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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

-----X	:	
CHRISTINE GAMBINO AND	:	Civil Action Number
GARRETT GAMBINO, ON BEHALF	:	
THEIR MINOR CHILD, R.G.,	:	2016 CAM 1884
AND FOR THEMSELVES,	:	
	:	***EXCERPT***
Plaintiff,	:	
	:	
versus	:	
	:	
MEDSTAR GEORGETOWN MEDICAL	:	
CENTER, INC.,	:	
	:	Washington, D.C.
Defendant.	:	Monday, November 5, 2018
-----X		

The above-entitled action came on for a Jury Trial, before the Honorable HIRAM PUIG-LUGO, Associate Judge, in Courtroom Number 317, commencing at approximately 1:45 p.m.

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APPEARANCES:

On behalf of the Plaintiff:

PATRICK MALONE, Esquire
DANIEL SCIALPI, Esquire
Washington, D.C.

On behalf of the Defendant:

ANDREW SPENCE, Esquire
KAREN COOKE, Esquire
Washington, D.C.

Kristina Ingram
Official Court Reporter
(202) 879-1080

1 P R O C E E D I N G S

2
3 (Thereupon, prior proceedings have been omitted
4 from this transcript to include only the excerpt requested
5 and transcribed herein.)

6 (Jury enters.)

7 THE COURT: All right. Good afternoon,
8 everyone. Welcome back. Please have a seat.

9 Madam courtroom clerk, are we on the record?

10 THE DEPUTY CLERK: Yes, Your Honor.

11 THE COURT: All right. Thank you.

12 Mr. Malone, thank you.

13 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

14 MR. MALONE: Okay. Thank you, Your Honor. May
15 it please the Court, counsel, Gambinos.

16 Ladies and gentlemen, here we are one day before
17 an exercise in mass democracy. We're all going to go to
18 voting tomorrow, many of us are. Harken back to what the
19 Judge said exactly a week ago, he said that this, what
20 we're doing right here, is the Government of the people,
21 for the people, by the people.

22 If you've ever had a chance to -- there's a guy
23 who wrote about this 150 years ago named Tocqueville, from
24 France. He wrote very eloquently on comparing trial by
25 jury in civil cases and how important it was as a part of

1 democracy, voting.

2 He said, in the jury room is as important an
3 exercise in democracy as voting in the ballot box. But,
4 there's one big difference. You can go in the ballot box,
5 shut the curtain, flip a coin, whatever you want to do,
6 vote, nobody ever asks you anything. Here, you have to
7 talk to each other, you have to deliberate, you have to
8 decide as one voice. And that is the amazing beauty of
9 our system.

10 We live in a very contentious world right now.
11 Everybody has their fact silos over here and their fact
12 silos over there, and never talk to each other. We have a
13 system where we require the people -- and by the way, this
14 is important enough that outside of a draft in times of
15 war, there is nothing that the Government can make you do
16 to come in and spend time doing other than this.

17 And the way we do it is quite amazing. We don't
18 have separate fact silos. We let each side put on their
19 case, but we put all the facts in and we pour it out. We
20 test what the other side says, they test what we say, and
21 then we have it and you get to bring, with some of the
22 community, a cross section of the community to this case.
23 Amazing, powerful system.

24 And you're going to hear from the Judge an
25 instruction that always gives me goosebumps, because this

1 is another unique aspect of our system.

2 Do I have this other block in here?

3 (Discussion held off the record.)

4 MR. MALONE: All parties stand equal before the
5 law and are to be treated as equals in this court. Where
6 else in the world would we have a system like this?
7 Really nowhere that I can think of. So, let's get down to
8 our case.

9 I want to suggest to you that if you want to see
10 a problem, if you want to see something bad going on, the
11 first thing you've got to do is look. Nurse Kim didn't do
12 her job to look carefully on that day, and we saw
13 something like that playing out here in the courtroom.

14 At the trial, she never looked at what she had
15 done. I didn't see a single photo they showed her, was
16 this the way it looked like when you saw it. Nope. Dr.
17 Subramanian, the head of the unit, he didn't see anything.
18 And they got a nurse from Nashville to sign on and defend
19 this case without looking at a single photo. What is
20 going on there?

