

CAUSE NO. B-195944

RACHEL ANN MELANCON,	§	IN THE DISTRICT COURT OF
INDIVIDUALLY AND AS	§	
REPRESENTATIVE OF THE ESTATE	§	
OF OLIVIA MARIE COATS	§	
PLAINTIFFS,	§	
	§	
VS.	§	JEFFERSON COUNTY, TEXAS
	§	
GEORGE BACKARDJIEV, M.D. AND	§	
THE MEDICAL CENTER OF SOUTHEAST	§	
TEXAS, L.P.	§	
DEFENDANTS	§	60TH JUDICIAL DISTRICT

PLAINTIFFS' SECOND AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, RACHEL ANN MELANCON, INDIVIDUALLY and as REPRESENTATIVE OF THE ESTATE OF OLIVIA MARIE COATS, Plaintiffs, and files this their Second Amended Petition (named the second because of Trent Allen Coat's (deceased) prior filing of Plaintiff's First Amended Petition) and in support thereof shows the Court and Jury the following:

I. DISCOVERY

Discovery in this matter is intended to be conducted under Level 3.

II. PARTIES

Plaintiff, RACHEL ANN MELANCON, is an individual residing in Orange County, Texas.

Defendant, GEORGE BACKARDJIEV, M.D., is an individual who is properly before this Honorable Court. Dr. Backardjiev's attorney of record is Mary Kathleen Evans of Luccia & Evans, L.L.P., 8 Greenway Plaza, Suite 1450, Houston, Texas 77046.

Defendant, THE MEDICAL CENTER OF SOUTHEAST TEXAS, is a Texas corporation with its principal place of business in Port Arthur, Jefferson County, Texas. Its attorney of record is Curry Cooksey of Cooksey & Marcin, P.L.L.C., 25511 Budde Road, Suite 2202, The Woodlands, Texas 77380.

III. JURISDICTION

The Court has jurisdiction over the controversy because the damages are in excess of the minimum jurisdictional limits of the Court.

IV. VENUE

Venue is proper in Jefferson County, Texas, because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred, and because it is the county where the Defendants maintain their principal offices.

V. CLAIM FOR RELIEF

Plaintiff seeks monetary relief over \$1,000,000 and a demand for judgment for all the other relief to which the party deems herself entitled.

VI. FACTS

Rachel Ann Melancon and Trent Allen Coats are the natural parents of Olivia Marie Coats. Olivia was born on December 28, 2013 and was their first child. George Backardjiev, M.D. was Rachel's obstetrician who provided for Rachel and Olivia's prenatal care and who delivered Olivia at The Medical Center of Southeast Texas.

On the evening of December 26, 2013, Rachel presented to The Medical Center of Southeast Texas for the delivery of Olivia. Rachel was approximately forty (40) weeks three (3) days pregnant at the time of her admission. At approximately 8:30 p.m. that day, an initial examination was performed which revealed Rachel's contractions coming at 2-5 minute intervals

with her cervix dilated 2cm/70%effaced/-3 station. Fetal heart tones were measured at a baseline rate of 130 beats per minute (bpm) with moderate variability and normal heart rate accelerations present.

On December 27, 2013, the next morning, at approximately 7:30 a.m., Dr. Backardjiev performed an exam of Rachel and found no significant changes with her or the baby. At that time, an amniotomy was performed revealing clear fluid. Fetal heart rate continued at 130 bpm. Pitocin was first used on Rachel by Nurse Emily Taylor, R.N. at 7:45 a.m. at an initial rate of two (2) mU/min. At 8:50 a.m., epidural anesthesia was administered by Dr. Raja Sehkar, and a fetal heart monitor was placed and used to monitor, among other things, the effects of the Pitocin on the fetal heart rate. At 9:22 a.m., variable fetal heart rate decelerations to 90 bpm began and continued with each contraction with the fetal heart rate baseline climbing tachycardic to 170bpm. At 9:28 a.m., the Pitocin was stopped, and the fetal heart tones gradually returned to their baseline.

