

2009 WL 903552 (N.Y.Sup.)

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Supreme Court, Eleventh Judicial District, Queens County, New York.

Glennford Irving, as Administrator of the Estate of Rachel Babb, and Glennford Irving, Individually v. Mary Immaculate Hospital, Catholic Medical Center of Brooklyn and Queens Inc.

No. 23407/03

DATE OF VERDICT/SETTLEMENT: February 20, 2009

TOPIC: MEDICAL MALPRACTICE - AMBULANCE/EMS - MEDICAL MALPRACTICE - CARDIAC CARE - MEDICAL MALPRACTICE - FAILURE TO TREAT - NEGLIGENCE - NEGLIGENT MAINTENANCE - WRONGFUL DEATH - SURVIVAL DAMAGES

Dead Defibrillator Battery Cost Heart Attack Victim Her Life, Suit Claimed

SUMMARY:

RESULT: Verdict-Plaintiff

The jury found that the hospital was negligent and awarded Babb's estate a total of \$5,322,000 in damages.

EXPERT WITNESSES:

Plaintiff: Arthur Romano; Paramedics/Paramedical; Greenwich, CT Eric Munoz, M.D.; Trauma; Newark, NJ Thomas K. Fitzgerald, Ph.D.; Economics; Bronxville, NY

Defendant: Robert Rothberg, M.D.; Emergency Room/ER; New York, NY

ATTORNEYS:

Plaintiff: Conrad Jordan; East Hampton, NY, trial counsel to Law Offices of Morton Povman PC; Forest Hills, NY (Estate of Rachel Babb, Glennford Irving)

Defendant: Jonathan D. Rubin; Kaufman, Borgeest & Ryan; New York, NY (Mary Immaculate Hospital & Catholic Medical Center of Brooklyn & Queens Inc.)

JUDGE: Janice A. Taylor

RANGE AMOUNT: \$5,000,000-999,999,999

STATE: New York

COUNTY: Queens

INJURIES: Babb died of her heart attack twenty minutes after arriving in the emergency room. At the time of her death, she was working full-time, earning \$30,000 a year and had health insurance benefits for her family of eight

children, who ranged in age from 2 to 22. Her eldest, Shenika Babb, a parole officer, obtained guardianship of her four oldest siblings. Irving initially maintained custody of his late wife's three youngest children, who were also his; however, Shenika Babb later obtained custody of those three, and all lived with her. By the time of trial, they had joint custody of those three, who lived with Shenika Babb. Meanwhile, all but one of the other children were adult and independent, and Irving lived alone.

Facts:

On March 9, 2002, plaintiff's decedent Rachel Babb, 39, a high school security officer, suffered cardiac arrest at her home in Queens. Her daughter Mahitot Arnold called 911.

When paramedics from Mary Immaculate Hospital arrived within eight minutes of the call, Babb had no pulse, no respirations and a Glasgow coma scale score of 3. Attempts to resuscitate her with a Lifepak 11 monitor and defibrillator failed.

Twenty minutes after the paramedics arrived and attempted resuscitation, they took Babb to Mary Immaculate Hospital. She was pronounced dead another 20 minutes later.

Her widowed husband, Glennford Irving, 40, an electrician's assistant, sued the hospital, whose paramedics he said had declared "it's not working" immediately after they placed the defibrillator leads on his wife. According to the suit, the Lifepak 11 had not administered a shock to her as it should have because of improper battery maintenance.

The plaintiff noted that although no malfunction was documented by the hospital, the defibrillator was removed from service after the paramedics' call and left with an outside on-site service technician for complaints of "intermittent operation." That technician testified, based on his repair records, that the machine was functional but had faulty or expired battery packs.

Of the defibrillator's two separate battery packs for its monitor and defibrillator portions, the plaintiff argued at trial that most likely only the defibrillator portion malfunctioned.