21 If you don't look and if you don't see how bad
22 the harm is that you've caused, it make it a lot easier to
23 defend it. Now, let's talk about memory for a minute. We
24 all know that when shocking events happen that we see, our
25 brain goes into memory overdrive. In fact, we heard a new

1 specific word on it in those recent Supreme Court
2 hearings.

3 The amygdala -- the amygdala is the part of the
4 brain that goes into overdrive and helps make the memories
5 vivid and powerful. None of us, obviously, can ever
6 forget where we were and what we were doing when those
7 Twin Towers went down.

8 Similarly, grandma can never forget, mom can
9 never forget what they saw when they came into that unit.
10 A red sock, a leg that looked like it had been dipped in
11 lava with an area of a white streak down the right side.

12 So, what if you know you've done something wrong
13 though and you'd rather not remember it. What do you do
14 to honestly be able to say later that, I just can't
15 remember? Well, you write down as little as possible at
16 the time of the event and then you walk away. And you let
17 the passage of time heal.

18 And you can understand that. It's a coping
19 mechanism that people have. We're not saying the lady is
20 dishonest when she doesn't remember, but we raise a
21 question about it. With an injury this bad, really? You
22 really can't remember it? Oh, it's because you've had 20
23 others like this? Whoa. And they kind of blend together?
24 Well, I don't know. I don't know about that.

25 So, here's what she wrote after 3:00. This is

1 the universe of what she wrote in that chart. IV out, I
2 for infiltrated, probably overwritten and overwriting a P
3 there on the left side, right foot infiltrate, report to
4 Dr. Mehta. And then, at the 6:00 p.m. slot, vitrase
5 subcutaneous on the right foot.

6 When she was grilled by a -- the doctor and the
7 resident at the time, here's what she said. At 3:00 p.m.,
8 Nurse Kim noted that the right lower extremity is
9 edematous -- erythematous, areas of white, lipid like
10 infiltration and areas of blistering cyanosis denoted
11 epithelium on the foot dorsum.

12 And when you compare that description with the
13 photo that dad took the next day, pretty much the same.
14 Pretty much the same. And yet, the problem is that is a
15 really advanced injury. The defense nurse herself
16 admitted you don't get blistering cyanosis as the first
17 stage, that's the second stage.

18 So, Georgetown tries to win this case from
19 missing data; missing data that their people, their nurse
20 left out of this chart. First off, how bad was it? Just
21 a little bit more on how bad it was.

22 Here's the attending treating plastic surgeon.
23 He got this photo before he added the beard, good beard
24 though. One of the worst I've ever seen, probably the
25 largest, he said, and one of the deepest.

1 Here is a guy who's catchment area at Johns
2 Hopkins Hospital brings in the worst burn cases from all
3 over, and Dr. Redett, who is just the treating doctor
4 says, it's one of the worst I've ever seen.

5 So, Georgetown has a record that is missing a
6 few things. They have a policy that says you're supposed
7 to fill this form out. We take infiltrates seriously, and
8 you, the nurse and the doctor cosign the form. You just,
9 you know, circle or put some marks that show the extent of
10 the injury, you say how much fluid infiltrated based on
11 the time of discovery and you put down the exact time
12 somebody was notified.

13 And why was I fooling around making a big deal
14 about the fact that in her notes -- let me just back up on
15 that. In her notes, they want to say, oh, it happened at
16 3:00, as if those times are, you know, locked in where it
17 says, 15.

18 It doesn't just mean during the 15:00 hour, it
19 means 1500. And we know that her timing is not precise on
20 that because she has the vitrase being given two hours
21 after it was given. What's the point?

22 The point is you've got to fill the form out if
23 you want people to really know exactly when you found it.
24 And so, we asked Dr. Mehta. And by the way, how strange
25 is it that the -- in terms of the Georgetown witnesses, we

1 see a long presentation from a witness who remembers
2 nothing of the event and we only get little deposition
3 excerpts that we read in from the guy who does remember
4 something about the event.

5 So, they want to say, well, you can't say,
6 plaintiff, how much fluid was in there from that
7 photograph the next day. We don't know the extent of the
8 infiltration. We don't know, because she didn't fill out
9 the note the exact time it was reported to Dr. Mehta. And
10 we don't know what her estimate was of the amount of the
11 infiltrated fluid based on the time of discovery, all
12 because she didn't do her documentation job.

