

Labor & Delivery, Stillbirth: Mother Can Sue For Negligent Infliction Of Emotional Distress.

The physician was about to give the pregnant mother an epidural, but it was called off because the fetal heart rate had dropped suddenly.

When the fetal heart rate did not stabilize the physician ordered an emergency c-section.

Time went by while spinal anesthesia was tried but that could not be accomplished so she was put to sleep with general anesthesia and remained unconscious during the procedure.

The stillborn fetus was delivered by c-section. The resuscitation team tried but failed to get a heartbeat started.

The autopsy revealed necrotizing chorioamnionitis, a severe infection of the placenta and extensive bacterial colonization of the fetus's lungs and colon.

The physicians and a labor and delivery nurse spoke with the parents after the mother awoke from general anesthesia. They explained what had happened and expressed their deepest sympathy for the couple's loss.

The mother was allowed to hold the baby and a professional photographer was brought in to take pictures.

The services of a grief counselor were also offered by the hospital for the couple's benefit.

Negligent infliction of emotional distress can be the basis for a civil lawsuit.

There must be a serious injury to a third person;

The shock to the victim must result in actual physical harm to the victim;

The third party who was injured must be a member of the victim's immediate family, that is, a parent, child, husband or wife; and

The victim must either be present at the time of the injury to the third person or suffer shock fairly contemporaneous to the incident.

The mother did suffer physical symptoms directly related to the emotional shock she experienced as a result of the labor and delivery nurses' panic in the delivery room.

The father was affected but cannot sue because he had no actual symptoms.

UNITED STATES DISTRICT COURT
MICHIGAN
November 15, 2012

The mother and father sued the hospital nevertheless.

The US District Court for the Western District of Michigan ruled that the mother did have the right to sue for negligent infliction of emotional distress but the father did not. At this stage in the litigation the Court left aside questions of medical malpractice which were not decided one way or the other by the present ruling.

The mother's case pointed directly to the time period after the destabilization of the fetal heart rate, before she was put under anesthesia for the c-section.

Nurses Panicked

Mother Suffered Emotional Distress

According to the Court, the nurses "swarmed her," shouting "breathe for your life," "breathe for your life to save the baby's life."

At one point the fetal heart-rate monitor became detached and the nurses struggled but were not able to re-attach it.

The mother heard the nurses saying that "the baby isn't going to make it," "it's been too long and the baby's lodged in the birth canal."

Afterward the mother had to be taken to the hospital's psychiatric ward for anxiety, hyperventilation, agitation and panic and expressions of homicidal ideation toward hospital staff. Her physician recommended transfer to a psychiatric hospital.

The Court ruled these facts fulfilled the legal requirement to sue for emotional distress that there be objective physical signs of trauma after the tragic event. **Fisher v. Lindauer**, __ F. Supp. 2d __, 2012 WL 5817322 (W.D. Mich., November 15, 2012).

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