At 10:03 a.m., Pitocin was started for a second time and gradually increased to six (6) mU/min by 11:13 a.m. At this time, uterine hyperstimulation occurred, and the fetal heart rate changed indicating late onset variable decelerations and loss of beat variability. A cervical exam revealed 4cm/90%/-1 station. The Pitocin was acting to distress the fetus. In response, at 12:06 p.m., Nurse Taylor decreased the Pitocin rate to two (2) mU/min, administered oxygen, and repositioned Rachel to resuscitate the fetus out of distress. Dr. Backardjiev was notified.

At 12:40 p.m., Dr. Backardjiev was at the bedside to evaluate Rachel and the fetus. Fetal heart tones had returned to normal, and the Pitocin was running at three (3) mU/min. Over the next several hours, while the Pitocin was going, the fetal heart rate gradually became tachycardic again, increasing to 180 bpm, with no significant decelerations occurring. With signs of fetal distress present, Nurse Taylor discontinued the Pitocin at 5:03 p.m. for the second time and

contacted Dr. Backardjiev. At 6:18 p.m., Dr. Backardjiev was at the bedside. An examination was performed, revealing Rachel's temperature to be 102.9 degrees and her cervix to be 8-9cm/100%/-1 station with the fetus in LOT presentation. At 7:10 p.m., Dr. Backardjiev again examined Rachel and found fetal tachycardia present at 170 bpm, although some variability and accelerations were returning.

At 8:01 p.m., despite the tachycardic fetal heart rate, and despite the two previous times in which Pitocin had distressed the fetus, Dr. Backardjiev again ordered the Pitocin to resume for a third time at two (2) mU/min. At 8:20 p.m., Dr. Backardjiev ordered the Pitocin to be increased to six (6) mU/min. After this, fetal heart rate accelerations disappeared and variability decreased, with the baseline heart rate increasing to 170-180 bpm followed by late onset variable decelerations. Nurse Haley Richardson, R.N. examined Rachel at 8:58 p.m. and found her at 9cm/90%/0 station. Shortly thereafter uterine hyperstimulation recurred as well as late decelerations. Despite these ominous signs, at 9:45 p.m. Rachel's Pitocin was increased further to eight (8) mU/min. Approximately 15 minutes later, Nurse Richardson documented the problems and decreased the Pitocin rate to six (6) mU/min. However, at 10:05 p.m., just five minutes later, Dr. Backardjiev ordered the Pitocin be increased back up to eight (8) mU/min. Next, seeing the distressing signs, Nurse Richardson turned Rachel and applied oxygen. Despite the continuing and increasing ominous signs of fetal distress, the Defendants continued to administer Pitocin. At 10:55 p.m., the charge nurse, Nurse D. Bray, R.N., was informed of the problems and informed Dr. Backardjiev that late decelerations were present. Despite this awareness by all parties, the Pitocin was continued at eight (8) mU/min.

At approximately 11:10 p.m., Rachel's cervix was completely dilated and effaced. At approximately 11:22 p.m., with Dr. Backardjiev at the bedside, Rachel was instructed to begin

pushing with total disregard for the continued ominous fetal heart tones. Severe late decelerations with minimal variability were present. Despite this, at 11:25 p.m. the Pitocin was again increased to ten (10) mU/min and further increased to twelve (12) mU/min at 11:51 p.m.

Around 11:51 p.m., Dr. Backardjiev made the decision to assist the vaginal delivery with the use of forceps. There is no indication that Dr. Backardjiev even considered delivery by cesarean section as an option at this point and no anesthesiologist was present at the hospital. By 12:00 a.m., forceps had been applied by Dr. Backardjiev twice. On the second attempt, it was documented that the forceps slipped off. Due to the difficult delivery and ominous fetal heart tones, the nursing staff asked Dr. Backardjiev to consider cesarean delivery. To this, the medical records indicate that he said “No.” During the next contraction, the forceps were applied a third time and again slipped off. Dr. Backardjiev was again asked to consider a cesarean section. Again, the medical records indicate that he stated “No, the head is coming down.” At 12:10 a.m., Dr. Backardjiev reapplied the forceps for a recorded fourth time and three more times before the forceps slipped off for a third time once again at 12:15 a.m.

