

2001

# John Joseph Radl v. University of Utah : Reply Brief

Utah Court of Appeals

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Vicki L. Radl; Pro Se.

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In the Utah Court of Appeals.

<p><b>JOHN JOSEPH RADL, II</b>, a minor child, by And through his Guardian Ad Litem, Vickie Radl; <b>VICKIE RADL</b>, individually; and <b>JOHN RADL</b>, individually.</p> <p><b>Plaintiffs/Appellants</b></p> <p><b>v.</b></p> <p><b>UNIVERSITY OF UTAH</b>, d/b/a <b>UNIVERSITY OF UTAH HEALTH SCIENCES CENTER</b></p> <p><b>Defendants/Appellees</b></p>	<p>Case No. 20010814-CA</p> <p>On Appeal from the Third District Court of Salt Lake County, Judge Tyrone E. Medley</p>
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Reply to Brief of Appellee

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### JURISDICTION

The Notice of Appeal (Utah R. App. P. 3(a); 3(c); 3(d); 3(f); 4; 40(a) was filed on September 10, 2001. The jurisdictional statement was filed on December 19, 2001. The jurisdiction of this Court is invoked under Section 78-2-2 (4) of the Utah Code Annotated. On July 17 2002, this Court issued an order denying Summary Disposition of Appellee for Summary Judgment, and Appellants' Countermotion. The ruling on the issues raised therein is deferred pending plenary presentation and consideration of the case. Utah R. App. P. 10(f).

### ISSUES PRESENTED

Whether the Jury Verdict of August 14, 2001 on Defendant's Special Verdict Form, finding Appellee, University of Utah Medical Center, did not breach the standard of care, was arrived at due to manipulating, misleading the jury, mischaracterizing, and misrepresenting the facts, along with innuendo and hearsay by defendant attorneys.

### STANDARD OF REVIEW

In reviewing the legal sufficiency of the evidence, we view the evidence in the light most favorable to the verdict to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979).

### DETERMINATIVE STATUTES

No Determinative Statutes relating to case were found.

### Argument

#### 1. Appellant Not Able to Properly address Utah Court of Appeals.

The Appellee's were quick to point out the Appellant's shortcomings in knowledge of the procedurals of the law regarding form and order of content of the Brief. We admit to the Court our lack of understanding of the exact procedures that the numerous rules, regulations, laws, and templates regarding submission of Briefs to the Utah Court of Appeals entail. There are only a handful of Legal entities in this State that are so equipped to be able to dot their "i's" and cross their "t's" to meet the rigid standards set forth by the State. These Attorneys would only do this

Appeal for a down payment of \$30,000, and the additional \$20,000 before filing. We filed a Statement of Impecuniosities because we could not accrue such a vast amount of monies for the transcripts needed from the Jury Trial. Due to the current circumstances, I do not work, my husband is on 100% disabled from the U.S. Army, and there are no alternatives that would allow us to obtain or provide the additional funds to acquire the services of an Expert Attorney. Therefore, we had to Pro Se this miscarriage of justice not only on behalf of our son and family, for we are all listed, but also for the further implications this case will have on other blatant injuries incurred at Medical Centers throughout the Nation. It has been most infuriating trying to work with an opposing counsel that is consistently mischaracterizing the facts. I have attempted to follow the rules of procedure the best I understand.

## **2. Appellee's Expert Witnesses Admitted University Hospital Medical Center Was Negligent.**

The Appellants would indulge the Court to consider that the Appellee completely side-stepped/ignored responding in their Appellee Brief about the Expert's, Dr. Peggy Norton MD, trial court admittance that the University of Utah was indeed negligent during the delivery of John Joseph Radl II, by allowing him to fall to the floor at birth as stated in

Appellant's brief. This also contradicted the last minute in-house falsified Affidavit, to stymie a Summary Judgment brought forth by Appellant for negligence, signed by the same Expert, and individual responsible for negligence, Dr. Peggy Norton, stating that Dr. Koschnitzke told Appellant not to push when in fact, the testimony of Dr. Koschnitzke stated he told her to push repeatedly. The jury has been misled by Appellee over and over. TEX. PEN. CODE ANN. § 7.01(a) (Vernon 1974). Judge Medley allowed, Dr. Norton, expert witness for defense/appellant not to directly answer Appellant/Plaintiff Counsels questions, but divert answers to hypothetical events.

