

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF MECKLENBURG

2015 MAY -7 PM 4: 47

SUPERIOR COURT DIVISION

15-CVS-1945

MECKLENBURG CO., C.S.C.

THERESA A. LEIPZIG,
Plaintiff,

vs.

VASCULAR ACCESS CENTER OF
DURHAM, LLC and
JAMES F. MCGUCKIN, Jr., M.D.,
Defendants.

COMPLAINT

The Plaintiff, complaining of the Defendants, alleges and says as follows:

PARTIES, JURISDICTION AND VENUE

1. The Plaintiff, Theresa A. Leipzig, is presently a citizen and resident of Burlington, Wisconsin. At all times material to this complaint, Ms. Leipzig was a citizen and resident of Boiling Springs, South Carolina.
2. The Defendant, Vascular Access Center of Durham, LLC, is a limited liability company organized and existing under the laws of the State of North Carolina. Its registered agent is CT Corporation System, 150 Fayetteville Street, Raleigh, North Carolina 27601-1395.
3. The Defendant, James F. McGuckin, Jr., M.D., upon information and belief, was at all times pertinent to the matters alleged in the complaint a citizen and resident of Durham, Durham County, North Carolina, and at all times herein complained was upon information and belief a physician duly licensed to practice medicine pursuant to the laws of the State of North Carolina. He is presently, upon information and belief, a resident of the State of Pennsylvania.
4. The Defendant, James F. McGuckin, Jr., M.D., upon information and belief limited his practice of medicine to interventional radiology and held himself out to be an expert and specialist in the field of interventional radiology surgery, and at all times herein complained was a "health care provider" within the definition of N.C. Gen. Stat. § 90-

5. The acts or omissions of the Defendants giving rise to this cause of action occurred in North Carolina.
6. This Court has subject matter jurisdiction.
7. This Court has personal jurisdiction over each of the parties.
8. Jurisdiction and venue are otherwise properly with this Honorable Court.

AGENCY

9. The Defendant, James F. McGuckin, Jr., M.D, at all times herein complained, was an agent, servant, officer or employee of the Defendant, Vascular Access Center of Durham, LLC, and all acts or omissions complained of herein occurred during the course and scope of his employment or agency relationship with said Defendant Vascular Access Center of Durham, LLC and are therefore imputed to the Defendant, Vascular Access Center of Durham, LLC,, under the doctrine of *respondeat superior*.

FACTS

10. At all times material to this complaint, Plaintiff Theresa A. Leipzig had primary progressive multiple sclerosis. She became a patient of Defendant McGuckin and Vascular Access Center of Durham, LLC, in 2011 for the purpose of receiving CCSVI treatments. The initials CCSVI stand for chronic cerebrospinal venous insufficiency.
11. In 2011 and 2012, some doctors claimed that CCSVI might be a cause of multiple sclerosis, and that treatment of people diagnosed with multiple sclerosis with endovascular procedures to improve venous blood flow improved those patients' medical condition.
12. On May 10, 2011, Defendant McGuckin performed percutaneous transluminal angioplasty procedures to Theresa Leipzig's left common iliac vein, left renal vein, the Azygous genu, and both internal jugular veins.
13. On July 6, 2011, Defendant McGuckin performed percutaneous transluminal angioplasty procedures and placed stents in Theresa Leipzig's left common iliac vein, in the Azygous vein, and in the left internal jugular vein.
14. On May 9, 2012, Defendant McGuckin performed percutaneous transluminal angioplasty procedures and placed stents in Theresa Leipzig's left renal vein, her Azygous vein, and her left internal jugular vein.
15. All of the procedures described in paragraphs 13 through 14 were performed by Defendant McGuckin at Vascular Access Center of Durham.

