

NOT ORIGINAL

DOCUMENT

COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT, DIV. I  
CIVIL ACTION NO. 20-CI-888

08/30/2023 02:52:17

PM

MEDIA5022

*Electronically Filed*

**BEN PHELPS, Administrator of the Estate of  
ASHLEY NICOLE PHELPS, deceased, ET AL.**

**PLAINTIFFS****VS.**

**UNIVERSITY MEDICAL CENTER, INC. D/B/A  
UNIVERSITY OF LOUISVILLE HOSPITAL D/B/A  
JAMES GRAHAM BROWN CANCER CENTER, ET AL.**

**DEFENDANTS**

---

**PLAINTIFFS' TRIAL MEMORANDUM**

---

Plaintiffs, by counsel, in compliance with the Court's Third Civil Jury Trial Order entered on November 10, 2022, for their Trial Memorandum, hereby state as follows:

**I. Introduction.**

This case arises from the personal injury and wrongful death of 30-year-old Ashley Nicole Phelps due to the medical negligence of Oncologist/Hematologist, Dr. Robert Emmons. Ashley Nicole Phelps died of preventable Pneumocystis pneumonia ("PCP") on September 5, 2018, following a successful autologous hematopoietic cell (stem cell) transplant in May of 2018. Dr. Emmons breached well-established standards of care by: (1) failing to prescribe a prophylaxis for PCP (common antibiotic known as Bactrim); (2) failing to request and/or obtain Ashley's abnormal chest CT scans; and (3) failing to consult with a pulmonologist regarding Ashley's abnormal respiratory issues. Ashley left behind her husband, Ben Phelps, and their three (3) minor daughters, Mishka, Amelie, and Hadassah.

NOT ORIGINAL

DOCUMENT

**II. Summary of Factual Situation.**

08/30/2023 02:52:17

PM

Ashley was previously diagnosed with Hodgkin Lymphoma in 2014 but achieved complete remission following a cycle of chemotherapy. In late 2017, over 3 years later and after giving birth to her third child, Ashley presented with some symptoms and received two (2) cycles of ICE chemotherapy aimed at treating recurrent Hodgkin Lymphoma, which achieved a nearly complete response as confirmed by PET Scan. She then received two (2) cycles of brentuximab therapy in March of 2018 in preparation for an autologous hematopoietic stem cell transplant. Ashley tolerated the brentuximab therapy well.

MEDIA5022

Ashley underwent a successful autologous stem cell transplant at University of Louisville Brown Cancer Center (“UofL”) on May 9, 2018. Dr. Emmons performed the stem cell transplant and devised the plan for the post-transplant care of Ashley Phelps, which he communicated to community oncologist Dr. Seshadri in Bowling Green, Kentucky. Ashley achieved engraftment of her stem cell transplant and her blood counts recovered to the point where she could be discharged from UofL on May 21, 2018. As a result of the stem cell transplant, Ashley was immunocompromised and at increased risk for infection. Ashley was prescribed a viral prophylactic medication, Acyclovir, prior to her discharge. However, Ashley was discharged from UofL without having been prescribed any prophylactic medication to prevent PCP.

UofL BMT (Bone and Marrow Transplant) division’s supportive care documents include guidelines for a PCP prophylaxis in autologous stem cell transplant patients like Ashley. The supportive care documents were in effect before, during, and after Dr. Emmons’ treatment of Ashley Phelps. Likewise, all of the Hematologist/Oncologist within UofL’s BMT division were prescribing a PCP prophylaxis to autologous stem cell like Ashley, except for Dr. Emmons who was new to UofL’s BMT program, arriving in January of 2018.

DOCUMENT

PM

Dr. Emmons instructed Dr. Seshadri to administer brentuximab vedotin for up to sixteen (16) cycles as maintenance therapy for Ashley's post-transplant care pursuant to the AETHERA trial (Moskowitz). The AETHERA trial includes that "[i]nfection prophylaxis for herpes simplex virus, varicella-zoster virus, and *Pneumocystis jiroveci* (the causative organism of PCP) after autologous stem cell transplantation were to be followed as per standard international guidelines."

On June 12, 2018, Ashley received her first post-transplant dose of brentuximab vedotin which was administered by community oncologist Dr. Seshadri in Bowling Green, Kentucky. Like the AETHERA trial, the instruction label for the brentuximab medication also indicates a prophylaxis for PCP, but the prophylaxis was not prescribed to Ashley.

On June 18, 2018, Ashley presented to Graves-Gilbert in Bowling Green, Kentucky with a heart rate of 164 (tachycardia) and complaints of a headache. Ashley subsequently developed abdominal pain, nausea, and cramps. On June 27, 2018, Ashley was admitted to the Medical Center of Bowling Green complaining of abdominal pain that had gotten worse in the previous week. Ashley was treated with steroids and discharged on June 30, 2018 by Dr. Seshadri. Dr. Seshadri reported to Dr. Emmons that Ashley was treated with steroids.

On July 15, 2018, Ashley presented to the emergency room of Medical Center of Bowling Green complaining of shortness of breath. Ashley was evaluated for a pulmonary embolus, though none were found as confirmed by a chest CT scan. However, Ashley's chest CT scan showed low lung volumes and scattered patchy airspace opacities. On July 20, 2018, a second chest CT scan was also abnormal and confirmed the existence of "increasing patchy ground glass opacities suggestive of infectious or inflammatory etiology."