13 Why is that documentation job important?
14 Because if this truly was some weird super rapid event
15 that happened in less than that golden hour that we all
16 know is the standard of care, they would want to know
17 about it.

18 They'd want to do something to checkout, geez,
19 is there something different about our little baby here;
20 does she have some, you know, genetic predisposition or is
21 there something we've got to really, really watch her for
22 carefully. Nothing like that. No such evidence.

23 So, here we have a case where a baby got a
24 really bad injury and it clearly took longer than one hour
25 for that thing to happen. There is no way you get a

1 cyanotic injury in that period of time, and they want to
2 take advantage of their failure to give us more precise
3 information; is that right?

4 So, was there no time for documentation? This
5 is their photo that they put on their website. And what
6 does it show the nurse doing? Documenting. Documenting
7 what is happening to the baby. And they have a whole
8 bunch of forms set up to make documentation fast, easy,
9 simple.

10 You got a legend, so you just have one letter,
11 and then you've got your times and check boxes. Boom,
12 boom, boom, boom, boom. It doesn't take long at all to do
13 a careful job. So my question is, where is there any
14 evidence that this is something other than a simple
15 violation of the rule, at the first sign, pull the line.

16 Now, we did hear one thing from their expert
17 witness last Friday. We had on our side, supported by
18 objective medical literature -- I'm going to get into that
19 in a minute -- that babies can tolerate up to an hour of
20 infiltrate. And so, the one-hour rule is a good rule that
21 protects babies if it's followed.

22 On their side, they say that these injuries can
23 happen very fast and with small doses, but we're keeping
24 the one-hour rule. Does that make any sense? Which side
25 presented to you objective evidence in support of their

1 case?

2 You know, anybody can hire expert witnesses and
3 pay them a lot of money, and you know, somebody else will
4 see the cup half empty and this person is coming in to
5 say, oh, no, it's half full. I get that, but what's the
6 tiebreaker?

7 The tiebreaker is look at things that doctors
8 use to -- and nurses use to teach each other to say this
9 is how medical practice works, and that's what we brought
10 you. We brought you the handbook of neonatal nursing --
11 I'm sorry -- neonatal intensive care, and the co-author,
12 Nurse Gardener.

13 We brought you the author of the article about
14 IV infiltrations in NICUs, Dr. Hermansen. We brought you
15 quotations that are relevant from journals like the
16 Journal of Infusion Nursing. And I don't need to spend a
17 whole lot of time on these, but here's another one we
18 brought you, American Journal of Nursing, steps in the
19 management of infiltration and extravasation.

20 At the first sign, pull the line; that's item
21 eight. Item 10, photograph the site or, you know, hey, do
22 something else like Georgetown that says, you know, just
23 circle it, mark it, whatever. Estimate the volume that's
24 escaped, and according to the flow, rate the condition of
25 the site and the length of time. That's where this record

1 is conspicuously silent.

2 Now, Georgetown brought with their nurse -- I
3 kept waiting for this -- is she going to have some
4 documented literature so we don't just have to take her
5 say-so that says these things happen ultra fast, happen
6 with as little as -- I think she said one or two
7 milliliters. It's a thousandth of a liter, so a few drops
8 she claimed that this happened.

9 I counted two articles that were mentioned by
10 Georgetown, and they were in Dr. Hermansen's
11 cross-examination, because they were, like, footnotes in
12 his chapter. One was about regional newborn intensive
13 care units in the United Kingdom and, where they did some
14 survey, and all the babies or most of the babies who had
15 bad burns were 26 weeks or less, not like this.

16 You heard the testimony that the skin is like
17 paper at 26 weeks. And then, they had one other, and it
18 was this 1979 article from a surgery journal. And they
19 were going through some -- and I asked to see a copy of
20 it. I had never seen it before. Flipped through it, and
21 it didn't take me long to find this quote.

22 "If calcium extravasation is recognized within
23 60 minutes, studies in animals indicate full thickness
24 damage may be reversed by -- and I pronounce it vitrase,
25 but it's got the generic term up there. Unfortunately,

1 most of these injuries are not recognized within 60
2 minutes.