16. The stent Defendant McGuckin placed in Theresa Leipzig's left renal vein on May 9, 2012, migrated up the venous system and entered Ms. Leipzig's right atrium.
17. Theresa Leipzig was forced to undergo open heart surgery at Aurora St. Luke's Medical Center, Milwaukee, Wisconsin, on May 21, 2012, to remove the stent from her heart, and to repair damage caused to her heart by migration of the stent.
18. The stent Defendant McGuckin placed in Theresa Leipzig's right internal jugular vein became completely occluded. The stent has migrated so that it now protrudes into the right subclavian vein.

ALLEGATIONS OF NEGLIGENCE

19. The allegations contained in paragraphs 1 through 18 are incorporated by reference as if fully set forth herein.
20. Defendant McGuckin had a duty to use his best judgment in the treatment and care of Theresa Leipzig, to use reasonable care and diligence in the application of his knowledge and skill in his patient's care, and to otherwise practice healthcare in accordance with the applicable standards of care.
21. During the period that the healthcare provider - patient relationship existed between Defendant McGuckin and Theresa Leipzig, Defendant McGuckin failed to use his best judgment in the treatment and care of his patient, failed to use reasonable care and diligence in the application of his knowledge and skill to his patient's care, and the care and treatment provided to Theresa Leipzig was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged acts giving rise to this claim. In particular, Defendant McGuckin was negligent and breached his duty of care to Theresa Leipzig in one or more of the following respects:
 - a. He performed procedures on Theresa Leipzig that carried significant risks of harm to her which were not approved by the Food and Drug Administration, and the angioplasty devices and stents he used had not been approved by the Food and Drug Administration for use in treating CCSVI;
 - b. He knew, or in the exercise of reasonable care should have known, that studies exploring a potential link between multiple sclerosis and CCSVI were inconclusive, and that the criteria used to diagnose CCSVI had not been adequately established.
 - c. He knew, or in the exercise of reasonable care should have known, that the procedures he performed for Theresa Leipzig, whose multiple sclerosis was the primary progressive type, had a low chance for a successful outcome in relation to the risks the procedures posed to Ms. Leipzig;

- d. He failed to adequately inform Theresa Leipzig of the dangers posed by the angioplasty procedures he performed and by his placement of multiple stents into her veins, and further failed to adequately inform Theresa Leipzig that the chance the procedures would improve her multiple sclerosis did not outweigh the risks associated with the procedures;
 - e. He placed stents in locations that were not likely to cause any improvement in Theresa Leipzig's multiple sclerosis, including left renal vein;
 - f. He failed to properly perform the stenting procedures on May 9, 2012, including placing the wrong size stent in Theresa Leipzig's left renal vein; and
 - g. He was otherwise negligent in his care and treatment of Theresa Leipzig as may be ascertained through discovery procedures undertaken pursuant to North Carolina Rules of Civil Procedure.
22. As a direct and proximate result of the negligence and medical malpractice by Defendant McGuckin, as described above, Theresa Leipzig suffered injuries and damages that would not have occurred but for his negligence.

DAMAGES

23. The allegations of paragraphs 1 through 22 are incorporated herein by reference as if fully set forth herein.
24. That as a direct and proximate result of her injuries, Plaintiff Theresa Leipzig has been forced to seek medical attention and treatment through private physicians, hospitals and other medical providers at considerable expense and, as a further result of her injuries, the Plaintiff has suffered severe physical pain and mental anguish and will continue to suffer severe physical pain and mental anguish in the future.
25. Plaintiff Theresa Leipzig is informed and believes, and so alleges on information and belief, that she will continue to incur substantial medical expenses over the remainder of her natural life for treatment of injuries received as a direct and proximate result of Defendants' negligence. Plaintiff Theresa Leipzig is entitled to recover of Defendants all amounts she will incur for future medical expenses
26. The negligence of Defendant McGuckin as herein described is a proximate cause of the injuries herein alleged and of Theresa Leipzig's resulting damages.