At 12:18 a.m., after failing to deliver baby Olivia vaginally, Dr. Backardjiev consented to proceed with a cesarean delivery. Before this time, neither Dr. Backardjiev nor The Medical Center for Southeast Texas nurses had requested preparation begin for a cesarean delivery. Finally, at 12:53 a.m., thirty-five (35) minutes after the decision had been made to proceed with cesarean delivery, baby Olivia was delivered by cesarean.

It was immediately apparent that baby Olivia suffered grave consequences as a result of the lengthy failed labor and delivery practices exhibited by Dr. Backardjiev and The Medical Center for Southeast Texas. After birth, it was determined that baby Olivia suffered intracranial ischemic injuries. She was transferred to Houston to Memorial Hermann Children’s Hospital.

Unfortunately, it was revealed through radiologic studies that baby Olivia had a partial skull fracture, intracranial and subdural hemorrhage, subluxation of the cervical spine, and hypoxic ischemic encephalopathy. Although baby Olivia was placed on life support initially, due to her grim prognosis and multi-organ failure, the decision was made to remove her from life support. Consequently, Olivia passed away on January 1, 2014 at 4:58 p.m.

An autopsy was performed, and it revealed a number of things. Linear skin defects were seen on the top and left side of the head. An abrasion was located behind the left ear. Additionally, two skull fractures were noted – a 6 cm long fracture of the skull in the right parietal bone and a 3 cm X 3.5 cm depressed fracture in the right parietal bone over the convexity. Diffuse hemorrhaging was present in the underlying tissues of the scalp. The primary cause of death was noted at Hypoxic Ischemic Injury. The immediate cause of death was noted as “Hypoxic ischemic injury as a result of trauma and fracture of the neonate skull.”

As the proximate result of the Defendants’ acts and omissions in their care and treatment of Rachel Ann Melancon and Olivia Marie Coats, Olivia is dead and two parents have been prematurely separated from their first child. Additionally, Rachel Ann Melancon suffered personal injury from the labor and delivery treatment she received, including the severe physical/mental injuries and distress caused to her fetus as part of Rachel’s body. Rachel also experienced stronger and more painful contractions because of the Pitocin, suffered pain and mental anguish over the course of a prolonged delivery in which she at first suspected and then knew that her fetus was in jeopardy, and underwent an unnecessary invasion of forceps into her body multiple times. Rachel Ann Melancon has dealt with the mental anguish of her injuries since her injuries occurred, and she continues to deal with them to this day.

VII. CAUSES OF ACTION AGAINST GEORGE BACKARDJIEV, M.D.

The above paragraphs are incorporated by reference. This case is brought as a health-care liability claim, in that it is cause of action against a health-care provider and physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care or health care which proximately resulted in the injury of Rachel Ann Melancon and the death of Olivia Marie Coats. George Backardjiev, M.D. was a “physician” as that term is defined and applied in the laws and statutes of the State of Texas. A physician-patient relationship existed between Rachel Ann Melancon and George Backardjiev, M.D., to which he owed Rachel a duty of care. A physician-patient relationship existed between Olivia Marie Coats and George Backardjiev, M.D., to which he owed Olivia a duty of care.

A. Negligence

The above paragraphs are incorporated by reference. At all times relevant to the allegations of this Petition, George Backardjiev, M.D. and his agents, servants, and/or employees under the doctrine of *respondeat superior* or other agency laws, had a duty to act as a reasonable and prudent physician would have under the same or similar circumstances. He breached this duty and was negligent. The acts and omissions of George Backardjiev, M.D. fell below the applicable standards of care and constitute negligence as those terms are defined and applied under the laws and statutes of the State of Texas. This negligence was a proximate cause, singularly or in combination, of the injuries and damages sustained by Rachel Ann Melancon, Trent Allen Coats, and Olivia Marie Coats. Defendant Backardjiev’s negligence includes, but is not limited to, the following:

1. Failing to administer and monitor Pitocin safely;
2. Failing to discontinue Pitocin use;

3. Failing to adequately assess and react to fetal well-being during labor;
4. Failing to properly assess fetal station during labor;
5. Using forceps, and then once using, failing to use them safely;
6. Failing to plan for and deliver by Cesarean Section earlier; and
7. Such other and further acts of negligence as may be supplemented as a result of discovery performed in this suit.

