

Babies Switched In Nursery: Court Allows One Of The Mothers To Sue For Damages.

One of the mothers was given an infant to nurse and nursed her for a time until she realized she did not look like her own baby. The mother checked the ID bracelet on the baby's ankle, realized it was not her own baby and jumped right up out of bed, injuring her sutured incision.

The neonatal nursing staff admitted there was a mistake. They went to the bassinets with her last name and found the ID bracelet on the infant inside had the other mother's last name. They put her name on a new ID bracelet for the baby and tried to assure her that the mix-up had been solved.

She was still understandably quite concerned. DNA testing was ordered on hers and this baby's blood samples to establish that she had the right infant.

The same infant was sent home with her when she was discharged. Her anxiety continued for ten days until the DNA results came back and proved she now really had the right baby.

The Court of Appeals of Tennessee ruled this mother did have the right to sue for her own mental anguish and emotional distress, from the time she discovered the mix-up until the DNA results came back.

It did not matter that her attorney was the one who finally sent her to a psychiatrist, basically so there would be expert testimony as to her anxiety reaction to prove damages in her lawsuit. **Filson v. Seton Corp.**, 2009 WL 196048 (Tenn. App., January 27, 2009).

Each of the two mothers has filed suit because one of them was allowed to nurse the other's baby, due to a mix-up committed by the neonatal nursing staff.

COURT OF APPEALS OF TENNESSEE

January 27, 2009

One of the mothers was resting comfortably in her hospital room when she was informed that her infant had been taken from the nursery and given to another new mother to nurse.

As a precaution, the other mother's breast milk was suctioned from the baby's stomach, along with glucose water that had earlier been given to the infant, pending blood tests on the other mother to rule out any infection that could be passed by her breast milk. The tests proved negative.

The Court of Appeals of Tennessee ruled the infant suffered no harm by being nursed by another person and having her stomach contents removed.

There was no medical battery committed because the procedure was done pursuant to a physician's order and fell within the general consent to treatment papers the parents had signed on the infant's behalf. **Hobbs v. Seton Corp.**, 2009 WL 196040 (Tenn. App., January 27, 2009).