3 So, Dr. Hermansen explained to us, yes, that's
4 part of the science. That's why we changed the standard.
5 That's why we went from three, four, five or six babies
6 per nurse to one or two. And that's why we do hourly
7 checks, and that's why, in his experience, he has never
8 seen an injury like this one in the last 20 or more years.
9 And Nurse Gardener has not seen an injury like this in her
10 37 years except for when she was brought in by the
11 Colorado Board of Nursing to examine that case.

12 So, I was waiting for them to call in some
13 doctor with a lot of degrees to tell you, oh, no, that's
14 not right. There are plenty of cases out there where
15 these babies get here hurt in very fast time, 10 or 15
16 minutes, even less, with tiny little dips. Did we ever
17 hear any such testimony? It ain't there.

18 So, the case is not even close. You have to
19 decide who is more likely right in this case. It is not
20 beyond a reasonable doubt, it's who is more likely right.
21 And, you know, people can say in the jury room things
22 like, oh, I think they're right, I'm just not totally
23 sure; I'm not a hundred percent convinced; I still have
24 some doubt in my mind; those don't apply under the
25 preponderance of the evidence standard.

1 You just have to decide who is more likely
2 right, Racquel Gambino and her mom and dad, or Georgetown
3 Hospital. Who brought you the objective evidence? Who
4 showed you that and challenged them that this cannot
5 happen in under an hour? We were the ones who did that.

6 You know, we had this little thing with these
7 vials. This one -- was the two-hour one? Okay. So, we
8 had a half hour worth, 4.4 CCs, and then we had two hours
9 worth, which is 17.6. Remember, it was 8.8 times two.

10 And the question for you is -- because remember,
11 Nurse Kim is telling us not only did I check at 2:00, I
12 checked at least once or twice after that. And I guess
13 she's telling us, although she doesn't remember, that,
14 okay, that puffiness at 2:00, that went away, that was
15 unrelated.

16 Some new puffiness came in, and that's what
17 caused this injury. But, it didn't happen until she
18 already examined the baby once or twice more, which would
19 mean, you know, 2:30 or 2:40.

20 So, the question is, is this more likely the
21 cause of this huge blistering cyanotic burn stretching
22 halfway up the calf, wrapping most of the way around, or
23 is this more likely? Two hours worth violated the
24 accepted standard of care, and it's not even close.

25 I want to go on to a harder issue. The Judge is

1 going to tell you this: Compensatory damages are intended
2 to make the plaintiff whole, or put another way, to
3 restore the plaintiff as far as money damages can do so to
4 the condition the plaintiff was in before the negligent
5 injury.

6 The law does not compensate everyone who has
7 been injured, but only compensates those persons whose
8 injuries are caused by negligence. I told you at the
9 beginning, this idea of compensation is a balancing. And
10 just as in this case it's a balancing, the Judge is going
11 to read you some factors for to you take into mind.

12 I've listed them up here. I don't need to go
13 into them in great detail now, but extent and duration of
14 the physical injuries, the effects of the physical
15 injuries on the physical and emotional wellbeing, physical
16 pain, emotional distress, disfigurement, deformity,
17 humiliation, embarrassment.

18 My parents here, my clients, are not in this for
19 any money for themselves. You didn't see any medical
20 bills from them, no claim for trips, you know, 20 some
21 trips to Baltimore to see Dr. Redett, no claim for their
22 own emotional distress. That's not in this case. This is
23 100 percent for Racquel. Any money she gets goes into a
24 guardianship account protected by the court until she
25 becomes an adult.

1 So, let's talk the plus side of it first. You
2 met a charming, preconscious, energetic, wonderful little
3 girl. She's got great parents, and that is a huge
4 advantage. By the way, if you want to have your heart
5 ripped out of your chest, check out those adoption posters
6 outside in the atrium. Those poor kids; it just brings
7 home to you, to all of us the tremendous importance of a
8 good, two-parent family. And she's got that, and so,
9 she's got a huge advantage.

10 Mom is already teaching her that this is a
11 character builder, that scar on her ankle, that deformity
12 on her ankle. Her life, in no way, is ruined. She will
13 live. She will walk, at least, mostly normally. She will
14 love. She will be loved. But, consider the human body.

15 And let me just mention one thing, because this
16 is the last thing you heard in the case, in terms of the
17 evidence. I want to ask you which plastic surgeon has
18 walked the walk with this little girl and really knows
19 her, and which, on the other hand has just talked some
20 talk.

