

NO. 15-CI-003710

JEFFERSON CIRCUIT COURT
DIVISION TWO (2)
HON. ANNIE O'CONNELL*(Electronically Filed)*

MARSHA D. WALKER

PLAINTIFF

v.

STEVEN F. SAMUEL, M.D.; and SAMUEL, STEWART &
ASSOCIATES, P.S.C.

DEFENDANTS

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DEFENDANTS' TRIAL BRIEF

Defendants, Steven F. Samuel, M.D., and Samuel, Stewart & Associates, P.S.C., by counsel, and pursuant to the Court's Trial Order, respectfully submit the following Trial Memorandum.

STATEMENT OF FACTS

This is a medical negligence action arising from injuries allegedly sustained by Plaintiff Marsha D. Walker from a series of hernia repair surgeries by Defendant Steven F. Samuel, M.D. Defendants recognize as facts Plaintiff's medical records described in Defendants' Exhibit List; briefly, though, the series of hernia procedures by Dr. Samuel and Plaintiff's subsequent medical course include the following:

May 30, 2008: Repair of recurrent ventral hernia with mesh, and an open repair and with plug and patch Marlex of right inguinal hernia.

March 3, 2009: Repair of an incarcerated ventral hernia with mesh.

March 16, 2010: Open repair with large plug and patch Marlex for recurrent right inguinal hernia.

June 20, 2014: Repair of recurrent incarcerated ventral hernia with mesh.

After the procedure on June 20, 2014, Plaintiff experienced partial incision separation with drainage. Dr. Samuel provided Plaintiff continued follow-up treatment, including wound-care, several times over the next six-week period until her last visit with him on July 28, 2014. At the final visit, Dr. Samuel noted the incision to be partially open with good granulation and 70% healed.

Plaintiff was seen by Dr. Richard Pokorny on August 7, 2014. Dr. Pokorny examined her wound and found no signs or symptoms of infection. On August 9, 2014, Dr. Pokorny performed an open recurrent incisional hernia repair with mesh and bilateral component separation; MRSA was cultured from the wound fluid, and Plaintiff was discharged on oral antibiotics. On August 22, 2014, Plaintiff saw Dr. Pokorny for follow-up; her drains were removed, and she was instructed to return on an as-needed basis. Plaintiff returned to Dr. Pokorny on September 25, 2014, with complaints of abdominal pain in the peri-incisional region that had persisted for the last three or four weeks. Dr. Pokorny treated Plaintiff with lidocaine patches with limited success, and on December 18, 2014, he referred her for pain management.

On February 27, 2015, Plaintiff presented to pain management specialist Dr. Darel Barnett for the abdominal pain. Dr. Barnett initiated treatment with trigger point injections and directed nerve blocks that provided short-term, acceptable pain relief. Dr. Barnett has yet to recommend any implantable pain control devices.

Plaintiff alleges that the procedures by Dr. Samuel were performed negligently and that the alleged substandard care and treatment caused her to undergo the August 9, 2014, surgery by Dr. Pokorny and to sustain abdominal scarring, pain and suffering, mental anguish, and future pain and suffering. Defendants maintain that the care and treatment Dr. Samuel provided Plaintiff was

always consistent with the applicable standard of care and not a factor in Plaintiff's alleged injuries or damages.

ISSUES OF LAW AND FACT

Plaintiff claims medical negligence against Defendants and seeks compensatory damages and costs, including reasonable attorney's fees. For Plaintiff to prevail, she must establish a deviation from the applicable standard of care and that the deviation was the cause of her alleged injuries and damages. *Reams v. Stutler* (Ky. 1982), 642 S.W. 2nd 586. This is not a case that can be understood by laypersons: an expert witness with the requisite knowledge, skill, expertise, training, and education is required to prove the deviation, causation, and damages elements. *Green v. Owensboro Med. Health. Sys., Inc.* (Ky. App. 2007), 231 S.W. 3rd 781.

Regarding compensatory damages, Plaintiff is seeking medical expenses. Kentucky law requires that the medical expenses sought are reasonable. *Miller v. Mills* (Ky. App. 1953) 257 S.W. 2nd 520. The medical expenses may be admitted without the necessity of expert testimony concerning the reasonableness; however, whether the medical expenses are reasonable is subject to challenge. *Townsend v. Stamper* (Ky. App 1965), 398 S.W. 2nd 45. Plaintiff is also seeking future damages for pain-and-suffering related to abdominal pain, which must be established with "positive and satisfactory evidence." *Consolidated Coach Corp. v. Eckler*, 58 S.W. 2nd 582 (Ky. App. 1933).

Considering the foregoing, this case turns of the following issues to be decided at trial:

1. Whether Plaintiff has proven to a medical probability that Defendant Steven F. Samuel, M.D., deviated from the applicable standard of care in his care and treatment of Plaintiff.
2. Whether Plaintiff has proven to a medical probability that Defendant Steven F. Samuel, M.D., was the proximate cause of Plaintiff's alleged damages.

3. Whether Plaintiff has proven that the medical expenses sought are reasonable.
4. Whether Plaintiff has proven the future damages sought with positive and satisfactory evidence.

The Jury will hear from multiple experts on both sides, as listed in the Parties' respective Witness and Exhibit Lists filed with the Court pursuant to the Trial Order. Also separately filed with the Court are Defendants' Motions in Limine and Proposed Jury Instructions.

Respectfully submitted,

/s/ Scott P. Whonsetler
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August, 2021, a copy of the foregoing was filed electronically through the KCOJ eFiling system, which will arrange service upon the following:

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