

COMMONWEALTH OF KENTUCKY  
28<sup>th</sup> JUDICIAL CIRCUIT  
LINCOLN CIRCUIT COURT  
DIVISION 2  
CIVIL ACTION NO. 18-CI-00171

*Electronically Filed*

CHELSEY IRVIN, AS GUARDIAN OF  
JAMESON COLE IRVIN, an unmarried infant

PLAINTIFF

vs.

**PLAINTIFF'S PRE-TRIAL MEMORANDUM**

BATES, MILLER AND SIMS, PLLC and  
JAMIE ATWOOD

DEFENDANTS

\* \* \* \* \*

Comes the Plaintiff, Chelsey Irvin, as Guardian of Jameson Cole Irvin, an unmarried infant, by counsel, and files her Pre-Trial Memorandum.

**INTRODUCTION**

This is a medical negligence case involving birth injuries to Jameson "Cole" Irvin. Cole sustained hypoxic-ischemic brain injury at birth. Plaintiff will show this was due to the attending midwife's failure to appreciate the seriousness of Chelsey's prolonged tachysystole (too frequent contractions) and Cole's prolonged fetal distress, and her failure to timely notify the on-call physician (Christopher Sims, M.D.) for prompt delivery of Cole via c-section.

**PARTIES**

**Chelsey Irvin:** Chelsey is Cole's mother, and was appointed Guardian for Cole by the Lincoln District Court.

**Jameson Cole Irvin:** Cole is now 4 years old. He suffers from cerebral palsy and intellectual/behavioral disabilities as a result of the injuries he sustained at birth.

**Bates, Miller and Sims, PLLC:** "BMS" is a Family Medicine practice that includes obstetrics, pediatrics, family medicine and gynecology. The physician

owners are Rodney Bates, M.D., James Miller, M.D., and Christopher Sims, MD. BMS is the employer of Jamie Atwood.

**Jamie Atwood:** Jamie Atwood is the midwife who oversaw the labor and delivery of Cole Irvin (before Dr. Sims arrived).

**Note:** Dr. Christopher Sims delivered Cole by emergency C-section on December 7, 2017 at 7:25 p.m. Plaintiff has never claimed that Dr. Sims did anything wrong.

**Note:** EMFHL, Inc., d/b/a Ephraim McDowell Fort Logan Hospital, is a former party to this action, having settled following mediation.

### RELEVANT FACTS

On Thursday, December 7, 2017 at 7:44 a.m., Chelsey is admitted to Fort Logan Hospital as planned for induction of labor. She is exactly 39 weeks pregnant. Midwife Atwood is the admitting provider. Chelsey is the only laboring mother Midwife Atwood is taking care of this day.

Chelsey is connected to an external electronic fetal heart monitor per Midwife Atwood's standing order. Chelsey is administered Cervical, a drug which promotes uterine contractions, and which is known to cause tachysystole in some laboring mothers. The initial fetal heart rate tracings are "Reactive," indicating that Cole is well oxygenated. Chelsey's labor pattern is normal.

Around 1:30 p.m., Chelsey's contractions become too frequent – a condition known as tachysystole. This condition, which can be both dangerous for the mother and the baby, is allowed to continue for hours. Over this time period, Cole's fetal heart tones become progressively non-reassuring. This indicates Cole is experiencing a decrease in oxygenation due to utero-placental insufficiency, a condition known to result from tachysystole, and which is known to cause hypoxic ischemic brain injury ("HIE") if not corrected.

Chelsey's tachysystole and Cole's non-reassuring heart tones are evident when Midwife Atwood arrives at the hospital for the first time around 3:00 p.m. Yet,

Midwife Atwood leaves the hospital (even as the fetal heart monitor is alarming) a few minutes later.

At 5:44 p.m. Midwife Atwood returns to the hospital for the second time. After reviewing the fetal heart monitor tracings, Midwife Atwood consults Dr. Sims by telephone. Dr. Sims was not even aware that Chelsey had been admitted for delivery. Midwife Atwood finally administers medication to correct Chelsey's tachysystole and takes additional measures to monitor Cole, but it is too little too late. Dr. Sims calls for a Level 1 Emergency C-section secondary to "non-reassuring fetal heart tones pattern, tachysystole, and maternal hypotension likely related to epidural."

Cole is born limp, blue and not breathing. His Apgar's are 2 at 1 minute, 6 at 5 minutes and 8 at 10 minutes. Cole has numerous abnormal lab values. Most importantly, Cole's cord blood gases are critically low (pH of 7.046 per umbilical vein blood and pH of 6.980 per umbilical artery blood). Dr. Sims consults with a physician in the UK Medical Center NICU, who appropriately recommends that Dr. Sims institute the passive cooling protocol for suspected hypoxia.

Cole is transferred to U.K. Medical Center, where he remains a patient from December 8, 2017 through January 9, 2018. His diagnoses include: hypoxic-ischemic encephalopathy (HIE), neonatal encephalopathy, seizures, hyperkalemia, acute kidney injury, and hypertension.

#### **QUESTIONS OF LAW**

The Court has entered an Agreed Order finding Bates Miller and Sims, PLLC liable for the actions of its employee, Jamie Atwood.

#### **QUESTIONS OF FACT**

Did Ms. Atwood exercise that degree of care and skill expected of a reasonably prudent Midwife under the same or similar circumstances?

If not, was Ms. Atwood's failure(es) a substantial factor in causing injury to Cole Irvin?

Amount of money to reasonably compensate Cole Irvin for his injuries.

**TRIAL CONSIDERATIONS**

The trial of this matter is expected to take 10 – 12 days.

Plaintiff's Proposed Jury Instructions have been filed with the Court, with a copy attached.

/s/Richard Hay

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was this 4<sup>th</sup> day of April, 2022, served by electronic service as designated below, or upon the following persons by mailing a true and correct copy of same by First Class, U.S. Mail, postage prepaid and addressed to:

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