

- (16) **KIMBERLY MENZIES, as natural mother of ROBERT MENZIES, a minor vs. JOSE FORADADA, III, M.D. and JOSE FORADADA, III, M.D., P.A.**

COUNTY/DOCKET #/JUDGE: Hillsborough / 00009521 Div. A / James D. Arnold

PLAINTIFF(S) ATTORNEY(S): Wil H. Florin and Tom Roebig of Florin, Roebig & Walker, P.A., Palm Harbor

DEFENDANT(S) ATTORNEY(S): J. Gregory Giannuzzi and Ted Copeland of Rissman, Weisberg, et al., Tampa

AGE/SEX/OCCUPATION OF PLAINTIFF: 12 / M / n/a

CAUSE OF INJURY: *Medical Negligence/Wrong Medication Prescribed.* Defendant Dr. Foradada, a pediatric neurologist in Tampa, treated minor Plaintiff Robert from the age of eighteen months until seven years old (1993-1997). According to his mother, friends, and family, Robert had significant behavioral problems which included head banging and hurting himself. There were numerous records in Robert's medical chart (including eighty-five telephone messages from his mother), with the mother reporting that she needed help. Dr. Foradada first placed Robert on Mellaril for the behavior issues. A couple of years later, Robert was switched to Risperdol. The case initially centered around the drug Risperdol; Plaintiffs contended that the PDR specifically provided that Risperdol had not been approved for children. Plaintiffs' principal argument was that the standard of care prohibited Risperdol being prescribed for children. Plaintiffs further contended that as a result of the use of Risperdol, Robert developed tardive dyskinesia, a movement disorder. (As described by one of Defendant's experts, it is similar to George Burns' facial grimacing and sucking of the cigar, though the movements can extend to other parts of the body). Much later in the case, Plaintiffs stated that Robert also suffered significant cognitive loss and would remain at a second grade level the rest of his life. Plaintiffs argued that the Mellaril should not have been prescribed for Robert and that the combination of those medications, and other medications, were inappropriate. Dr. Breggin testified that Risperdol cannot be prescribed for children, that Risperdol causes tardive dyskinesia, and that Robert developed this condition as well as significant cognitive loss.

During cross-examination, it was brought out that Dr. Breggin's testimony had been rejected by five courts around the country; he had only six children in his practice (Dr. Foradada has 5,000); and although his Curriculum Vitae (CV) provides that he taught at John Hopkins, he never taught at the medical school, did not have hospital privileges, worked part-time, and was fired. His CV also reflected that he taught at Harvard, though he was never a professor; he had written numerous books attacking drugs, such as "Talking Back to Prozac" and "Talking Back to Ritalin", and his website provided that he is the "foremost critic of biological drugs in the world." Furthermore, an agency he founded to study psychiatry was something he and his wife (who is not a physician), operated out of his home. He has not had hospital privileges for over thirty years. Defendant used these items to challenge Dr. Breggin's credibility and that what he was attempting to do in his practice was change the standard of care. Dr. Breggin also testified that Robert had tardive dyskinesia though he had never seen the child. He was then shown two blow-ups from another case that he worked on, where he wrote a report criticizing two other doctors for opining that a person did not have tardive dyskinesia without seeing the patient. As an aside, in closing, Plaintiffs mentioned Dr. Breggin once, only to address that Defendant had mocked Dr. Breggin. Dr. Fischer is not considered a pediatric neurologist because his practice includes only 2%-3% children, and for difficult matters he refers those children to a pediatric neurologist; he has rarely seen cases of tardive dyskinesia. After extreme effort, which included affidavits from two of Defendant's experts, the judge ultimately agreed to find that two articles and a movement disorder book were authoritative and could be used on cross-examination. Both articles discussed Risperdol and its common use with children, that tardive dyskinesia is not a side-effect, and long-term cognitive loss is not a potential risk. Robert also testified at trial. He did not exhibit any darting of the tongue, facial grimacing, or shaking. Plaintiffs contended that the medication Robert was on masked those signs, but Defendants' experts refuted Plaintiffs' contention.

HILLSBOROUGH COUNTY (Continued)**MENZIES (Continued)**

CAUSE OF INJURY (Continued): Dr. Duchowny testified unequivocally that Risperdol and Mellaril have been prescribed to children for years, at various dosages, and for extended periods of time; those medications have not been known to cause tardive dyskinesia, nor cognitive loss. Dr. Duchowny further examined Robert and stated that Robert does not have tardive dyskinesia. At trial, defense counsel developed Robert's extensive problems when he was young. Robert was born five weeks premature and, before being seen by Dr. Foradada, had been in and out of the hospital on numerous occasions, with various surgeries early in life, which included surgery to repair torticollis, facial asymmetry, and a hernia. Records showed in great detail Robert's mental delays in sitting up, walking, talking, etc. Also brought out from the records was that an uncle also had a movement disorder (twisting his arm), the child's grandmother had neurological problems, and the family also had "writer's cramp." Dr. Kane examined Robert and testified that Robert did not have tardive dyskinesia. He stated that any underlying problems Robert had were due to long-standing neurological issues. Defense counsel read into evidence the testimony of Robert's subsequent pediatric neurologist who testified that Robert did not have tardive dyskinesia, and that he commonly uses Risperdol on children.

NATURE OF INJURY: Tardive dyskinesia; cognitive deficit.

EXPERT WITNESSES:

PLAINTIFF'S: Peter Breggin, M.D., Psychiatry, Ithaca, NY
Kenneth Fischer, M.D., Neurology, Miami

DEFENDANT'S: Michael S. Duchowny, M.D., Pediatric Neurology, Miami
John M. Kane, M.D., Tardive Dyskinesia/Psychiatry
Dana S. DeBoskey, M.D., Neuropsychology, Temple Terrace
Wilkie A. Wilson, Jr., Pharmacology, Duke Univ., Durham, NC
William L.E. Dussault, P.S., Disability Law, Seattle, WA

VERDICT: For the Defendants on February 11, 2005.

DEFENDANT'S ATTORNEY'S COMMENTS: J. Gregory Giannuzzi: Plaintiffs' case centered around the fact that the PDR does not provide for the use of Risperdol on children and that Dr. Foradada had failed his board certification test on numerous occasions. There were numerous pre-trial motions, including a Frye hearing. Defense counsel requested that the court prohibit any evidence that Robert had long-term cognitive impairment, which the court denied. As for the board certification issue, based upon the case law, the judge held that Plaintiffs could not ask how many times Dr. Foradada had failed the test, but could only inquire if Dr. Foradada had failed the test several times. Plaintiffs kept repeating at trial the content of the PDR, despite the fact that every physician who testified, including Plaintiffs' experts, stated that hundreds, if not thousands, of drugs are used beyond what is recommended in the PDR, and that this is especially true in prescribing drugs for children. As for Dr. Foradada's background, even Plaintiffs' experts concede that they have friends and acquaintances who are not board certified who are competent, and that Dr. Breggin misrepresented items in his Curriculum Vitae; Dr. Breggin was also not board certified. Plaintiffs demanded between \$14,000,000 and \$16,000,000 in closing arguments. Defendants entered into a high-low agreement of \$250,000/\$1,000,000 just before the jury returned its verdict. The jury was out for two days.