21 Let me just remind you of what Dr. Redett said.
22 He believes there are damages to the tendons, and that's
23 the problem now, not the skin itself. Disagrees with that
24 man we heard from this morning. He agrees with Dr.
25 Arcater (phonetic spelling) that she needs orthopedic

1 surgery. She need her Achilles tendon lengthened. And by
2 the way, whatever happened to that orthopedic surgeon that
3 examined her for the defense? If he had something
4 different to tell you --

5 MR. SPENCE: Objection, Your Honor.

6 MR. MALONE: -- that could be better --

7 THE COURT: Sustained. Please approach.

8 (Bench conference.)

9 THE COURT: Okay. What is your objection?

10 MR. SPENCE: This is a missing witness argument.
11 That's improper.

12 MR. MALONE: The rule is that a witness who is
13 peculiarly under the control of one party --

14 THE COURT: Did you ask for leave of the Court
15 before you posed this argument to the jury?

16 MR. MALONE: I did not.

17 THE COURT: You did not.

18 MR. MALONE: No.

19 THE COURT: Objection sustained.

20 MR. MALONE: Okay.

21 (In open court.)

22 THE COURT: Objection sustained. Please
23 proceed.

24 MR. MALONE: Okay. Let's forget about that day,
25 but let's talk about what the evidence was that you did

1 hear. Dr. Redett agrees with Dr. Arcater; she needs
2 orthopedic surgery, the Achilles lengthen tendon. There
3 is no contradictory testimony to that.

4 He's not optimistic about the blood flow down
5 there, and that's why he thinks that a simple skin graft,
6 just a little patch of skin without its own blood supply
7 is not going to work. What she really will need is a skin
8 flap where you grab a piece of tissue from somewhere else,
9 the thigh, the abdomen, with its own blood supply, you
10 transfer it down there.

11 You borrow from one the arteries in the foot;
12 there are three of them, remember he told us that. And
13 that artery now feeds this new flap. But, it's not a
14 cosmetic flap. He was very clear he would never recommend
15 purely cosmetic surgery, because it would do more harm
16 than good.

17 We asked him would you help us work with an
18 illustrator to come up with something that looks
19 reasonably accurate to what she would have the rest of her
20 life, and he said, yes, and he said, I think this is
21 reasonably accurate.

22 That's the man who's walked the walk. It's easy
23 to say, oh, second opinion; I think it will be a lot
24 better. But, the guy who has to sit down with the family
25 and explain the risks and the benefits and here's how we

1 go forward and all, I don't know about that, he's the one
2 that we called.

3 Imagine if we turned the tables. What if we
4 called some guy as a second opinion, who hadn't ever
5 treated her, who saw her just once, and said, oh, well,
6 that's going to be bad. And then, they subpoenaed in Dr.
7 Redett to testify and he said, well, gee, I'm pretty
8 optimistic about this.

9 Well, if that had happened, if we had turned the
10 tables, sure, you'd have something to go on. But, when
11 the treating guy says what he says and is not optimistic
12 about the future, that is the more substantial evidence.

13 So, here's what she faces; I want to ask you to
14 consider some big picture things about the human body.
15 You know, when it works together, every part functioning
16 on its own, it's a miracle. We have miracles of sports,
17 athleticism, you know, with Serena Williams and Maria
18 Sharipova, artistic athleticism, all those ballerinas,
19 Suzanne Farrell, it's just stunning what the human body
20 can do.

21 It spins and leaps. And the other great thing
22 about the human body is the creativity that all of us
23 bring to adorning the human body to show off our beauty,
24 to take pride in what our creator gave us, and it shows.

25 Now, consider a human body where only one part

1 of that body has been damaged, like here. However, it's
2 an injury to the entire body and to the entire human
3 being. St. Paul wrote in First Corinthians he was correct
4 when he said the body does not consist of one member, but
5 of many; and if one member suffers, all suffer together.
6 There are many parts; you get one body.

7 So, it's a global thing. You know, we're all
8 better at valuing damage when it's not a human being that
9 was injured. There was a story a few years ago where this
10 Las Vegas guy, Wynn, bumps his elbow into this Picasso
11 painting and tears a big gash in it. He was about to sell
12 it for \$193 million, and this wall street guy, end of
13 sale, you know, millions down the drain, but that's an
14 easy appraisal. That's an easy appraisal because that's
15 not a human body.

