

**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:

Marion County Circuit Court

NAME OF CASE:

LYNN REPETTI,

Plaintiff,

v.

S. SCOTT TAPPER, M.D.

Defendant.

CASE DOCKET NO.: 43-2017-CA-000345 **JUDGE:** William L. Roby

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

Stephan LeClainche
Nicholas Johnson
Cohen, Milstein, Sellers and Toll, PLLC
2925 PGA Blvd., Suite 200
Palm Beach Gardens, FL 33410
(561) 515-1400

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

Jennings L. Hurt III
Henry W. Jewett II
Rissman, Barrett, Hurt,
Donahue, McLain & Mangan, P.A.
201 E. Pine Street, Suite 1500
Orlando, FL 32801
(407) 839-0120

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

Plaintiff, Lynn Repetti (DOB 1-17-1961) was 54 years old when she presented to Martin Memorial Medical Center on April 18, 2015.

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

The case focus on care rendered by Dr. Scott Tapper between April 22 & April 30, 2015

CAUSE & NATURE OF INJURY:

This was a medical malpractice case arising out of Ms. Repetti's presentation and admission to Martin Memorial Medical Center (MMMC) on April 18, 2015 through April 30, 2015. During two hospitalizations, in that period of time, Ms. Repetti claimed that Dr. Tapper had negligently failed to diagnose and treat her for compartment syndrome in her lower right leg. On April 14, 2015, plaintiff had twisted her knee at home while climbing out of bed. She heard and felt a pop when her right knee twisted and she reported feeling immediate pain. At the time, Ms. Repetti was very sick with the flu.

Ms. Repetti went to an urgent care center four days later, on April 18, 2015, for her right knee pain. However, she was much sicker with the flu and was immediately admitted to Martin Memorial Medical Center. Ms. Repetti's primary admitting diagnoses were pneumonia, bacteremia and sepsis. The right leg injury was secondary at the time.

Plaintiff was admitted to MMMC by a hospitalist, Dr. Michael Blum. He ordered an infectious disease consultation with Dr. Collin. Dr. Tapper, a vascular surgeon, was not consulted until April 22, 2015, the fourth day of the admission

Plaintiff underwent a venous doppler on April 20, 2015. The lower right leg was swollen and painful so Dr. Bloom was concerned about DVT. The doppler ruled out DVT, but incidentally found that the right superficial femoral artery (SFA) was occluded. In response, Dr. Bloom requested that Dr. Tapper perform a vascular surgery consult.

A major point of contention in the case with the scope of Dr. Tapper's role with regard to this consult. Ms. Repetti argued that Dr. Tapper was responsible for diagnosing and treating whatever was wrong with her right leg. The defense contended that Dr. Tapper's role was limited to evaluating the arterial and venous circulation in the right leg, and determining whether Ms. Repetti had limb threatening arterial and venous ischemia that required immediate intervention.

Dr. Tapper determined in his initial evaluation on April 22, 2015 that while Ms. Repetti had significantly decreased arterial circulation in the right leg, she was asymptomatic and did not require immediate vascular surgical intervention. She had doppler pulses in the right foot and the foot and toes were warm and pink. Ms. Repetti also did not have a history of claudication, rest pain or arterial ischemic ulcers in the right foot or toes.

Dr. Tapper conceded that the right calf was swollen and tender and that there was a discoloration on the skin on the back of the calf. However, Dr. Tapper said that these changes were not due to arterial or venous ischemia. Dr. Tapper's plan was for Ms. Repetti to follow-up in his office two weeks after discharge for further workup of the arterial circulation problems, including testing and lifestyle modification.

On April 22, 2015 Dr. Tapper spoke directly to Dr. Blum and reported that Dr. Tapper did not know what was causing the swollen calf but it was not due to arterial or venous ischemia. Dr. Blum did not order any other consults, such as an orthopedic consult to evaluate the twisted right knee. Ms. Repetti was discharged by Dr. Blum on April 24, 2015, two days after Dr. Tapper's initial consult.