On July 26, 2018, Ashley scheduled an unplanned office visit with Dr. Emmons. Ashley and Ben reported to Dr. Emmons that her recent chest CT scans were abnormal. Ashley further

DOCUMENT

PM

reported that she was experiencing shortness of breath and dyspnea. It is documented in her medical records that Ashley had left lung inflammation per the aforementioned diagnostic studies, but the cause of Ashley's left lung inflammation was "unclear." A pulmonary embolism was previously ruled out by CT scan in Bowling Green, Kentucky. Dr. Emmons did not consult a pulmonologist or obtain a copy of the CT scans of Ashley's chest.

On August 17, 2018, because her problems persisted, Ashley returned to Dr. Emmons for evaluation. Ashley again reported shortness of breath and oxygen saturation as low as 90% on her home meter. Again, Dr. Emmons failed to consult a pulmonologist or obtain a copy of the CT scans of Ashley's chest. However, Dr. Emmons later testified during his deposition that the July CT scans would have prompted him to seek consultation with a pulmonologist. Dr. Emmons and Dr. Seshadri were in communication during the course of co-managing Ashley's post-transplant treatment by text messaging.

On August 19, 2018, Ashley presented to the emergency room of Greenview Regional Hospital complaining of a cough and intermittent hypoxia. According to her records, Ashley's oxygen saturation was 83%. A consulting pulmonologist immediately noted that Ashley's symptoms suggested PCP given the bilateral interstitial infiltrates, hypoxia, and absence of a prophylaxis for PCP in her immunocompromised state. However, Ashley developed respiratory failure and required intubation.

On August 23, 2018, Ashley was life flighted to UofL and was conscious upon arrival. On August 24, 2018, Ashley underwent a bronchoscopy and a Pneumocystis PCR test, which was positive and confirmed that Ashley had PCP. The results of beta-d-glucan tests further supported the diagnosis of PCP. Ashley was treated with high-dose Bactrim in response. However, Ashley's condition deteriorated, and she required paralysis for ventilation as well as prone positioning, and

DOCUMENT

PM

she was transferred to Jewish Hospital in Louisville, Kentucky for ECMO. Ashley deteriorated further, and life support was eventually withdrawn. Ashley died on September 5, 2018, due to complications from PCP.

08/30/2023 02:52:17

MEDIA5022

Defendants dispute that Dr. Emmons was required to prescribe a prophylaxis for PCP to Ashley. However, Plaintiffs' experts have testified during depositions (and will testify at trial) that the pneumocystis and Ashley's death were completely preventable had Dr. Emmons complied with the applicable standard of care by prescribing a prophylaxis for PCP, obtaining copies of Ashley's abnormal chest CT scans, and/or timely consulted with a pulmonologist. Dr. Emmons simply did not provide Ashley with the treatment that a reasonably prudent Hematologist/Oncologist would have provided in the same or similar circumstances.

### III. Issues involved.

1. Whether the Dr. Emmons met the standard of care in his treatment of Ashley Nicole Phelps.
2. Whether Dr. Emmons' negligence was a substantial factor in causing the injuries and death of Ashley Nicole Phelps.
3. The damages to award Plaintiffs as a result of Dr. Emmons' negligence.

### IV. Stipulations.

1. It is anticipated that the parties can stipulate to the authenticity of medical records, and the authenticity and amount of medical bills.
2. It is anticipated that the parties can stipulate to the amounts of Plaintiffs' claims for lost earning capacity and loss of household services.

This the 29<sup>th</sup> day of June, 2023.

NOT ORIGINAL

DOCUMENT

PM

/s/ Mark D. Alcott

08/30/2023 02:52:17

Mark D. Alcott

Justin L. Duncan

MEDIA5022

HARLIN PARKER

519 East Tenth Street, P.O. Box 390

Bowling Green, KY 42102-0390

(270) 842-5611

*Counsel for Plaintiffs***CERTIFICATE OF SERVICE**

This is to certify that a true and exact copy of the foregoing has this 29<sup>th</sup> day of June, 2023, filed with the Clerk of Court via CM/ECF system and served via email to the following:

Ashley J. Butler  
 Robert Shilts  
 Stoll Keenon Ogden PLLC  
 500 West Jefferson Street, Ste 2000  
 Louisville, KY 40202  
 (502) 333-6000  
[Ashley.Butler@skofirm.com](mailto:Ashley.Butler@skofirm.com)  
[Robert.Shilts@skofirm.com](mailto:Robert.Shilts@skofirm.com)  
[Karla.Eastridge@skofirm.com](mailto:Karla.Eastridge@skofirm.com)  
[Summer.Miller@skofirm.com](mailto:Summer.Miller@skofirm.com)  
*Counsel for Defendants,*  
*University Medical Center, Inc. d/b/a*  
*University of Louisville Hospital d/b/a*  
*James Graham Brown Cancer Center and*  
*Robert Emmons, M.D.*

James P. Grohmann, Esq.  
 Justin Janes, Esq.  
 O'Bryan, Brown & Toner, PLLC  
 401 South Fourth Street, Suite 2200  
 Louisville, KY 40202  
 (502) 585-4700  
[grohmannj@obtlaw.com](mailto:grohmannj@obtlaw.com)  
[janesj@obtlaw.com](mailto:janesj@obtlaw.com)  
*Counsel for Defendant,*  
*University of Louisville*  
*Physicians, Inc.*

/s/ Mark D. Alcott

Mark D. Alcott