B. *Gross Negligence (Wilful and Wanton Negligence)*

The above paragraphs are incorporated by reference. George Backardjiev, M.D. and his agents, servants, and/or employees acted with gross negligence with regard to rights, welfare, and safety of Rachel Ann Melancon and Olivia Marie Coats. George Backardjiev, M.D.'s acts and omissions, when viewed objectively from his standpoint at the time it occurred, involved an extreme degree of risk of serious injury, considering the probability and magnitude of the potential harm to others. George Backardjiev, M.D. had an actual, subjective awareness of this extreme degree of risk but proceeded with a conscious indifference to the rights, safety, and welfare of others. Therefore, George Backardjiev, M.D. acted in gross negligence. The gross negligence of George Backardjiev, M.D. and his agents, servants, and/or employees was a proximate cause of the injuries and damages sustained by Rachel Ann Melancon, Trent Allen Coats, and Olivia Marie Coats.

VIII. CAUSES OF ACTION AGAINST THE MEDICAL CENTER OF SOUTHEAST TEXAS

The above paragraphs are incorporated by reference. This case is brought as a health-care liability claim, in that it is cause of action against a health-care provider and physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care or health care which proximately resulted in the injury of Rachel Ann Melancon and the death of Olivia Marie Coats. The Medical Center of Southeast Texas was a "health-care provider" as that

term is defined and applied in the laws and statutes of the State of Texas. A health-care provider-patient relationship existed between Rachel Ann Melancon and The Medical Center of Southeast Texas, to which it owed Rachel a duty of care. A health-care provider-patient relationship existed between Olivia Marie Coats and The Medical Center of Southeast Texas, to which it owed Olivia a duty of care.

A. Negligence

The above paragraphs are incorporated by reference. At all times relevant to the allegations of this Petition, The Medical Center of Southeast Texas and its agents, servants, and/or employees under the doctrine of *respondeat superior* or other agency laws, had a duty to act as a reasonable and prudent health-care provider would have under the same or similar circumstances. The Medical Center of Southeast Texas breached this duty and was negligent. The acts and omissions of The Medical Center of Southeast Texas fell below the applicable standards of care and constitute negligence as those terms are defined and applied under the laws and statutes of the State of Texas. This negligence was a proximate cause, singularly or in combination, of the injuries and damages sustained by Rachel Ann Melancon, Trent Allen Coats, and Olivia Marie Coats. The Medical Center of Southeast Texas' negligence includes, but is not limited to, the following:

1. Failure to administer and monitor Pitocin safely;
2. Failing to discontinue Pitocin use;
3. Failing to adequately assess and react to fetal well-being during labor;
4. Failing to plan for a Cesarean Section earlier;
5. Failing to go "up the chain" of command when called for during the Pitocin use once health concerns for the fetus were apparent;
6. Failing to follow, and ensure nurses follow, hospital policies and protocol regarding Pitocin use and monitoring fetal well-being when such policies and protocol reflect the standard of nursing care that should be followed; and

7. Failing to act to prevent harm and ensure patient safety to Plaintiffs;
8. Such other and further acts of negligence as may be supplemented as a result of discovery performed in this suit.

B. *Gross Negligence (Wilful and Wanton Negligence)*

The above paragraphs are incorporated by reference. The Medical Center of Southeast Texas and its agents, servants, and/or employees acted with gross negligence with regard to rights, welfare, and safety of Rachel Ann Melancon and Olivia Marie Coats. The Medical Center of Southeast Texas' acts and omissions, when viewed objectively from its standpoint at the time it occurred, involved an extreme degree of risk of serious injury, considering the probability and magnitude of the potential harm to others. The Medical Center of Southeast Texas had an actual, subjective awareness of this extreme degree of risk but proceeded with a conscious indifference to the rights, safety, and welfare of others. Therefore, The Medical Center of Southeast Texas acted in gross negligence. The gross negligence The Medical Center of Southeast Texas was a proximate cause of the injuries and damages sustained by Rachel Ann Melancon, Trent Allen Coats, and Olivia Marie Coats.