### 3. Appellees Continue to Mislead, Misrepresent, Manipulate Appellee Brief to Utah Court of Appeals.

The Appellees again, as throughout the trial, tried to mislead, misinform, and confuse the Judge and Jury as to the facts, even at this time they have attempted to sway the Utah Court of Appeals. Quietly and unobtrusively, the Appellees, on page 17 last paragraph line 3 and line 4 of Brief of Appellee, they audaciously state "...although none of these depositions are in the record and Dr. Borge and Jan Bauer were not even called as witnesses at trial." The Appellee's again mixed truth with falsehoods. Dr. Borge was a witness for the Plaintiff. He testified to the first question on the Appellee's



special verdict form of causation, which states, “1. Did the University of Utah Medical Center breach the applicable standard of care?” Jan Bauer had her deposition taken, but was not called as a witness in court but on the witness list in the Trial. Please refer to the Docketing Statement Page 19 August 7, 2001 Under TRIAL line 4. The Appellee even cross-examined Dr. Borge at the same time period he was on the stand.

2. Rendering of Appellee based on “normal” birth, not one caused by negligence of Drs. Koschnitzke and Norton.

On pages 19 – 27 of the Appellee’s Brief, the rendering discussed was based upon a normal delivery and not one caused by Drs. Koschnitzke and Norton in an attempt to hurry the progress of the assisted birth. On cross-examination, Appellant’s attorney, as stated in Appellant’s Brief, page 30-31,

**Dr. Norton** in her court reporter testimony disc page 42 line 18 through line 20 on August 13, 2001 Plaintiff’s Counsel asked:

“Would you agree, Dr. Norton, that at least one of the primary responsibilities of the delivering Doctor is to receive the baby at birth?”

Her answer is on line 21 and responds, “Yes sir, it is.”

During interrogation by appellant's counsel, **Dr. Peggy Norton's**  
Court Testimony on disc page 44 lines 11-23.

- a. Q. Let me ask you a question about another part in "Williams".  
And let me call your attention to the first full paragraph on page  
648 and ask you if you agree with this proposition: "during an  
unattended birth, the infant may fall to the floor and be injured  
or need resuscitation that is not immediately available.

A. **Yes Sir.**

- b. Q. Was this birth an unattended birth?

A. **No, it was an attended birth.**

Q. And would you agree that one of the reasons that it is wise to  
have an attend at birth is so the baby does not fall to the floor,  
be injured and need resuscitation?

A. **Yes, sir, that's true.**

At this point, Appellee admitted the standard of care was breached  
when they did not catch the baby. Also at this point, the Affidavit of Dr.  
Peggy Norton was attested to being falsified and the Summary Judgment  
for negligence should be granted in favor of the Appellant. In addition,

the Judge should have disallowed any of the testimony of Dr. Norton to be used except to impeach her testimony and be detained for Perjury.

5. Failure to allow local OB/GYN to testify at a lower a cost to Plaintiff/Appellant.

Appellant also had requested to use a local OB/GYN, Dr. James T. Roth, rather than our Expert from California, but Appellee and Judge Medley denied the request. Furthermore, Appellee's mislead the Utah Court of Appeals that the only Expert Testimony came from Appellee, and was Dr. Peggy Norton, and Dr. Koschnitzke, who are in fact key players in this traumatic birth and cover-up.

I ask you – to find anyone who would not find – that in a top rated University Hospital, such as the University of Utah Health and Science Center, under a controlled setting in the Labor & Delivery Suite, being fully staffed with Dr. Koschnitzki OB/MD, Jan Bauer RN Midwife, and another OB/RN, NBICU Team, etc. that there wasn't Neglect –by someone other than the Mother who was told to PUSH!, and allowing the baby to come into this world hitting the floor? (State Case Law: where an expert is not needed when it is so clear that any lay person would find neglect without the need of an expert.)

## 6. Discovery Sanctions.

Appellee intentionally withheld (omission) information about Johnny's treatment and condition results from their experts in order to paint an obscure picture without the details from the following resources:

- Dr. Gray (Johnny's University of Utah Psychiatrist)
- PhD. Nilsson (Johnny's Psychologist),
- Dr. Stiefel (Johnny's University of Utah Specialty Psychiatrist)
- APGAR Scores (APGAR Score altered from a status of grave to an acceptable level. Original document photocopied by University of Utah about two years after birth was blank, Second time photocopied about 3-4 years after birth the APGAR document was found to be annotated)
- Fetal Monitor Strips annotated by University of Utah Obstetric Team noting bad APGAR Scores.