RULE 9(j) CERTIFICATION

27. The Plaintiff objects to the requirements of Rule 9(j) of the North Carolina Rules of Civil Procedure on the basis that this Rule requires Plaintiffs in medical negligence actions to

prove their case before factual discovery is even begun. This Rule denies medical malpractice Plaintiffs their rights of due process of law, of equal protection under the law, of the right to open courts, and of the right to a jury trial (in violation of the United States and North Carolina Constitutions) and, further, that Rule 9(j) is an unconstitutional violation of the following: (A) Amendment VII and Amendment XIV of the United States Constitution; and (B) Article I, Sections 18, 19, and 25 of the North Carolina Constitution.

Without waiving these objections, Counsel for Plaintiff provides the following information to comply with the requirements of Rule 9(j): the medical care rendered by Defendants and all medical records pertaining to the alleged negligence that are available to Plaintiff after reasonable inquiry have been reviewed before the filing of this Complaint by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the North Carolina Rules of Evidence and who is willing to testify that the care provided by Defendants did not comply with the applicable standard of care.

In addition, should a Court later determine that any of the persons who have reviewed the medical records of Defendants does not meet the requirements of Rule 702(b) or 702(c) of the North Carolina Rules of Evidence, then Plaintiff will seek to have such person qualified as an expert witness by motion Under Rule 702(e) of the North Carolina Rules of Evidence, and Plaintiff moves the Court (as provided in Rule 9(j) of the North Carolina Rules of Civil Procedure) that such person be qualified as an expert witness under Rule 702(e) of the North Carolina Rules of Evidence. Plaintiff does not waive objections on the grounds stated to the purported certification requirements of Rule 9(j) by providing this certification, and specifically preserves objections to any "discovery" related to Rule 9(j).

CONSTITUTIONAL CHALLENGE "Billed vs. Paid"

28. Plaintiff objects to the provisions of Rule 414 of the North Carolina Rules of Evidence as unconstitutional. This legislative enactments, which applies to actions arising on or after October 1, 2011, violate Article IV, § 13(2) of the North Carolina Constitution, which provides that "No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury." The Rule also violates the right to a jury trial, due process of law, equal protection under the law, and the right to open courts, and violates the separation of powers, in violation of Article I, sections 6, 18, 19, and 25, and Article IV, sections 1 and 13 of the North Carolina Constitution.
29. Plaintiff in this action has incurred substantial medical expenses as a result of Defendants' negligence. Under the common law, a Plaintiff is entitled to recover his or her "medical expenses," including "all medical bills reasonably incurred by the Plaintiff as a proximate result of the negligence of the Defendant." N.C.P.I. Civil 810.04. Contrary to North Carolina substantive law, and in violation of the North Carolina Constitution, Rule 414 bars a Plaintiff from submitting evidence of their actual medical bills to the jury, and limits Plaintiff to presenting "the amounts actually paid to satisfy the bills" and "the amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied." These new evidentiary and procedural rules, if applied in this case, will directly harm Plaintiff by reducing the amount

of medical expenses she can recover as damages.

WHEREFORE, the Plaintiff respectfully prays the Court for relief as follows:

- A. That Plaintiff have and recover of the Defendants, jointly and severally, a fair and reasonable money sum to be determined by a jury based upon the evidence and in accordance with the law as instructed by the Court, for damages and personal injuries, incurred or to be incurred, in an amount in excess of Ten Thousand Dollars (\$10,000.00);
- B. That the costs of this action be taxed against the Defendants, including a reasonable fee for the Plaintiff's attorney;
- C. That the Plaintiff have and recover of the Defendants interest at the legal rate on any compensatory judgment from the date of the institution of this action, as provided by Sections 24-1 and 24-5 of the General Statutes of North Carolina;
- D. For such other, further and different relief to which the Plaintiff may be entitled under the law and facts of the case.

This the 2 day of May, 2015.



Charles G. Monnett III
N.C. Bar # 11230
Attorney for Plaintiff

FOR THE FIRM:

CHARLES G. MONNETT III & ASSOCIATES

6842 Morrison Boulevard, Suite 100

Charlotte, NC 28211

(704) 376-1911

cmonnett@carolinalaw.com