16 we're talking about a human body here. All of
17 us humans fall short of artistic perfection. You know,
18 we're not talking about being athletes necessarily, but
19 each of us has our own beauty that our creator endowed
20 each of us with, and whether we're blessed with a lot of
21 beauty or just a little beauty, that's ours, and it's
22 priceless. And you don't take that away from somebody by
23 negligence without it being realized to be a very heavy
24 thing that you have done.

25 So, where is the loss of perfection going to be

1 felt for our little girl? When she looks in the mirror?
2 When she sees the winning gymnast at the Olympics? When,
3 in a few years from now, in middle school, she pretends
4 not to hear the jeers on the playground? When she
5 pretends that she wanted to sit by herself in the
6 cafeteria anyway?

7 When she doesn't go out for cheerleading? When
8 she doesn't race with the rest of the kids down to the
9 beach to surf? When she poses for group photos standing
10 sideways and blocking it and just pretending that this is
11 the way she likes to stand.

12 When she holds her tongue when well-meaning
13 people for the millionth time say to her, oh my goodness,
14 what happened to your leg? When she surfs the internet,
15 looks at all the gorgeous women's footwear and almost --
16 almost clicks on that button that says, buy?

17 When she gets up out of the bed every single
18 morning for the next 80 years of her life, the next 29,200
19 mornings if she -- God willing that she lives that long
20 and she has to think about that foot and what to put on
21 that foot?

22 When she measures herself -- you heard about
23 body image and how important it is to people. When she
24 measures herself and falls short against one standard that
25 we all hoped for ourselves, we just don't want to be

1 different. We don't want to stand out in a deformed way.
2 We want to be like others.

3 So, I said this has to be balanced out, and all
4 of that has to be balanced out because you can't turn the
5 clock back, you cannot cure anything, you can only make up
6 for what cannot be cured. This loss must be measured by
7 what she will feel and what she will experience. All of
8 it is profound and is huge.

9 I just want to leave you with one last thought.
10 Verdict is a Latin word that literally means, ver, truth,
11 dict, to speak. You will speak the truth with your
12 verdict. You can tell grandma, we suggest, it wasn't your
13 fault for letting your daughter sleep late that morning.

14 You will speak the truth that this should not
15 have happened. You will speak the truth that you
16 recognize the profound consequence of disfiguring a little
17 girl for her entire life.

18 The Judge is going to give you some instructions
19 afterwards, and one of his instructions that I want to
20 mention to you, just as a procedural idea for you, and
21 it's totally optional, it's up to you; when you start
22 talking, the Judge is going to -- I think will tell you
23 something to the effect of don't announce strong opinions
24 right at the beginning. Let things percolate a little bit
25 first.

1 So, I have a thought about the dollars, if you
2 get there. Instead of doing it orally, where people start
3 going around the room -- the problem with that is that the
4 first few to speak, they can set up a trend, and then the
5 last ones say, well, I'll just go with the flow.

6 It might be better -- it might be better, just a
7 suggestion to just -- before you start out loud talking
8 about dollars, just write your own number on a piece of
9 paper, fold it over and put in the middle of the table.

10 And then, when everybody is done with that, you
11 open them up and you go around and you say, okay, you said
12 this, what's your reason; you said that, what's your
13 reason. Now, will some of those figures be high seven
14 figures? Will some be less? Will some be more?

15 That's not for me to say. It is entirely up to
16 you. Following the law, following the evidence and just
17 realizing what a profound thing has happened here and what
18 must be done to balance it out. Thank you very much.

19 THE COURT: Okay. Thank you, Mr. Malone.

20 Mr. Spence?

21 **(Thereupon, the portion of Defendant's closing**
22 **has been omitted from this transcript to include only the**
23 **excerpted portion requested and transcribed herein.)**

24 THE COURT: Thank you. All right. We're going
25 to take a 15-minute break. Okay. Then, we'll come back

1 for rebuttal arguments. Thank you.

2 (Jury excused.)

3 THE COURT: All right. Fifteen minutes, please.

4 Thank you.

5 (Court in recess.)