By so doing, their experts did not have the full picture of the problems and having been mislead by Appellee Counsel through omission of pertinent acquirable documentation caused the opinions of their expert, Dr. Vannucci, who testified in Court on 8-13 or 8-14 -2001 to base his opinion on the assumption the Johnny was leading a "normal" life, free of complications of

the atrocious, blatantly inattentive birth due to Dr. Koshnitzke's need to hurry the birth because he wanted to go to bed early and not wait for the assisted birthing process to take place over the space of 6-8 hours. Where-in-fact Johnny's Doctors testified in Trial Court that due to the traumatic birth he is unlike any other child they have treated psychologically ( Nilsson, PhD.) or physically (Dr. Calabrese, Neonatologist and Pediatrician of Johnny). (Dr. Calabrese was also referred to us *by* IHC,

of which John T. Nielsen is

- A University of Utah J.D graduate
- Co-Chairman with the Honorable Judge Tyrone E. Medley (A University of Utah J.D.) on the Utah Task Force on Racial and Ethnic Fairness in the Legal System
- Senior Council of Intermountain Health Care (IHC)
- Chairman of the Executive and Judicial Compensation Commission for increase pay for the Judges of Utah.
- Director: Government Relations, Intermountain Health Care (IHC). (Primary Children's)

for Johnny's care because they insisted we needed an outside Pediatrician rather than just the University of Utah Medical Center and Primary Children's Hospital.).

Johnny has to be extremely medicated in order for him just to be able to focus on one task. Medicated, he could not even take the evaluation tests in the normal standard of time. He had to come back a second day just to finish the psychological evaluation (PhD. Nilsson).

#### 7. Tampering with a Legal Document with intention to harm an innocent.

Through a last minute affidavit to the Trial Court, the Appellee responsible for the delivery, (Dr. Peggy Norton, affidavit and deposition) (cover-up) attests that during the delivery process, Vickie was told to not to push, several times, until the doctor was prepared to receive the baby and inferred that she was not a good mother and caused the injuries to her son by going against Dr. Koschnitzke's directions and pushing and. " Dr. Koschnitzke's testimony during trial (previously stated in Brief) as well as his deposition states that he told her to push from the first major contraction of which there were many according to the Fetal Monitor Strips which the Appellee's are trying to throw-out in the Appellees Brief.

Later, Appellee inferred that we were not good parents. In court they stated that my husband, John J. Radl Sr., violently shook Johnny during a seizure and resuscitation at home and caused his injuries. But they fail to state that my husband Graduated from San Joaquin Delta College, Stockton, California, with certification as an Emergency Medical Technician, employed by **Stockton Ambulance** as a trained ambulance attendant, and certification from the Red Cross in CPR. He would cause no harm on any infant but try to revive him/her within approved medical standards and not “shaken baby syndrome.”

- a. Then Appellee’s mislead, the Judge and Jury by confusing them with genetics and citing them as causing the problems that Johnny had incurred at birth and not the fall and impact to the concrete tile floor. Not the exposure to the floor of the birthing room where numerous bacteria are walked into the room from the bottom of janitors, nurses, and doctors shoes or other implements rolled or carried into the room causing infectious bacteria to cover his body and resulting in albumin and other medications needing to be given. In Appellee’s Brief page 23 paragraph 1 last line states “ If you glove too early, you risk contaminating the gloves (R. at 1497, p. 20-21) what about the baby? Not to the jarring of the body and

resulting in Johnny defecating in his pants 2-10 times per day because he can't tell when he must use the bathroom. Not the inability to focus on one subject but having multiple hyperactivities not allowing him to focus as per the University of Utah treating Doctors.

- b. The Appellee's manipulated the facts to suit their need confuse the Jury and Judge and have the Court and Jury draw conclusions from hearsay. There was no medical test to determine if it was genetics, only the Appellee's overreaching and abusive tactics basing their conclusions upon lawyer hearsay and innuendos.

