presented No Foundation to Show that the Injury Would Not Have Occurred But for the Negligence of a Defendant.

In the classic res ipsa loquitur cases involving alleged medical malpractice, a piece of medical equipment is left inside a patient's body. It takes no expertise to know that the

item could not get there by any means other than an open wound or an opening made during a surgical procedure. Finding the item in a body cavity lays the evidentiary foundation for at least one, if not all, of the required elements for *res ipsa loquitur*. Items do not get to the place of injury unless left during medical procedures; such items are controlled or managed by medical practitioners and the patient has no control over and generally can do nothing to remove the offending item. This case is significantly different.

Initially, what the trial court correctly perceived is that an injury to the body's surface, such as a burn on the leg, can occur from a variety of causes, not limited to some act or omission which occurred in an operating room. Ms. Dalley's example from Prosser and Keeton on Torts of a patient who is burned by a hot water bottle assumes without stating that the hot water bottle was the only available source for the burn in question and that the burn was fresh.

However, in this case, although Ms. Dalley claims her burn was not present before she went into surgery, she has offered no medical evidence that the burn was fresh or new when observed. She asks this Court to assume, without evidence, that the burn was new and thus could only have occurred in the operating room. The assumption cannot reasonably be made. In fact, Dr. Francis states that the burn could not have occurred during the surgical procedure and that on the day following surgery the burn looked like a 4 to 5 day old burn. The strong and plausi-

ble inference to be drawn from this record is that the burn did not originate during the cesarean procedure but came into the operating room with Ms. Dalley herself. When an injury might have resulted from a variety of causes or circumstances and when the only medical evidence shows that the injury occurred at a time other than during surgery, the plaintiff cannot rely on res ipsa loquitur to prove her case. See Nixdorf.

Ms. Dalley, who wishes to prove negligence by assumption and to slough over the question of causation, must set forth proof because her assumptions have no foundation in medical fact. The appellant has the burden to prove negligence and causation. An old burn gives no foundation evidence to permit res ipsa loquitur to apply.

**B. Appellant Must Present Medical Evidence to
Establish When the Burn Occurred.**

Whether a burn is fresh or old is a question requiring medical competence and a medical opinion based on reasonable medical probability. Ms. Dalley could not refute her doctor's opinion by her own allegation. A lay person such as Ms. Dalley cannot make that determination and cannot controvert medical evidence.

She has offered no medical evidence when the burn occurred; she has only allegations that it might have occurred when she says. Allegations are insufficient to overcome affidavits. Freed Fin. Co. v. Stoker Motor Co., 537 P.2d 1039 (Utah

1975). This is not a res ipsa loquitur case. Summary judgment was properly granted to Utah Valley and IHC.

C. The Appellant Has Identified No Instrument That Caused Injury and No Management or Control of Any Instrument.

The second foundation element of res ipsa loquitur requires the plaintiff to identify an instrument or item which caused the injury and the defendant or defendants who had control of it. In the classic terms of negligence, the plaintiff must prove injury, causation and damage. The doctrine of res ipsa loquitur does not depart from these fundamentals but permits certain assumptions only if foundation elements are established. Ms. Dalley's failure to identify anything that could have caused the 4 or 5 day old asymptomatic burn and her concomitant failure to show that the unidentified thing was under the control of any defendant-respondent demonstrate her failure to show causation. Causation is a required element to her claim. Robinson v. Intermountain Health Care, 740 P.2d 262 (Utah App. 1987). Ms. Dalley's case simply fails for lack of foundation, mandating summary judgment.

D. Ms. Dalley Has Not Established the Third Foundation Element.

If the trial court had assumed without evidence (1) that Ms. Dalley had an injury which, with reasonable medical probability, occurred during surgery and (2) that an identifiable object under the control of some or all of the defendants

had been its cause, then the Court might have had a basis for determining the third foundation element, whether the injury occurred without participation by Ms. Dalley. However, inferring this element is precluded by the absence of any other foundation element. Res ipsa loquitur requires more than Ms. Dalley's assertions that she was injured. The trial court thus properly granted summary judgment to Utah Valley and IHC.

**II. RES IPSA LOQUITUR CANNOT BE APPLIED TO
MULTIPLE DEFENDANTS IN THIS CASE.**

Because the doctrine of res ipsa loquitur does not justify a reversal of the trial court's decision, the alleged applicability of res ipsa loquitur to multiple defendants is irrelevant. The fact that some states apply res ipsa loquitur to multiple defendants cannot supersede required foundation elements before the doctrine can be applied at all.