6 (Jury enters.)

7 THE COURT: Good afternoon, please have a seat.

8 Mr. Malone, please proceed.

9 CLOSING REBUTTAL ARGUMENT

10 MR. MALONE: I can be out talked in length, but
11 not in points. I'm not going to jawbone you to death with
12 another amount of time that matches what we've just heard,
13 but I'm going to ask some questions and correct a few
14 misstatements.

15 I kept waiting to hear an answer on the basic
16 story. Okay. You say the puffiness at 2:00 was something
17 else, what was it and when did it get fixed? And when did
18 the new puffiness come around, and when did she check
19 again? Is there a story that hangs together that lets you
20 exonerate Georgetown? I didn't hear one.

21 Are we really saying -- and I didn't hear an
22 answer to this either -- I did hear them say, okay, one or
23 two milliliters, 15 or 20 minutes. Hang on. This injury,
24 one or two milliliters, six centimeters up the calf, six
25 centimeters out to the toes, wrapping all around, contact

1 burn, there's not enough milliliters in one or two
2 milliliters, much less half an hour's worth, a teaspoon,
3 4.4, there's not enough fluid there to do that, even if it
4 was like a, you know, sulfuric acid.

5 So, we just didn't hear a story that hanged
6 together. You know, harken back a week and we heard, oh,
7 another reason why this couldn't have happened the way
8 plaintiff says it happened is because the alarm would have
9 gone off, and she relied on the alarms. Okay. Well,
10 yeah, she did testify she relied on the alarms.

11 We showed you all the Journal of Infusion
12 Nursing, American Journal of Nursing, that they said you
13 cannot rely on the alarms. The alarms are for total
14 blockages, not just the pressure changing a little bit.
15 Very bad; don't do that.

16 So, then they want to say things that just
17 aren't so. I asked in my open and closing, I said, how
18 come she didn't fill this out and put in the key missing
19 facts, amount of fluid, the time that she notified the
20 fellow and some indication of the size.

21 All we heard just now was no answer to any of
22 those items. Did you hear anyone say, well, how come she
23 didn't document the time that she found it? Was there
24 anything about her documenting the extent of the injury
25 based on the amount of fluid infiltration? Was there any

1 answer for why she didn't document where exactly it was?

2 And the point wasn't that this would have cured
3 her, this would have prevented the thing from happening.
4 The point was so that you can write down
5 contemporaneously, right then and there what you say
6 happened if you have a defense.

7 If you, the nurse, can honestly say, you know, I
8 checked the baby at 2:00, the tape was too tight, I
9 loosened the tape, I changed it, I checked twice more over
10 the next hour, this happened very suddenly and it was a
11 very small area at the time, I told Dr. Mehta immediately
12 at 15:00.

13 They say, oh, she didn't have time to do that.
14 Hang on. She goes off shift at whatever it was, 7:00 at
15 night, had all the time in the world. And also, there was
16 all the time in the world while the other people were
17 treating this baby for this hideous burn that happened.
18 Go down and sit down in a corner and write down what
19 happened.

20 Every time he showed this, what do you call
21 that, syringe thing for aspiration and the flushing, I
22 just had this fantasy of trying to defend a car knocking
23 down a pedestrian in a crosswalk turning right on red.
24 And so, what was your custom and habit as you approached
25 the intersection.

1 well, I would come to a complete one hundred
2 percent stop, and I would always look to my left and look
3 to my right and look to my left again, and then and only
4 then -- and was this a diagram of the accelerator pedal
5 and the brake pad; yes, I would move my foot from the
6 brake pedal to the accelerator pedal, and then and only
7 then turn. And I'm sorry, I just don't remember it
8 because this has happened 20 times or more over the years,
9 and they all kind of merge together. You know, this story
10 makes no sense.

11 So, let's just correct a few of the
12 misstatements and then let's let you do the job that you
13 want to do. Okay. The key one I want to tell you is
14 claiming that the plaintiff's literature proved that this
15 could happen very fast or that the plaintiff's witnesses
16 admitted that they put up a quote from the deposition of
17 the Nurse Gardener as little as 15 minutes.