IX. DAMAGES

The above paragraphs are incorporated by reference. As a proximate result of the incident made the basis of this suit and Defendants' negligent and grossly negligent acts and omissions, Intervenor brings this suit against Defendants to recover damages for the following items:

- (1) Medical Negligence Damages sustained by Rachel Ann Melancon:
 - (a) Past medical expenses for Rachel Ann Melancon;
 - (b) Past Physical Pain and Mental Anguish suffered by Rachel Ann Melancon because of the injuries to her personally, including the fetus as a part of her body; and

- (c) Future Physical Pain and Mental Anguish suffered by Rachel Ann Melancon because of the injuries to her personally, including the fetus as a part of her body.
- (2) Wrongful Death Damages for Rachel Melancon under Ch. 71 of the TEXAS CIVIL PRACTICE & REMEDIES CODE for:
 - (a) Loss of companionship and society sustained in the past by Rachel Melancon;
 - (b) Loss of companionship and society that, in reasonable probability, will be sustained in the future by Rachel Melancon;
 - (c) Mental Anguish sustained in the past by Rachel Melancon;
 - (d) Mental Anguish that, in reasonable probability, will be sustained in the future by Rachel Melancon;
- (3) Survival Damages for Olivia Marie Coats under Ch. 71 of the TEXAS CIVIL PRACTICE & REMEDIES CODE for:
 - (a) Medical expenses;
 - (b) Pain and Mental Anguish;
 - (c) Physical Disfigurement;
 - (d) Physical Impairment; and
 - (e) Funeral and burial expenses
- (4) Pre-judgment and post-judgment interest;
- (5) Court costs; and
- (6) Such other and further items of damages as may be supplemented as a result of the discovery performed in this suit.

X. EXEMPLARY DAMAGES

The above paragraphs are incorporated by reference. The acts and omissions of George Backardjiev, M.D. and The Medical Center of Southeast Texas referenced above not only constitute negligence, but gross negligence and wanton and willful misconduct towards the rights,

safety, and welfare of others, including Rachel Ann Melancon and Olivia Marie Coats, thereby entitling Plaintiffs to recover punitive or exemplary damages in such amount as the jury finds to be proper upon trial of this matter.

XI. CONDITIONS PRECEDENT SATISFIED

All conditions precedent necessary for sustaining this lawsuit, including *inter alia*, the requisite notice requirements under Sections 74.051 and 74.052 of the TEXAS CIVIL PRACTICE & REMEDIES CODE, have been performed. Plaintiff provided written notice of this claim, certified mail, return receipt requested, to the physician and health-care provider against whom such claim is being made at least sixty (60) days before the filing of this lawsuit. Plaintiff also provided a medical authorization in substantially similar form specified by Section 74.052 of the TEXAS CIVIL PRACTICE & REMEDIES CODE. All other conditions precedent have been satisfied before the initiation of this lawsuit.

XII. REQUEST FOR JURY TRIAL

Plaintiff respectfully requests a jury trial in accordance with the applicable provisions of the TEXAS RULES OF CIVIL PROCEDURE.

XIII. T.R.C.P. 193.7 NOTICE

Pursuant to TEXAS RULE OF CIVIL PROCEDURE 193.7, be advised that Plaintiff intends to use any document produced by Defendants in discovery in any pre-trial or trial proceeding in this case.

XIV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, RACHEL MELANCON, INDIVIDUALLY and as REPRESENTATIVE OF THE ESTATE OF OLIVIA COATS, prays that Defendants, GEORGE BACKARDJIEV, M.D. and THE MEDICAL CENTER OF

SOUTHEAST TEXAS, appear and answer herein as the law directs, and that upon final hearing and trial by jury, Plaintiffs have and recover of and from Defendants, jointly and severally, their items of damages and exemplary damages together with costs of Court and pre-judgment and post-judgment interest, and that Plaintiffs be entitled to such other and further relief, both at law and in equity, to which they may show themselves justly entitled.

Respectfully submitted,

THE DAWS LAW FIRM

/s/ Malachi Daws

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served on the following counsel of record in accordance with the TEXAS RULES OF CIVIL PROCEDURE on this the 29th day of April 2016.

/s/ Malachi Daws

MALACHI DAWS

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