Ms. Dalley cites 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), which applies standards different from the Utah law set forth in the Nixdorf case. Even under Schaffner, Ms. Dalley has problems of evidence, foundation and logic.

The plaintiff in Schaffner made an evidentiary showing of a key foundation element: she had, through the deposition testimony of one of the defendants, established that a piece of medical equipment used in cauterizing blood vessels had sparked and malfunctioned during her surgery. That same defen-

dant also testified that no grounding plate had been placed under the plaintiff, although the use of such a plate was part of the accepted standard of care when the cauterizing equipment was to be used.

In Schaffner the plaintiff was required to lay a foundation before the court was able to determine whether the res ipsa loquitur doctrine accepted in North Carolina could be applied to multiple defendants. Ms. Dalley does not offer any such evidence. It is illogical to apply a res ipsa loquitur theory to a group of different defendants in the absence of medical evidence to establish even the occurrence of the injury or evidence of what instrumentality led to the injury. Without evidence, Ms. Dalley's position has no merit. Summary judgment was proper.

III. THE TRIAL COURT CORRECTLY DENIED ANY CLAIM FOR MENTAL TRAUMA DAMAGES.

Ms. Dalley leaps to two conclusions based upon her unsupported assumptions. The first is that since each of the defendants was present in the operating room each was negligent -- a proposition fully refuted because of her failure to establish a res ipsa loquitur foundation -- and then concludes that she has a valid claim for emotional injuries. Utah law simply does not support such a conclusion.

In Johnson v. Rogers, 763 P.2d 221 (Utah 1988), the Utah Supreme Court agreed to recognize the tort of infliction of emotional distress, adopting the standards set forth in Section

313, Restatement Second Torts (and explanatory comments) as the legal standard. The Court did not apply the rule retroactively. Ms. Dalley's claim is not covered by Johnson.

Moreover, the Johnson decision does not assist Ms. Dalley to carry her evidentiary burden as a plaintiff since she must still offer some elements of proof if she is to prevail on any claim in negligence, including a claim for emotional distress. Unlike this case, Johnson did not involve injuries and emotional distress in an ambiguous situation in which the plaintiff relied totally on personal allegations and res ipsa loquitur to show physical injury. Serious and substantial injury had occurred at a proven time and by a proven instrument: a truck had struck and killed a child and injured its parent. To recover for emotional distress under Johnson, a person must be injured or in the zone of danger as a result of proven negligence.

Although Ms. Dalley was allegedly injured, she has no proof. She alleges the injury but certainly has not proven it to have occurred during surgery or that it was caused by any action or omission of Utah Valley or IHC. Before she can claim damages for some form of emotional trauma which purportedly arose from the burn on her leg (assuming arguendo that she is to be permitted to plead the tort from circumstances she claims occurred some three years before the Johnson decision), she must show that the burn was caused by some defendant at a time established by medical testimony. Even though she may have been emotionally upset because there was a burn on her leg, she has

failed to offer evidence to justify a claim for emotional injury on this record.

Even adopting the more liberal views of the Johnson case over those in the prior leading decision, Reiser v. Lohner, 641 P.2d 93 (Utah 1982), which stated the law at the time Ms. Dalley alleges her injury, Ms. Dalley's claim for emotional distress has been shown meritless after pretrial proceedings. The decision granting summary judgment on the emotional claim, like the decision on the other issues she raised, was correct and should be affirmed by this Court.

CONCLUSION

The Defendants-Respondents Utah Valley and IHC respectfully request that the trial court's decision be affirmed and that they be granted such other and further relief, including costs and fees, as may be just and proper.

Dated: February 14, 1989.

KIRTON, McCONKIE & POELMAN

By M. Karlynn Hinman
Charles W. Dahlquist II
M. Karlynn Hinman

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.

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

1988 AUG 18 PM 12:17

WILLIAM F. HUSH, 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>ORDER</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 L. Fisher

MAILING CERTIFICATE

I hereby certify that on this 14th day of February, 1989, I mailed true and correct copies of the foregoing Brief of Appellees, postage prepaid, to:

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

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

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

M. Karilynn Linnman