Ms. Repetti's vascular surgery expert testified that Dr. Tapper was responsible for determining what was causing the problems in the lower right leg, and that once Dr. Tapper had ruled out arterial circulation as the cause, he should have suspected compartment syndrome. Dr. Tapper then should have ordered tests and consults that would have diagnosed compartment syndrome. The definitive treatment at that point would have been a fasciotomy to open the compartments of the right leg. Had this been done by April 24, 2015, the day of discharge (two days after Dr. Tapper's first involvement in the case), Ms. Repetti would not have suffered any of her claimed injuries and damages.

The defense presented evidence through Dr. Tapper and the defense's vascular surgery expert that it was highly unlikely that Ms. Repetti had compartment syndrome at any point. The timing of the injury was too slow to have been compartment syndrome, which develops in hours, not days. Additionally, Ms. Repetti did not have signs or symptoms consistent with compartment syndrome and her lab studies did not support compartment syndrome.

Ms. Repetti's CDK, chloride, lactic acid, CO₂ and calcium were all normal. Patients with compartment syndrome will have an increase in their CPK, chloride and lactic acid. There will be a decrease in the values of CO₂ and calcium. Again, Ms. Repetti's lab studies were normal.

Additionally Ms. Repetti's urinalysis was normal. When tissue dies due to compartment syndrome, it results in brown urine. Ms. Repetti's urine was always clear. The defense demonstrated that the actual cause of Ms. Repetti's problem was a ruptured Baker's cyst, an extremely rare condition. A Baker's cyst can form behind the knee in patients with degenerative disease. The cyst contains synovial fluid, which is the fluid that lubricates the knee joint. Synovial fluid is a very caustic to tissue outside the knee.

The pop Ms. Repetti felt when she twisted her knee was likely the cyst rupturing. The synovial fluid then traveled downward into the posterior compartments of the right calf, causing pain and swelling. A ruptured Baker's cyst is very painful but it is a self-limiting process that eventually plateaus and subsides. It ordinarily does not require surgery.

The ruptured Baker's cyst was discovered when Ms. Repetti was readmitted to MMMC on April 25, 2015, the day after discharge from the first admission. A CT performed in the ED diagnosed fluid in the compartments in the calf consistent with a ruptured cyst. Ms. Repetti was admitted by a new hospitalist group. Ms. Repetti was very angry with Dr. Blum and refused to let him be her hospitalist during the second admission. Ms. Repetti's aunt had even filed an official grievance with the hospital against Dr. Blum.

Dr. Tapper was re-consulted on April 26, 2015, the second day of the second admission. Again, his role was to evaluate the arterial and venous circulation in the right leg, which he found to be still adequate. However, Dr. Tapper saw that the CT had diagnosed a ruptured Baker's cyst and he realized that the ruptured cyst probably accounted for what was occurring in the right calf.

Dr. Tapper also recognized that ruptured Baker cysts are not treated by vascular surgeons. They are treated by orthopedic surgeons so Dr. Tapper specifically told Dr. Kumar, the new hospitalist, that an orthopedic consult was necessary. Dr. Tapper expected that Dr. Kumar would order the ortho consult, but neither Dr. Kumar nor the subsequent hospitalists (Drs. Nasta and Guerra) who saw Ms. Repetti in the ensuing days, did so.

Three days later, on April 29, 2015, Dr. Tapper, recognizing that the hospitalist had not requested an orthopedic surgeon consult, went outside his scope of duty and ordered an orthopedic surgeon consult. Based on the results of the CT scan, Dr. Tapper was concerned Ms. Repetti might have an abscess in the right leg.

The orthopedic surgeon group's physician assistant evaluated Ms. Repetti on the morning of April 29, 2015. The PA suspected Ms. Repetti had compartment syndrome in the right leg. However the PA was overruled by his boss, Dr. James Hoffman, a board-certified orthopedic surgeon. Dr. Hoffman evaluated Ms. Repetti the evening of April 29, 2015 and found that she did not have compartment syndrome. Instead, he felt she had an abscess and he recommended that Dr. Tapper perform surgery the next day to drain it.

Dr. Tapper took Ms. Repetti to surgery on April 30, 2015. He performed a four compartment fasciotomy. Dr. Tapper found that all the muscles and nerves were alive and functioning which would be totally inconsistent with compartment syndrome. Dr. Tapper did find, and remove, thick gelatinous fluid that he thought was the abscess. Instead, it turned out to be the synovial fluid that had entered the compartments from the knee. There was no abscess present.