#### **8. *Ethical concerns.***

Did the litigation and the fact the University of Utah might have to pay, allow the Lawyers to interfere with Peggy A. Norton, M.D with her independent professional judgment? And did she withhold the truth because of the research money this law suite could take away from the University? Or, the accreditation the University of Utah was attempting to receive? Or why weren't our lawyers allowed to interview the jurors after the trial to determine if there were any points to place an appeal. (see Appendix IV)



## SUMMARY of ARGUMENT

### I

The Appellants want to remind the Court that the Appellees have consistently misled, not only the Jury and Courts, but continue to do so for their own benefit. In this case just because one will lie, and the other swear to it does not make it the truth. And, yes, we are emotional about this, living the problems that resulted from the atrocities. We were not allowed in the trial because we were witnesses for the Plaintiff/Appellant, and not allowed to assist our new Attorneys to refute evidence or misrepresented facts by Appellee/Defendants witnesses or Counsel. We are appalled that the Legal Counsel for the Appellee/Defendant would make slur remarks about our Oldest Sons during their closing statements, never having them on the witness stand, and telling the jury 'you bet if the other boys teachers were here, they would say they were worse than Johnny.' Then the Judge stated after the verdict from the Jury 'sorry for wasting your time', turned to opposing Counsel and stated 'didn't we dismiss this once? Well, dismissed again.', whereupon defendants were all jubilant.

## II

**We pray that the Utah Court of Appeals should rule in favor of the Appellant and have the case retried and grant the Motion for Summary Judgment of Negligence due to falsified government documents. And all the facts, to include Johnny's dad's knowledge of causation by Doctor Koshnitzke's need to go to bed early.**

RESPECTFULLY SUBMITTED this Tuesday, March 11, 2003

Vickie L. Radl

Guardian Ad Litem - - Pro Se

By Vickie L. Radl

## Appendix I

The Jury heard addressing of the Standard of Care. During interrogation by Appellants Counsel, Dr. Peggy Norton's Court Testimony on disc page 44 lines 11-23.

1. Q. Let me ask you a question about another part in "Williams".

And let me call your attention to the first full paragraph on page 648 and ask you if you agree with this proposition: "during an unattended birth, the infant may fall to the floor and be injured or need resuscitation that is not immediately available. A. Yes Sir

2. Q. Was this birth an unattended birth? A. No, it was an attended birth.

3. Q. And would you agree that one of the reasons that it is wise to have an attend at birth is so the baby does not fall to the floor, be injured and need resuscitation? A. Yes, sir, that's true. In

Dr. Koschnitzke's, very own testimony and deposition corroborates

1. Doctor K's Deposition dated October 21, 1999 page 128, Line 7-10.

Q. OK. In your opinion/Dr/ is there ever a valid reason for a baby to fall to the floor like this? A. (Dr. Koschnitzke, Martin) No

Dr. Koschnitzke's Testimony (Court Transcript) page 23 lines 2-18 and line 22-25

2. Q. In fact, before the bed was broken down, isn't it true that you told Mrs. Radl to push? A. I believe when I checked her at 1:30, I instructed her to push

3. . Q. In fact, you instructed her to push twice; is that right? A. During two contractions I believe.

4. Q I just want to make sure I get that. I'm still having a little trouble hearing you. Did you instruct her to push twice before or were there just two contractions? What is your recollection? A. I don't remember exactly. I believe there were two contractions and I instructed her to push during those contractions.

Q. There were two contractions and you instructed her to push during those contractions? A. I instructed her to push when she became completely dilated. I don't remember exactly how many times I instructed her to push.

**Dr. Peggy Norton** in her court reporter testimony disc page 42 line 18 through line 20 on August 13, 2001 Plaintiff's Counsel asked:

**"Would you agree, Dr. Norton, that at least one of the primary responsibilities of the delivering Doctor is to receive the baby at birth?"** Her answer is on line 21 and responds **"Yes sir, it is."**

During interrogation by Appellants Counsel, **Dr. Peggy Norton's** Court Testimony on disc page 44 lines 11-23.

a. Q. Let me ask you a question about another part in "Williams".

And let me call your attention to the first full paragraph on page 648 and ask you if you agree with this proposition: **"during an unattended birth, the infant may fall to the floor and be injured or need resuscitation that is not immediately available. A. Yes**

**Sir**

5. Q. Was this birth an unattended birth? A. No, it was an attended birth.

6. Q. And would you agree that one of the reasons that it is wise to have an attend at birth is so the baby does not fall to the floor, be injured and need resuscitation? A. **Yes, sir, that's true.**

At these points the Standard of Care was given, and the Appellees failed to attain the standard by their own Expert Witness, Peggy Norton, MD

## **Appendix II**

### **Legal Sufficiency of Evidence**

In reviewing the legal sufficiency of the evidence, we view the evidence in the light most favorable to the verdict to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979).



## **Appendix III**

### **Falsifying Affidavit**

The jury convicted appellant of tampering with a governmental record. The Penal Code provides:

(a) A person commits an offense if he:

(2) knowingly makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent [\*3] that it be taken as a genuine governmental record.