Plaintiff's counsel pointed out that the electrocardiogram strips, which would be expected to have been kept by the hospital for patients in ventricular fibrillation who were shocked, were missing.

Even if the strips were not printed at the scene, they could have been printed afterward from the device's memory, the plaintiff charged. The paramedics' supervisor testified that there was controversy that evening over whether the Lifepak 11 had shocked Babb. But the defibrillator had a limited memory of up to 50 patients and was put back into service days later with no EKG strips having been printed. The data from the memory, alleged the plaintiff, was not saved because it showed either that the machine had never turned on or else had failed to render a shock. On that basis, the plaintiff successfully moved for a charge of spoliation of evidence.

The plaintiff contended that only the monitor battery pack, not the defibrillator pack, was tested by the paramedics daily. He pointed to testimony from an expert, paramedic supervisor Arthur Romano, who opined that the hospital had inadequate battery-maintenance procedures.

Romano said the hospital should have had, but did not have, an inventory system or reconditioning schedule for the batteries and that it violated industry standards by failing to require paramedics to carry spare batteries.

According to the paramedics' testimony at trial, consistent with their ambulance call report, they had found Rachel Babb without a pulse and used the monitor portion of the defibrillator to determine that her heart rhythm was ventricular fibrillation.

The paramedics testified that after they successfully shocked her twice, her heart rhythm changed to asystole, not amenable to shock, and that she was intubated, injected with medications and given cardiopulmonary respiration.

The defense argued that the defibrillator had not malfunctioned until toward the end of the paramedics' 20-on-scene effort to revive Babb. Its malfunction then consisted only of a blacking out of the monitor screen and did not affect patient treatment, it contended.

Immediately after that malfunction was noticed, Babb was brought to the emergency room, the defense said. That was because there were no other available means by which to attempt resuscitation in the field once defibrillation, medications and basic life-support measures had failed.

According to the defense, if the defibrillator had malfunctioned early in the call as the plaintiff claimed, the paramedics would have used the automated external defibrillator in their own ambulance or would have borrowed a defibrillator from one of the many other ambulances that arrived on the scene soon thereafter. (Among those other medical professionals were two other Mary Immaculate ambulances and at least two fire department vehicles, one being an ambulance staffed by Babb's sister, an emergency medical technician.)

Additionally, a paramedic supervisor who was paged by, and discussed the situation with, the treating paramedics testified that although she had heard unspecified allegations that the machine had failed to shock Babb, her own investigation found that shocks had been administered.

In addition to the spoliation-of-evidence charge, the court granted two missing-document charges. One was granted on the basis of an incident report that a paramedic said existed but was never produced during discovery or trial. The other concerned a medical control face sheet, summarizing communications between paramedics and an emergency room doctor, which the defense could not produce.

At trial, the plaintiff's trauma surgery expert, Dr. Eric Munoz, testified that under the circumstances, she had had about a 40-percent chance of survival if shocked. According to the plaintiff, there was evidence that Babb had been in cardiac arrest for three to eight minutes before the shocking attempt.

Defense emergency-room medical expert Dr. Robert Rothberg testified that patients in ventricular fibrillation might have a 40-to-60-percent chance of survival if shocked within three to five minutes, a chance that dropped by eight to ten percent per minute thereafter. Rothberg testified that Rachel Babb was in cardiac arrest for at least 10 minutes before any attempts at CPR, making her chances of successful defibrillation and recovery from cardiac arrest very slim.

Rothberg also testified that Babb's chance of survival was sharply reduced by her numerous medical conditions, among them her uncontrolled insulin-dependent diabetes, uncontrolled hypertension, high cholesterol, smoking habit and morbid obesity. Munoz disagreed, testifying that although those conditions would have reduced Babb's life expectancy to 60, they would not have affected her chances of survival of the heart attack.

Meanwhile, the plaintiff's economist testified that, based on a life expectancy of 60, her past and future lost earnings, health insurance benefits and household services totaled about \$1.3 million.

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