18 The stuff eats -- can eat through the veins like
19 acid. You remember the quote she explained when she got a
20 chance to explain on redirect, total apples and oranges.
21 Do you remember when she's talking about bolus and when
22 you have to give a concentrated injection to the baby
23 because you've got to boost the calcium really fast, like
24 if the baby just had heart surgery or something?

25 Yes. Then you put it in very rapidly, and it

1 can be much more caustic. And what does the nurse do?
2 stands there and watches it during the entire 15-minute
3 infusion so these babies don't get these injuries.

4 In no way is this comparable. Total apples and
5 oranges. Then, he twice quoted from that, I think it was
6 called, Wilkins -- Wilkins and Williams, yes. Yeah,
7 Wilkins and Emerson. He quotes from it, left out the key
8 fact, most of these days, these 26 weeks or less when
9 their skin is immature, that was the problem with the
10 survey of regional NICUs in the United Kingdom.

11 There is no epidemic of rapid injuries here in
12 the United States with babies who have mature skin like
13 our baby had, 31 weeks. And then, we got another one.
14 Oh, she said it started at noon and there's 30 CCs and she
15 contradicted herself, 17.6 CCs -- talking about
16 Gardener -- that's not what she said.

17 She said she thought the infiltrate happened
18 between 1:00 p.m. and 3:00 p.m. It should be 17.6 CCs.
19 Sure, it -- and what caused it -- and actually, this
20 defense expert kind of agreed with that, at least during
21 the first report; remember, she left it out of her
22 testimony.

23 And by the way, who is partisan here; the ones
24 who write the books and come in and give you the testimony
25 or the ones that lets the lawyer write their opinion for

1 them and then says, oh, but everything in my report I've
2 independently verified before I sign the report.

3 Yeah. But, what about this line where you said
4 that you were talking about Nurse Kim's wonderful habits
5 and practices. Where did you get that from; oh, well that
6 came from the lawyers, so that's an exception of my rule
7 of always independently verifying. So, boom, boom, boom.
8 You can see through that.

9 So, I get a little sidetracked. The difference
10 between the 17.6 and the 30 are very simple. Of course it
11 looks like 30 the next day. Yeah, the foot is a little
12 more swollen. It looks like it's got 30 CCs in there, but
13 what it got in that caused this much injury is 17 and a
14 half, give or take.

15 Okay. Let's see. You know, when you don't have
16 a plausible story about what happened and how this baby
17 could get an advanced burn without or with regular
18 checking in and even checking every 15 or 20 minutes in
19 the last hour, when you have no plausible story for that,
20 what do you do? You just lash out and attack here and
21 attack there with things that just aren't accurate.

22 I trust you guys to remember the evidence, to
23 put everything together. Another good example was quoting
24 Nurse Gardener as saying the aspiration and flushing is
25 meaningless. Her total context was saying that, yes, it

1 would be helpful, but the problem is that you can get back
2 blood and think it's still in the vein and it's not there,
3 and so, it's not a hundred percent is what she was saying.

4 There are, you know, so many examples of that.
5 I don't want to bore you and keep you from your work. You
6 know, hopping and skipping through her resume where she
7 writes down every single speech she's ever given, yeah,
8 she's talked to the plaintiff's lawyer group, but yeah,
9 she's also written a handbook of risk management -- thank
10 you, Dan -- risk management, which is about helping nurses
11 in hospitals prevent lawsuits by doing a better job.

12 I could go on and on and on, but you see the
13 case. You see that this is case of a really serious
14 injury that has no good explanation for it. A lot of
15 dodgeball being played here; a lot of assumptions. Your
16 verdict will speak the truth about what happened. Thank
17 you.

18 THE COURT: Okay. Thank you, Mr. Malone.
19 (Excerpt concluded at approximately 4:00 p.m.)

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CERTIFICATE OF REPORTER

I, Kristina Ingram, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the excerpt of proceedings had and testimony adduced upon the Jury Trial in the case of CHRISTINE GAMBINO AND GARRETT GAMBINO, ON BEHALF OF THEIR MINOR CHILD, R.G., AND FOR THEMSELVES versus MEDSTAR GEORGETOWN MEDICAL CENTER, INC., Civil Action Number 2016 CAM 1884, in said court on the 5th day of November, 2018.

I further certify that the foregoing 29 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 4th day of December, 2018.



Kristina Ingram
Official Court Reporter