TEX. PEN. CODE ANN. § 37.10(a)(2) (Vernon 1994).

### **Appendix III**

#### **Pre -Statement to the Utah Court of Appeals**

We would like to address to the Appellate Court of Utah of the infallible, conscientious, painstaking materialistic methodologies that the erudite opposing counsel so filled with silver tongued rhetoric, has put us in our place. Yet we do not understand how the 2<sup>nd</sup> highest court in the State can sit by and allow them to make blatant outright lies to the court? They continually mislead the court and manipulate the facts such that they sound feasible. This has been continuing from the beginning of the incident of not being negligent for allowing the baby to hit the floor, through action of altering and falsifying APGAR scores and other medical records, to the latest outstanding misfeasance of stating to The Appellate Court of Utah that Doctor Borg, witness for plaintiff, was not present in Trial Court to provide evidence and statements in the Third District Court that the Appellee was indeed negligent for not catching Johnny at birth, thus allowing him to hit the floor, even though Attorneys for the Appellee cross examined the non-existing witness. This continued throughout the trial as the Appellee's

Attorney's presented to the court and the jury, twisted: dates, times, circumstances, and hearsay. They tried to make us appear as some Neanderthal's that just dropped off the turnip truck. The Appellees have manipulated, misstated, misrepresented, and omitted facts to mislead the court and the jury as to the facts in this case.

Maybe this type of tactics might work for the attorneys around the water cooler, but there should be no place allowed for such tactics in the Judicial Courts of this State. Such frivolous disregard for fair and balanced judgments to sustain one set of attorneys and not the other contains prejudice on part of the court.

If the Appellees can blatantly lie to The Appellate Court of Utah, how much more have they misled and covered up in Trial Court? It would take a complete audit by the State of Utah to go through the files of the Appellee and the documentation of Snow, Christensen, and Martineau to arrive at the real truth.

## **Appendix IV**

### **Judge Medley Allows Dr. Norton to Circumvent Answering Directed Questions/ Denies Appellant Attorney to Speak to Jury**

Court Disk, Peggy Norton, MD

Page 12 Mr. Williams in direct examination.

Line 3-5 The Court: Mr. Williams, I apologize for interrupting, but as to that last question you put to the witness, her answer was a nod of the head.

Line 6. The Witness: Yes

Line 7. Mr. Williams: Thank you, your Honor, would you answer that audibly please.

Page 36 Mr. Parker for the Plaintiff

Line 21-22 Q. I and you were the one you indicated that was responsible for that delivery as the attending surgeon.

Line 23 A. I was, sir.

Line 24 Q There were factors in this case that might lead to a more rapid labor, were there not?

Page 37

Line -1-4-A Mild factors compared to, say. A 28-week delivery which happens quite often. That's a baby who is 12 weeks before their due date where we are actually much more worried about precipitous delivery

Line 5. Q. Let me ask you this:

(Mr. Parker) Your Honor, could the Witness be instructed to respond to my question.

Line 8. (The Court) Not as to the last question, Mr. Parker. I have it in front of me and your question provided a more lengthy answer. I mean I'll willing to do it when it's appropriate.

## Appendix V

### Refusal of Judge to Allow Plaintiff's/Appellee's Counsel to Speak with Jury Members

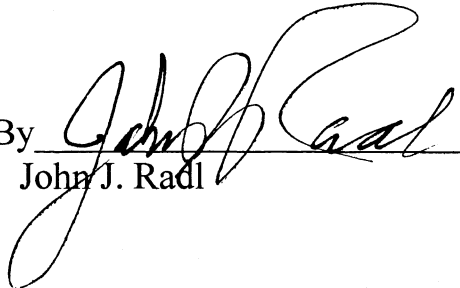
Jim McConkie, Counsel for Plaintiff, asked Judge Medley if he could speak with the Juror's. Judge medley said he would think about it, then the Judge left town. When the Judge returned, instead of allowing Jim to question the jurors, the Judge demanded any and all paper work with the Jurors' Names and information on them to be turned over to the Court. We feel it would have been of great benefit to our Appeal to have had access to the Jurors. We should have been able to see if they understood the 45 instructions the Judge gave them, as well as the Special Verdict Form.

## CERTIFICATE OF SERVICE

I certify that two copies of the foregoing Brief of Appellee were served by first class mail, postage prepaid, on March 11, 2003, as follows:

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By

  
John J. Radl