

[Cite as *Geron v. Ohio State Univ. Med. Ctr.*, 2006-Ohio-4343.]

IN THE COURT OF CLAIMS OF OHIO
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JAMES GERON :
 :
 Plaintiff : CASE NO. 2005-01102
 : Judge J. Craig Wright
 v. :
 : DECISION
 THE OHIO STATE UNIVERSITY :
 MEDICAL CENTER :
 :
 Defendant :
 : : : : : : : : : : : : : : : :

{¶ 1} Plaintiff brought this action alleging medical negligence. Defendant admitted liability. The case proceeded to trial on the issue of plaintiff's damages.¹

{¶ 2} On March 26, 2004, plaintiff sustained severe injuries when the motor vehicle that he was operating was struck by another vehicle. Plaintiff was transported to defendant's hospital and underwent emergency surgery which included a splenectomy. On March 30, 2004, plaintiff underwent a second surgery to repair his crushed pelvis. The second surgery was performed by Laura Phieffer, M.D., an orthopedic traumatologist, who was assisted by William Smead, M.D., a vascular surgeon. Dr. Smead's primary responsibilities were to isolate plaintiff's vascular structures and intestines so that Dr. Phieffer could repair the pelvis. In doing so, Dr. Smead placed a surgical towel in plaintiff's abdomen.

¹On April 13, 2006, plaintiff filed a motion to tax as costs over \$600 in deposition expenses of his expert, William F.M. Daniel, M.D. On May 2, 2006, the court received a proposed entry from the parties wherein they agreed that the deposition expenses total \$348.40. Upon review, plaintiff's motion is GRANTED, in part, in that \$348.40 shall be taxed as costs.

On another matter, on May 4, 2006, plaintiff filed a "motion for leave to file a final submission, instanter." Upon review, plaintiff's motion is GRANTED.

The surgery lasted approximately seven hours and was completed successfully.

{¶ 3} After the second surgery, plaintiff was transferred to Dodd Hall to begin physical therapy. However, over the course of several days plaintiff's white blood cell count remained elevated and he suffered intermittent low-grade fevers. On April 11, 2004, a CT scan of plaintiff's abdomen revealed a suspected abscess or foreign body.

{¶ 4} On April 16, 2004, Dr. Smead performed an exploratory laparotomy whereby he made a three-inch opening in the upper portion of plaintiff's abdominal incision. During the laparotomy, which lasted approximately 20 minutes, Dr. Smead discovered that he had left a surgical towel inside plaintiff's body. Dr. Smead removed the towel and drained the fluid that had accumulated around it. The fluid was later cultured and tested negative for the presence of any infection. Plaintiff was discharged on April 19, 2004.

{¶ 5} Plaintiff testified that he became worried and anxious when he was advised that a third surgery was necessary and that it would be performed by Dr. Smead. Plaintiff further testified that he felt "completely let-down." Plaintiff stated that as a result of the third surgery, additional staples were placed in his incision; that the part of his scar that was reopened has not healed as well as the rest of the scar; and that his recovery from the first two surgeries was delayed approximately three days. Plaintiff also asserted that both his rehabilitation and physical therapy were curtailed because of the third surgery.

{¶ 6} Plaintiff's father testified that his son became anxious, worried, grouchy, withdrawn and seemed as though he had "given up" upon learning about the need for a third surgery.

{¶ 7} Plaintiff's expert, William F.M. Daniel, M.D., a general surgeon, opined to a reasonable degree of medical probability that failure to remove a surgical towel from a patient's body constitutes conduct that falls below the standard of care. Dr. Daniel further opined that plaintiff suffered the following adverse consequences as a result of Dr. Smead's breach of the standard of care: 1) post-operative pain including the pain associated with the placement and removal of additional staples; 2) a three-day delay in convalescence; 3) the need for additional antibiotics;² 4) an increased risk of future incisional hernia; 5) anxiety and frustration over having to undergo a third surgery because of a medical mistake; and 6) fever caused by his body's response to the presence of a foreign object.

{¶ 8} Plaintiff also asserts that he experienced pain and suffering as a result of drains that were placed in both sides of his abdomen without the use of anesthesia. Plaintiff contends that the drains were inserted to remove fluid that had accumulated in his body in response to the presence of the surgical towel. However, defendant maintains that the drains were placed to remove fluid that was generated as a natural consequence of the pelvic surgery. Upon a review of the medical records, the court notes that the drains were placed on April 5, 2004, and that they were removed on April 8, 2004, more than a week before the laparotomy. Therefore, the court finds that plaintiff has failed to prove by a preponderance of the evidence that the placement of the drains was causally related to the presence of the surgical towel in his abdomen.

{¶ 9} Based upon the evidence presented at trial, the court finds that plaintiff has proven by a preponderance of the evidence

²On May 3, 2006, plaintiff filed a reply to defendant's proposed findings of fact and conclusions of law wherein he withdrew his prayer for damages based upon additional treatment with antibiotics.

that he is entitled to noneconomic damages, including, but not limited to physical pain, anxiety, and mental distress. Accordingly, judgment shall be rendered in favor of plaintiff in the amount of \$45,000.

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: JUDGMENT ENTRY
THE OHIO STATE UNIVERSITY :
MEDICAL CENTER :
Defendant :
: : : : : : : : : : : : : : : :

This case was tried to the court on the issue of plaintiff's damages. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$45,025, which includes the \$25 filing fee paid by plaintiff. Court costs including \$348.40 associated with the deposition expenses of William F.M. Daniel, M.D., are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. CRAIG WRIGHT
Judge

Entry cc:

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