

[Cite as *Williamson v. Univ. of Cincinnati*, 2003-Ohio-970.]

IN THE COURT OF CLAIMS OF OHIO

LISA WILLIAMSON, Ind., etc., :
 et al. :
 Plaintiffs : CASE NO. 2002-06669
 : JUDGMENT ENTRY
 v. :
 Judge Fred J. Shoemaker :
 UNIVERSITY OF CINCINNATI :
 Defendant :
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{¶1} On January 24, 2003, the court held an evidentiary hearing in this case to determine whether Lavenia Carpenter, M.D., is entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86.

{¶2} R.C. 2743.02(F) provides, in part:

{¶3} "A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer's or employee's conduct was manifestly outside the scope of his employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims, which has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action. ***"

{¶4} R.C. 9.86 provides, in part:

{¶5} "*** no officer or employee [of the state] shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were *manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.* ***" (Emphasis added.)

{¶6} Plaintiffs allege that on August 18, 1998, Dr. Carpenter was negligent in the care and treatment of plaintiff Audrey Kearney while she was in labor. They also allege negligence in the method of delivery of Kearney's infant daughter, Janna. Plaintiffs further contend that Dr. Carpenter was acting outside the scope of her employment with defendant when she rendered care to Kearney. Defendant asserts that all of Dr. Carpenter's interactions with Kearney were within the course and scope of her employment with defendant.

{¶7} In 1996, Dr. Carpenter began a two-year fellowship with defendant, which she completed on June 30, 1998. On July 1, 1998, Dr. Carpenter became employed as an Assistant Professor of Clinical Obstetrics and Gynecology at defendant's College of Medicine. On August 18, 1998, Dr. Carpenter was assigned to work from 8:00 a.m. to 12:30 p.m. at the labor and delivery unit at University Hospital, a private institution. She was also scheduled to work that afternoon at St. Luke's Hospital. At approximately 11:30 a.m., Dr. Carpenter was in the operating room at University Hospital performing a Caesarean-section on another patient when she was paged to evaluate the fetal heart rate for Audrey Kearney, who

was a clinic patient in the nurse-midwife program. Dr. Carpenter had not met Kearney until that morning. Dr. Carpenter examined the fetal heart rate monitoring strip and concluded that Kearney's fetus was experiencing late fetal heart rate decelerations. Dr. Carpenter discussed the option of a C-section with Kearney, the nurse midwife assigned to Kearney, and Ann Waters, M.D., a first-year resident. Dr. Carpenter testified that she was supervising Dr. Waters as the attending physician on-call, and that after viewing the monitoring strip, she decided that a C-section was necessary. While discussing the procedure of a C-section with Kearney, Dr. Carpenter received a page from the operating room informing her that the patient she had been working with previously was now hemorrhaging. After Dr. Carpenter returned to the operating room to perform surgery on the other patient, she asked a second-year resident, Dr. Cooper, to check on Kearney. Subsequently, Dr. Carpenter received a report from the anesthesiologist on duty that the monitoring strip looked better and that Kearney's labor was progressing. At approximately 1:30 p.m., Dr. Carpenter spoke to Dr. Miadovnik, the attending physician on-call that afternoon, to see if he had any questions, and she then left for St. Luke's Hospital to attend to her scheduled patients.

{¶8} Kearney eventually underwent a vaginal delivery, and plaintiffs allege that Janna sustained brain damage as a result.

{¶9} In 1998, Dr. Carpenter received income from the University of Cincinnati in the amount of \$5,000.04; income from "Foundation for Obstetrics (FOG) and Medical Center Fund" in the amount of \$59,093.29; and income from University Hospital in the

amount of \$20,597.84. Dr. Carpenter testified that the income from University Hospital represents the income she earned during her fellowship from January 1, 1998 to June 30, 1998, and that the income from the University of Cincinnati and FOG/Medical Center Fund represents half of her annual salary as an assistant professor. She further testified that FOG provides her with malpractice insurance.

{¶10} David Asteles, senior business administrator for defendant, testified that FOG is the billing arm for defendant that enables physicians to be reimbursed for delivery of patient care. He stated that in order to be a member of FOG, one must have a faculty position at defendant's college of medicine. He further testified that defendant provides Dr. Carpenter with health, dental, vision and disability insurance, tuition reimbursement, retirement benefits, vacation and sick leave; that residents were involved in Kearney's care; that FOG did not bill Kearney for her treatment at University Hospital on August 18, 1998; and that FOG does not bill patients for services provided by residents.

{¶11} Based upon the totality of the evidence presented and the recent cases of *Jacobs v. Univ. of Cincinnati Med. Ctr.* (Dec. 17, 2002), Franklin App. No. 02AP-315, and *Kaiser v. The Ohio State Univ.* (Nov. 5, 2002), Franklin App. No. 02AP-316, the court finds that Dr. Carpenter acted within the scope of her employment with defendant at all times relevant thereto. The court further finds that Dr. Carpenter did not act with malicious purpose, in bad faith, or in a wanton or reckless manner toward plaintiffs. Consequently, Dr. Carpenter is entitled to civil immunity pursuant

to R.C. 9.86 and R.C. 2743.02(F). Therefore, the courts of common pleas do not have jurisdiction over civil actions against her based upon the allegations in this case.

FRED J. SHOEMAKER
Judge

Entry cc:

Richard D. Lawrence
Thomas C. Korbee
425 Walnut Street, Suite 2100
Cincinnati, Ohio 45202

Attorneys for Plaintiffs

John R. Ipsaro
2406 Auburn Avenue
Cincinnati, Ohio 45219

Robert W. Lipp, III
986 Marycrest Lane
Dayton, Ohio 45429

Larry Y. Chan
Assistant Attorney General
65 East State St., 16th Fl.
Columbus, Ohio 43215

Attorney for Defendant

HTS/cmd
Filed 3-3-2003
Jr. Vol. 734, Pgs. 163-167
To S.C. reporter 3-4-2003