

CASE INFORMATION SHEET
FLORIDA LEGAL PERIODICALS, INC.
P.O. Box 3370, Tallahassee, FL 32315-3730
(904) 224-6649/(800) 446-2998 * FAX (850) 222-6266

COUNTY AND COURT:

Brevard County, Circuit Civil

NAME OF CASE:

SHEILA LECOUNT and ROBERT LECOUNT,

Plaintiffs,

v.

HEALTH FIRST, INC.,
VIERA HOSPITAL, INC.,
BRANDON TAIVAL, D.O.,
BRADLEY M. BARNES, M.D.,
ABC CORP., XYZ, LLC,
JOHN DOES 1 THROUGH 5 and
JANE DOES 1 THROUGH 5,

Defendants.

CASE DOCKET NO.: 05-2015-CA-043316-XXXX-XX

JUDGE: John M. Harris

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:

Mark S. Guralnick
923 Haddonfield Road, Suite 300
Cherry Hill, NJ 08002-2752

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:

Howard L. Citron
Rissman, Barrett, Hurt,
Donahue, McLain & Mangan, P.A.
888 S.E. 3rd Avenue, Suite 300
Fort Lauderdale, FL 33316
Attorney for Health First, Inc., Viera
Hospital, Inc. and Bradley P. Barnes, M.D.

Kevin T. O'Hara
Beytin, McLaughlin, McLaughlin,
O'Hara, Bocchino & Bolin
1063 Maitland Center Commons Blvd.
Maitland, FL 32751
Attorney for Brandon Taival, D.O.

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

61-year old female

FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:

N/A

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

On April 4, 2013, the Brevard County Fire Rescue responded to Ms. LeCount, who fell at a local restaurant while getting into her car. She suffered a blunt force trauma injury to the left side of her face and left eye.

CAUSE OF INJURY:

The liability issues raised by plaintiffs' pre-suit expert witness were that the emergency medicine physician that cared for and treated Ms. LeCount in the emergency department at Viera Hospital failed to perform a complete physical examination in light of the traumatic events and failed to consult with a specialist (ophthalmologist and/or maxilla-facial surgeon) to determine the extent of her injuries. Plaintiffs' expert opined that the radiologist interpreting the radiographs ordered by the ED physician failed to appreciate entrapment of the inferior rectus muscle, an injury that requires immediate surgical intervention.

NATURE OF INJURY:

Plaintiffs alleged that as a result of the failure to diagnose the entrapment of the inferior rectus muscle of Ms. LeCount's left eye, coupled with a corresponding delay in treatment and surgery for same, she suffered permanent, irreversible loss of sight in her left eye.

PLAINTIFF'S EXPERT WITNESSES:

None disclosed in litigation.

DEFENDANTS' EXPERT WITNESSES:

None disclosed in litigation.

CHECK APPROPRIATE SPACE:

X Motion for Summary Judgment granted as to defendants,
Health First, Inc., Viera Hospital, Inc. and Bradley M.
Barnes, M.D.

DATE OF SUMMARY JUDGMENT:

The hearing took place on February 24, 2016.

SUMMARY JUDGMENT:

Granted for defendants, Health First, Inc., Viera Hospital, Inc.
and Bradley M. Barnes, M.D.

COMPARATIVE NEGLIGENCE:

N/A

JUDGMENT:

Summary judgment entered by the court.

DATE OF JUDGMENT:

The order was entered on March 9, 2016.

DEFENDANTS' OFFER:

No offers made.

PLAINTIFF'S DEMAND:

No demands made.

ATTORNEY'S COMMENTS:

Prior to filing the complaint, plaintiffs served a notice
of intent to initiate litigation identifying a radiologist and

an emergency medicine physician as potential defendants. The initial notice of intent did not include a verified written medical expert opinion. Counsel for the defense notified plaintiffs' counsel in writing of the deficiency and later received a second notice of intent which included an unverified "Certificate of Merit" prepared by an ophthalmological expert. Counsel for defendants again notified opposing counsel that the second notice of intent was deficient in that it failed to contain a verified expert opinion as required by the statute and that the expert used by plaintiffs was not of the same specialty as the defendants in the matter.

Defendants, Health First, Inc., Viera Hospital, Inc. and Bradley M. Barnes, M.D., filed a motion for summary judgment and argued that the notice(s) of intent and its corroborating affidavits were deficient in that the expert in ophthalmology was not qualified to opine on the care provided by an emergency medicine physician and/or radiologist. Defendants further argued that because plaintiffs failed to provide an expert who was properly verified or affirmed prior to the expiration of the statute of limitations, plaintiffs failed to strictly comply with Florida's medical malpractice pre-suit statutory requirements, which barred plaintiffs' cause of action.

The trial court granted summary judgment in favor of defendants, Health First, Inc., Viera Hospital, Inc. and Bradley M. Barnes, M.D., ruling that plaintiffs had failed to corroborate their claim with an expert(s) of the same specialty of those involved in Ms. LeCount's care and, moreover, failed to properly verify the opinion of their "expert ophthalmologist" to include language specifically required by § 92.525(2) **Fla. Stat.** prior to the time that the statute of limitations ran.

Submitted by: Howard L. Citron and Danielle A. Suarez

Date: September 12, 2016

Firm: Rissman, Barrett, Hurt,
Donahue, McLain & Mangan, P.A.

Address: 888 S.E. 3rd Avenue
Suite 300
Fort Lauderdale, FL 33316

Telephone: (954) 526-5480