

IN THE CIRCUIT COURT OF LEE COUNTY, ALABAMA

CORTNEY JOHNSON, Administrator of the)
ESTATE OF HOPE JOHNSON, Deceased,)

Plaintiff,)

vs.)

DR. KERRI F. HENSARLING; et al.,)
LEE OBSTETRICS AND GYNECOLOGY,)

P.A.;)

DR. ZENON BEDNARSKI;)

AUBURN URGENT CARE, INC.;)

and Fictitious Party Defendants, No. 1 through)

No. 17, hereinafter described.)

Defendants.)

CIVIL ACTION NUMBER:

43 CV 2016 - 900204

THIRD AMENDED COMPLAINT

No. 1, whether singular or plural, plaintiff hereby intending to designate that person, firm, corporation or other legal entity known and doing business as Lee Obstetrics and Gynecology, P.A.;

No. 2, whether singular or plural, plaintiff hereby intending to designate that person, firm, corporation or other legal entity known and doing business as Auburn Urgent Care, Inc.;

No. 3, whether singular or plural, that hospital, clinic, or other health care facility which undertook to provide gynecologic services to plaintiff's decedent on the occasion made the basis of this suit and whose negligence, breach of contract, or other actionable conduct contributed to cause the death of plaintiff's decedent;

No. 4, whether singular or plural, that hospital, clinic or other health care facility or entity which undertook to provide medical, diagnostic, or urgent care services or family medicine services to plaintiff's decedent on the occasion made the basis of this suit and whose negligence, breach of contract, or other actionable conduct contributed to cause the death of plaintiff's decedent;

No. 5, whether singular or plural, that clinic, health care facility or other entity which undertook to provide medical, diagnostic or laboratory services to plaintiff's decedent on the occasion made the basis of this suit and whose negligence, breach of contract or other actionable conduct contributed to cause the death of plaintiff's decedent;

No. 6, whether singular or plural, being that employee, servant or agent of Lee Obstetrics and Gynecology, P.A., that undertook or failed to undertake, the charting, reporting,

transmission, communication or delivery of laboratory reports/results to the physicians and whose negligence, breach of contract or other actionable conduct contributed to cause the death of plaintiff's decedent;

No. 7, whether singular or plural, being that employee, servant or agent of Lee Obstetrics and Gynecology, P.A., that undertook or failed to undertake, the charting, reporting, transmission, communication or delivery of laboratory reports/results to plaintiff's decedent;

No. 8, whether singular or plural, being that employee, servant or agent of Auburn Urgent Care, Inc., that undertook or failed to undertake, the charting, reporting, transmission, communication or delivery of laboratory reports/results, patient history details, or other medical or diagnostic information to the physicians and whose negligence, breach of contract or other actionable conduct contributed to cause the death of plaintiff's decedent;

No. 9, whether singular or plural, that medical partnership, professional association, or professional corporation which undertook to provide medical services to plaintiff's decedent on the occasion made the basis of this suit and whose negligence, breach of contract, or other actionable conduct contributed to cause the death of plaintiff's decedent;

No. 10, whether singular or plural, that person who, as an owner, stockholder, partner, associate, employee, or agent of any of the fictitious parties described above in items 1 through 9, inclusive, undertook to provide any health care or related service to plaintiff's decedent on the occasion made the basis of this suit and whose negligence, breach of contract, or other actionable conduct contributed to cause the death of plaintiff's decedent;

No. 11, whether singular or plural, that physician (including an intern, resident, or fellow) who undertook to provide medical services to plaintiff's decedent on the occasion made the basis of this suit and whose negligence, breach of contract, or other actionable conduct contributed to cause the death of plaintiff's decedent;

No. 12, whether singular or plural, that nurse or those nurses who undertook to provide medical services to plaintiff's decedent on the occasion made the basis of this suit and whose negligence, breach of contract, or other actionable conduct contributed to cause the death of plaintiff's decedent;

No. 13, whether singular or plural, that medical services technician or worker who undertook to provide services to plaintiff's decedent on the occasion made the basis of this suit and whose negligence, breach of contract, or other actionable conduct contributed to cause the death of plaintiff's decedent;

No. 14, whether singular or plural, that entity or those entities, other than those entities described above, which is the successor in interest of any of the entities described above;

No. 15, whether singular or plural, that entity or those entities, other than those entities described above, which was the predecessor corporation of any of the entities described above;

No. 16, whether singular or plural, that entity which, concerning the occasion made the basis of this suit, was the principal of any of the named or above-described fictitious party defendants;

No. 17, whether singular or plural, that entity, other than those described above, whose negligence, breach of contract, or other wrongful conduct contributed to cause the death of plaintiff's decedent on the occasion made the basis of this suit.

Plaintiff avers that the identity of the fictitious party defendants is otherwise unknown to plaintiff at this time, or, if their names are known to plaintiff at this time their identity as proper party defendants is not known to plaintiff at this time; but their true names will be substituted by amendment when the aforesaid lacking knowledge is ascertained.

THIRD AMENDED COMPLAINT

Plaintiff amends his Complaint to conform to the evidence produced in discovery, add a claim against defendants, Auburn Urgent Care and Dr. Zenon Bednarski, and conform the allegations against Lee Obstetrics and Gynecology and Dr. Hensarling, to relate to the dismissals of some defendants and the testimony, and for that states:

PARTIES

1. Plaintiff, Cortney Johnson, is and was at all times material herein the duly appointed Administrator of the Estate of Hope Johnson, deceased. The Estate is pending in Jefferson County, Alabama.

