



Bayer v. Dobbins, 371 Wis.2d. 428 (Wisc. App. 2016)

Topics Covered: Abusive Litigation Against Physicians

Outcome: Very Favorable

Issue

The issue in this case was whether a trial court had discretion to prevent four expert witnesses from testifying in a medical liability case because the trial court found the proffered testimony unpersuasive, notwithstanding that the proffered testimony was supported by other experts in the field and by peer reviewed articles in respected medical journals.

AMA Interest

The AMA supports state medical societies in combating lawsuit abuse.

Case Summary

Leah Bayer was delivering a baby while under the care of her obstetrician/gynecologist, Brian D. Dobbins, MD. Initially, the labor was unremarkable, but after about two hours the progress of the delivery slowed and Mrs. Bayer showed signs of exhaustion. Dr. Dobbins used a vacuum to advance Mrs. Bayer's daughter, Unity Bayer, down the birth canal. Shortly after this was attempted, Dr. Dobbins determined that Unity's shoulder was stuck inside the canal and was causing a condition known as shoulder dystocia. To prevent this from happening, Dr. Dobbins attempted two other obstetrical maneuvers. He was then able to deliver Unity within approximately two minutes of the shoulder dystocia diagnosis.

Following the delivery, Unity was diagnosed with permanent right brachial plexus injury. This injury incapacitated the nerves that send signals from the neck and spine to the shoulder, arm, and hand. It could result in a loss of function or sensation in the arm and possible paralysis.

Unity and her parents sued Dr. Dobbins and his insurance company for medical negligence. The plaintiffs maintained that Dr. Dobbins was negligent in his care. They asserted that he applied excessive traction to Unity's head during the shoulder dystocia event which led to the right brachial plexus injury.

The defendants argued that Dr. Dobbins had met the standard of care, and it was the forces associated with the mother's contractions and pushing, rather than the efforts of Dr. Dobbins, that caused the right brachial plexus injury. In support of their defense, the defendants tendered as expert witnesses four well-known medical scientists, supported by dozens of peer-reviewed medical studies. Many of these studies had been published by or were connected with the American College of Obstetricians and Gynecologists (ACOG).

The plaintiffs proffered their own expert on the subject of maternal forces and the causation of brachial plexus injury. They also moved, *in limine*, to exclude the defendant's experts and the medical publications those experts were relying upon. As the basis of their motion, the plaintiffs argued that the medical literature upon which the defense experts were relying was unreliable.

The court observed that the defendants' medical literature was "inappropriate", as it did not adequately differentiate between permanent and temporary brachial plexus injuries. The court granted the plaintiffs' motion *in limine* to exclude the defendants' experts.

The Wisconsin Court of Appeals heard an interlocutory appeal of the order preventing the defendants' expert witnesses from testifying

On July 6, 2016, the Court of Appeals reversed the *in limine* order. It held that it was for the jury to decide which of the competing scientific theories would better fit the facts of this case.

Litigation Center Involvement

The Litigation Center, along with the Wisconsin Medical Society, filed an *amicus* brief in support of the admissibility of the expert evidence.

Wisconsin Court of Appeals brief