Plaintiff claimed that Dr. Tapper's allegedly negligent delay in treatment of the alleged compartment syndrome caused her permanent nerve injury in the lower right leg that now requires chronic pain management with opioids and gabapentin. She also claimed that she needed extensive wound care and a skin graft for the area on the back of her calf, which eventually became a full thickness wound.

PLAINTIFF'S EXPERT WITNESSES:

Dr. Timothy Harward, Vascular Surgeon
1140 W. La Veta Avenue, Suite 850
Orange, CA 92868

Dr. Harward was plaintiff's vascular surgery expert. Dr. Harward testified that Dr. Tapper deviated from the standard of care by failing to timely diagnose and surgically treat compartment syndrome at an earlier point in time. Dr. Harward stated surgery should have been performed no later than April 24, 2015 but conceded Ms. Repetti probably still would have had some residual deficits and pain even had surgery been performed earlier.

Dr. Richard Kishner, Neurology Expert
4725 N. Federal Highway
Ft. Lauderdale, FL 33308

Dr. Kishner was plaintiff's neurology expert who actually evaluated Ms. Repetti on November 28, 2017 and again on September 6, 2019. At trial, he testified that Ms. Repetti's tibial and perineal nerves were not normal. This contrasted with his November 28, 2017 EMG findings which indicated both nerves were normal

Dr. Kishner conceded that Ms. Repetti did not need a walker, cane or crutch to ambulate. Ms. Repetti is able to get out of the chair and walk within her home.

He also conceded that the knee brace that Ms. Repetti wears was not related to the alleged compartment syndrome. This was actually a result of significant neuropathic radicular pain as a result of degenerative disc disease at L5 – S1.

DEFENDANT'S EXPERT WITNESSES:

Dr. Thomas Naslund, Vascular Surgeon
Vanderbilt University
2000 Mallory Lane, Suite 130-172
Franklin, TN 37067

Dr. Naslund was the defense vascular surgery expert. He testified that Dr. Tapper's met the standard of care and did not cause any injury or harm to Ms. Repetti.

He explained that compartment syndrome is a very fulminant process. It is not indolent. It is usually a two – six hour event. If Ms. Repetti had compartment system syndrome, dating back to April 14, 2015, she would have lost her leg long before the April 30, 2015 surgery.

Dr. Naslund testified that Ms. Repetti suffered a rupture of her Baker's cyst. This is a rare condition. When the synovial fluid leaks into the compartments of the calf, it creates edema, tightness, irritation and eventually leaks into the subcutaneous tissue causing severe pain.

Dr. Naslund stated that Ms. Repetti could not had compartment syndrome as all of her muscles were pink and healthy and her nerves were alive. If plaintiff had had compartment syndrome, all of the tissue and nerves would have died.

CHECK APPROPRIATE SPACE: ___ X ___ Verdict

Defense verdict.

DATE OF VERDICT:

October 24, 2019

COMPARATIVE NEGLIGENCE:

Not applicable

JUDGMENT:

For Defendant, Dr. Scott Tapper.

DATE OF JUDGMENT:

October 31, 2019

DEFENDANT'S OFFER:

Defendant filed three proposals for settlement during discovery with the last one in July 2019 in the amount of \$75,000.

PLAINTIFF'S DEMAND:

In closing argument, plaintiff requested \$1,785,000. This consisted of \$1,217,000 in non-economic damages and 568,000 past and future medical bills

ATTORNEY'S COMMENTS:

Plaintiff still had a viable right leg at trial. She had been to several physicians for evaluation of her vascular disease including Dr. Mark Grove of the Cleveland clinic in Davie, Florida. He felt that she had bilateral lower extremity peripheral artery disease, moderate in nature, related to superficial femoral artery (SFA) disease. Even as of October, 19, 2018, Dr. Grove assured Ms.

Repetti that she did not have acute limb threatening ischemia in her right leg. Dr. Grove attributed her right leg pain to her lower back degenerative disease.

Submitted By: Jennings L. Hurt III **Date:** May 18, 2020

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

Address: 201 E. Pine Street, Suite 1500
P.O. Box 4940
Orlando, FL 32802-4940

Telephone: (407) 839-0120

Fax: (407) 841-9726

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