

CHILDBIRTH**Wrongful Death — Stillbirth****OB-GYN didn't see pulmonary edema in triage, plaintiff alleged****VERDICT** Defense

CASE Nicholas Lopez v. Debra Turull,
No. KC 047453

COURT Superior Court of Los Angeles County,
Pomona, CA

JUDGE Peter J. Meeka

DATE 10/18/2007

PLAINTIFF

ATTORNEY(S) John A. Girardi, Girardi & Keese,
Los Angeles, CA
Amanda McClintock, Girardi & Keese,
Los Angeles, CA

DEFENSE

ATTORNEY(S) Raymond L. Blessey, Taylor Blessey LLP,
Los Angeles, CA

FACTS & ALLEGATIONS On April 11, 2005, plaintiff's decedent Ana Lopez, 28, gave birth to twins via emergency Caesarean section before she died. The male twin was stillborn, and the female twin died several days later after being removed from life support.

Lopez was 37 weeks pregnant when she presented to the triage area at Pomona Valley Hospital Medical Center, complaining of nausea, vomiting, and diarrhea. She also reported a two-week old cold and cough. Debra Turull, who was Lopez's OB-GYN, saw her in the triage area.

Turull noted that her blood pressure was elevated and there was evidence of protein in her urine. Her oxygen saturation level was 84 percent to 85 percent, which if accurate, was abnormally low. She didn't have a fever, and her pulse rate was 122 beats per minute. Her respiration was 22 breaths per minute.

Turull wrote orders for Pitocin to induce labor due to the change in her condition; cough medication; pregnancy-induced hypertension laboratory studies; pulse oximetry monitoring; respiratory therapy; supplemental oxygen; and intravenous hydration. In addition, the infants were to be monitored by fetal monitoring recordings.

Lopez was then transferred to the labor and delivery area after about an hour in the hospital. For four hours, fetal monitoring remained normal. During this time, she received a breathing treatment from a respiratory therapist. Her respiration remained stable. Her vital signs, including respiration, remained stable, and there was no evidence by way of auscultation of fluid in her lungs. After 3.5 hours in the delivery ward, Lopez's respiration began to increase and her oxygen saturation began to decrease. An hour later, Lopez's

family complained to nurses that she was having trouble breathing. Turull was called and arrived at Lopez's bedside soon thereafter. At this time there was X-ray evidence of pulmonary edema. Twice during this time frame her oxygen saturation levels on room air were noted to be 98 percent.

Lopez was transferred to the intensive care unit and had cardiopulmonary arrest. She was intubated and a pacemaker was placed in preparation for the emergency C-section. She was pronounced dead 15 minutes after the twins were born.

Lopez's husband, plaintiff Nicholas Lopez, a 28-year-old delivery driver, sued Turull, the medical center and Pro Care, a nursing registry, for medical malpractice, seeking wrongful death damages. The medical center and Pro Care settled with Lopez prior to trial for a confidential amount.

Plaintiff's counsel contended that Turull failed to diagnose the pulmonary edema when the decedent presented to the triage area and negligently ordered intravenous fluid despite evidence that she was experiencing fluid overload. Plaintiff's counsel also alleged that, on a duplicate order sheet for Turull's written orders, not all of the orders were written.

The plaintiff obstetrics expert testified that Turull fell below the standard of care by failing to adequately examine the decedent's breathing complaints and call for a pulmonary consultation. In addition, he noted that Lopez gained weight rapidly in the later stages of her pregnancy and had evidence of fluid accumulation in her legs. Therefore, it was below the standard of care to order intravenous fluid.

The plaintiff internal and pulmonary medicine expert testified that Lopez presented to triage with mild acute respiratory distress syndrome and pulmonary edema. Her breathing problems were allowed to worsen through the afternoon up to the time when Turull was called. He claimed that she also developed a high output cardiac failure. He believed that it was a reasonable medical probability that Lopez's death was due to a combination of acute respiratory distress syndrome with fluid accumulation and high output cardiac failure. The expert added that, if the mother's oxygen levels had been properly supported, she and the twins would have survived.

The defense denied the allegations.

The defense obstetrics expert testified that Turull's care and treatment in triage was appropriate. Lopez's situation was not atypical, including the cough, as she had a history of bronchitis and chronic cough. He said that the standard of care did not require a pulmonary consultation, and that it was appropriate to give intravenous fluid in anticipation of an epidural.

Defense counsel noted that, while in triage, she did not complain of shortness of breath or difficulty breathing. And, during the four-hour period of fetal monitoring, there also was no indication that Lopez complained of shortness of breath.

The defense internal and pulmonary medicine expert testified that the decedent's respiratory complaints when at triage were due to bronchitis and pneumonia. She subsequently developed acute respiratory distress syndrome and severe pulmonary edema four hours after she was moved to the labor and delivery ward. It was these conditions that caused her death, according to the defense.

CALIFORNIA

INJURIES/DAMAGES Husband Nicholas Lopez claimed general damages for the loss of his wife and twin children's comfort, care and society. He also sought compensation for loss of household support and earnings from his wife.

The plaintiff forensic economist testified that the present value of the Lopez's loss of earnings and loss of household support was \$854,500, assuming that, with proper care, only the mother would have survived.

The defense forensic economist testified that the present value of the plaintiff's damages for lost income and household help were between \$225,000 and \$525,000, assuming that Lopez wouldn't have returned to work full-time and the twins would have survived the birth. The range in amounts was based on different estimated periods when the mother would have returned to work full-time.

RESULT The jury rendered a defense verdict.

DEMAND None

OFFER CCP 998 offer to waive costs, including expert witness fees of approximately \$20,000, and rights to malicious prosecution action in exchange for dismissal with prejudice.

TRIAL DETAILS Trial Length: 5 days
Trial Deliberations: 5 hours
Jury Vote: 9-3 for the plaintiff on the issue of negligence.
11-1 for the defendant on the issue of causation.

PLAINTIFF EXPERT(S) Joel Kessler, M.D., obstetrics, Santa Monica, CA
Randolph H. Noble, M.D., pulmonology, Encino, CA
David J. Weiner, Ph.D., economics, Los Angeles, CA

DEFENSE EXPERT(S) Michael Adams, Ph.D., economics, Pasadena, CA
Irwin Frankel, M.D., OB-GYN, Los Angeles, CA
Andrew Wachtel, M.D., F.C.C.P., pulmonology, Los Angeles, CA

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel and defense counsel.

-Brian Carreira