

(48) **MARY SMITH vs. S.M.S., D.O., P.A., d/b/a GULF COAST MEDICAL CENTER and DOUGLAS A. JORDAN, JR., DPM**

COUNTY/DOCKET #/JUDGE: Pasco / 51-02-CA-2790 / W. Lowell Bray, Jr.

PLAINTIFF(S) ATTORNEY(S): James P. Ogden and T. Michael McKnight, St. Petersburg

DEFENDANT(S) ATTORNEY(S): J. Gregory Giannuzzi and Brian P. Haskell of Rissman, Weisberg, et al., Tampa

AGE/SEX/OCCUPATION OF PLAINTIFF: 45 / F / Disabled

CAUSE OF INJURY: *Medical Negligence/Foot Surgery.* Plaintiff went to see Defendant Dr. Jordan, a podiatrist, to discuss foot pain on October 16, 2000. Plaintiff alleged that Dr. Jordan, during the initial examination, failed to conduct a complete examination and rushed Plaintiff to foot surgery. Plaintiff also alleged that the surgery was inappropriate and poorly performed; follow-up care was inadequate; one of the pins placed into Plaintiff's foot during surgery entered a joint following surgery; Plaintiff had delayed healing of the second metatarsal; a piece of bone in Plaintiff's toe chipped off following surgery; and Plaintiff needed two additional surgeries by other podiatrists thereafter. Plaintiff attempted to create the impression that the foot problems she had, for which she had seen Dr. Jordan, were not significant, and also were primarily related to her heel spurs. Through other medical records, the defense was able to establish that for a number of years Plaintiff had complained of pain in her feet. Plaintiff had numerous problems with both feet. However, the foot that was operated upon was the right foot. For that foot, she had a bunion, a short first metatarsal, a long second metatarsal, her metatarsals were angled inward, her toes were angled outward, and she had hammer toes. The initial examination was a major theme in Plaintiff's case. Plaintiff repeatedly argued at trial that certain items were not contained in the initial report. The defense addressed that by pointing out that not every rudimentary matter is provided in a report; otherwise physicians would spend their hours writing, not treating patients. Plaintiff also claimed that alternative forms of treatment (conservative care) were never discussed, nor were the risks of surgery. Plaintiff signed a consent form at Dr. Jordan's office, but it was lost. However, on the day of the surgery, which occurred five weeks after the initial exam, Plaintiff signed another consent form at the surgery center which provided that alternative forms of treatment, and risks, had been discussed. The next item of criticism was the surgery. Defendants had the testimony of Dr. Downey who stated that not only were prior and future conservative care tried or recommended (suggestion for wider shoes, Celebrex prescribed previously), if there was a bunion, it needed to be surgically removed. Additionally, and equally as important, if the structure of Plaintiff's foot was not changed, the bunion would return. The foot alignment had to be changed, with the bones straightened. Therefore, the five procedures performed by Dr. Jordan to straighten the foot were appropriate, and quite common. Dr. Gorman initially stated that Plaintiff did not need surgery, but he ultimately conceded that surgery was needed to remove the bunion. Following surgery, Plaintiff had delayed healing in the second metatarsal. This also was emphasized during trial. The defense was able to establish through Dr. Downey, as well as Dr. Gorman and one of Plaintiff's treating physicians who testified, that delayed healing was an inherent risk of any surgery. Dr. Downey further offered testimony, assisted by x-rays, that although there was delayed healing, eventually the second metatarsal healed. Another theme of Plaintiff's case involved one of the pins which was inserted into the first toe, ultimately moving into Plaintiff's joint. Additionally, for that pin, a small piece of bone chipped off after surgery. The defense lined up the x-rays to show the course of events. An x-ray two months following surgery demonstrated that everything was proceeding satisfactory. Then, importantly, Plaintiff stubbed her foot. The very next x-ray following the stubbed foot incident showed the chipping off of the bone and disruption to the foot. The defense was also able to show, as contained in the records, that Plaintiff was exercising, which she was told not to do. All the experts and the subsequent treater agreed that exercising could cause disruption in healing. As for Plaintiff's need for future surgery, one of the physicians performed a procedure to remove pins, which Dr. Jordan had scheduled to perform anyway. Another surgery was performed by a subsequent treater who inserted a plate and screws. Although that was designed to further repair Plaintiff's right foot, through Dr. Downey the defense offered that this surgery was unnecessary since the foot had healed.

NATURE OF INJURY: Continuing problems with right foot which required two additional surgeries as a result of surgery performed by Dr. Jordan.

PASCO COUNTY (Continued)

SMITH (Continued)

EXPERT WITNESSES:**PLAINTIFF'S:** Jack B. Gorman, D.P.M., Podiatry, Warminster, PA**DEFENDANT'S:** Michael S. Downey, D.P.M., Podiatry, Moorestown, NJ**VERDICT:** *For the Defendants on September 22, 2005.*

DEFENDANT'S ATTORNEY'S COMMENTS: J. Gregory Giannuzzi: There was another large element of Plaintiff's claim, which related to the alleged "falsifying of records" by Dr. Jordan. Most of Dr. Jordan's notes in his chart were handwritten and illegible. At the request of the defense, he dictated those, also inserting what he normally would have done during a specific examination. That was done to assist the defense. By a clerical error of Dr. Jordan's office, those dictated notes made their way to another doctor's office, and that is how Plaintiff discovered them. Defendants were not able to keep these records out of evidence. A significant portion of Plaintiff's cross-examination focused on attacking Dr. Jordan's credibility. Blow-ups of the handwritten notes were set side by side with the dictated notes. Dr. Jordan handled this well. He offered the explanation that those were done simply to assist his attorneys, and by clerical error they were somehow sent to another doctor. Additionally, the dictated notes merely spelled out certain abbreviations he had in the original notes. Defendants offered \$65,000; Plaintiff demanded \$200,000.