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A. Argument in Reply

Plaintiffs presented sufficient evidence to put the issue of causation before a jury. Dr. Gale's opinion regarding the effect the methotrexate overdose had on Tatiyana was made on a more probable than not standard of medical certainty:

I give the opinion in this declaration on a more probable than not standard of medical certainty.

Tatiyana Harris had acute lymphoblastic leukemia, a cancer of the blood and bone marrow which can spread throughout the body including to the central nervous system. On March 24, 2006, plaintiff received a 6-fold higher intrathecal dose of methotrexate (12 mg rather than 2 mg) than that prescribed by her physicians. This higher dose is sometimes associated with adverse signs and symptoms. Because the higher than prescribed intrathecal dose of methotrexate was given synchronous with a central nervous system relapse of acute lymphoblastic leukemia in the plaintiff, it is probable the higher dose could cause adverse effects indistinguishable from those of central nervous system relapse of acute lymphoblastic leukemia in the plaintiff.

CP 350 at ¶ 10 (emphasis added). The medical evidence and the testimony of Dr. Louie, Dr. Irwin, and Ms. Sanford clearly illustrates that things changed for Tatiyana on the day of the overdose.

On the last date of treatment with Dr. Irwin before the overdose, Tatiyana's systems were normal or unremarkable and her Leukemia prior to the March 24, 2006 overdose was in complete remission. CP 96 at ¶ 10. *Id.* Prior to March 24, 2006, Tatiyana was in full remission from her

Leukemia while under the consistent care of Dr. Niebrugge and Dr. Irwin. CP 98 at ¶ 13.

Immediately following the overdose, Tatiyania's health began to decline and her suffering increased greatly. Her treatment went from curative to palliative. CP 181 at p. 8:2-7. Dr. Gale testified that Tatiyania's decline and demise is precisely the type of adverse effect that one can have to an overdose of methotrexate. Dr. Irwin never gave such a high dose of methotrexate directly into a patient's brain because he knew such a dosage in the brain would be toxic. CP 173 at ¶ 3.

After the overdose, Tatiyania was diagnosed with chemotherapy toxicity, which carries with it painful symptoms. CP 187 at p. 31:3-20 (emphasis added).

A So the side effects of methotrexate given into the spinal space would include things like *fever, headache, neck pain*. There can be *other neurologic symptoms* associated with methotrexate toxicity: *nausea and vomiting*.

CP 183-184 at p. 17:22-19:14 (emphasis added).

Dr. Gale's opinion, combined with all of the other evidence presented by plaintiffs, is sufficient to prove that the overdose of methotrexate administered to Tatiyania caused her pain and suffering during the months following the overdose and injured and ultimately destroyed the parent/child relationship.

B. Conclusion

The lower court erred when it dismissed plaintiffs' cause of action for medical malpractice. The evidence presented, when viewed in the light most favorable to the plaintiffs, demonstrates that a genuine issue of material fact exists making summary judgment improper with respect to causation. Plaintiffs respectfully request that the Court of Appeals reverse the lower court's order dismissing this case and remand this matter for a jury trial.

RESPECTFULLY SUBMITTED this 8th day of December, 2010.

THADDEUS P. MARTIN & ASSOCIATES


By _____

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CERTIFICATE OF SERVICE

I hereby certify that I am not a party to this action and that I placed for service on counsel of record the foregoing document via legal messenger on the 8th day of December, 2010.

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