2. Plaintiff's decedent, Hope Johnson, was at all times relevant an adult resident and citizen of Jefferson County, Alabama, and a full-time student at Auburn University.

3. Defendant Dr. Kerri Hensarling, is a physician practicing in Opelika, Alabama, as a board certified obstetrician and gynecologist. Hope Johnson was a patient of Dr. Hensarling.

4. Defendant Lee Obstetrics and Gynecology, P.A. is believed to be an Alabama professional association incorporated and doing business in Lee County, Alabama, for whom Dr. Hensarling, and/or one or more of the fictitious party defendants, was employed and acting for and on behalf of at all material times herein. Hence, Defendant is vicariously liable for the acts and/or omissions of Dr. Hensarling, and/or one or more of the fictitious party defendants. Dr. Hensarling is believed to be a member of the professional association.

4.a. Allegation removed because claims against defendants, Tabitha Strickland, Latressa Whitfield, and Tabitha Spratlin are dismissed.

5. Defendant Dr. Zenon Bednarski, is a physician practicing in Auburn, Alabama, as a family practice physician. Hope Johnson was a patient of Dr. Bednarski.

6. Defendant Auburn Urgent Care, Inc. is believed to be an Alabama corporation incorporated and doing business in Lee County, Alabama, for whom Dr. Bednarski, and/or one or more of the fictitious party defendants, was employed and acting for and on behalf of at all material times herein. Hence, Defendant is vicariously liable for the acts and/or omissions of Dr. Bednarski and/or one or more of the fictitious party defendants.

6.a. Defendant, Dr. David Willis, is a physician practicing in Auburn, Alabama, as a family practice physician. Dr. Willis is alleged to have seen Hope Johnson on December 3, 2014.

6.b. Defendant, Dr. David Willis, was an agent, servant and/or employee of Auburn Urgent Care, acting for and on behalf of, and under the control, instruction and authority of Auburn Urgent Care at all material times herein.

7. The fictitious defendants described in the caption of this complaint and the following paragraph are hereby added to and incorporated in this action as defendants by this reference. Any and all counts, allegations, and claims against the named defendants are hereby

also made against each and all fictitious defendants. The identities of the fictitious party defendants herein are unknown to the plaintiff or his attorneys at this time or, if their names are known to the plaintiff, facts which identify them as proper party defendants intended to be sued are not known to the plaintiff or his attorneys at this time, but their true names will be substituted by amendment when ascertained.

7.a. Allegation removed because claims against Tabitha Strickland, Latressa Whitfield, and Tabitha Spratlin are dismissed.

8. At all times relevant herein, all named and fictitious defendants which are corporations or legal entities, acted through agents, employees, and officers, who were acting within the line and scope of their agency or employment or authority; the acts and conduct of said persons were at all times ratified and approved by defendants, and done for the benefit of defendants.

GENERAL AVERMENTS

9. On or about October 20, 2014, Hope Johnson and her mother, went to Dr. Hensarling and Lee Obstetrics and Gynecology, P.A. and/or one or more of the fictitious party defendants, for evaluation and prescription of a safe birth control method.

10. Dr. Hensarling was fully informed of the fact that Hope Johnson's mother had experienced multiple blood clots in her medical history.

11. Dr. Hensarling's medical notes from this appointment and her examination specifically mention that "Mom had a hx of multiple DVTs and PE in pregnancy...."

12. On or about October 20, 2014, Dr. Hensarling, at the insistence of Hope Johnson and her mother, drew blood from Hope Johnson and ordered tests to determine whether Hope Johnson was also at risk for blood clots.

13. Dr. Hensarling noted that she would “further discuss different contraceptive options after reviewing lab results.”

14. The test for Factor V Leiden, a clotting factor, was positive for one copy of the Factor V Leiden Mutation.

15. The tests results were returned on or about October 27, 2014, to Dr. Hensarling and Lee Obstetrics and Gynecology, P.A., and/or one or more of the fictitiously described defendants.

15.a. Dr. Hensarling is alleged to have reviewed and interpreted the lab results and entered the results incorrectly as being all normal, when in fact, the lab result for Factor V Leiden was “positive,” which is not a “normal” lab result.

15.b. Dr. Hensarling and Lee Obstetrics and Gynecology claimed that Tabitha Strickland, Latressa Whitfield and/or Tabitha Spratlin, incorrectly interpreted the lab result for Factor V Leiden and entered the lab result as “normal” when in fact, it was “positive.” Dr. Hensarling and Lee Obstetrics and Gynecology reported to Hope Johnson that her Factor V Leiden was normal.

16. The positive Factor V Leiden test was not communicated or delivered to Hope Johnson or her mother.

17. On or about November 6, 2014, Dr. Hensarling prescribed hormonal birth control pills to Hope Johnson. Hope Johnson was not offered or provided any counseling by Dr. Hensarling and Lee Obstetrics and Gynecology, P.A., and/or one or more of the fictitiously described defendants, about her medical diagnosis and safe birth control options.

18. Hope Johnson filled her prescription for the birth control pills and began taking the birth control pills, without any knowledge of the positive result for Factor V Leiden, and the increased risks of blood clots with hormonal birth control pills and positive Factor V Leiden.

19. On or about December 1, 2014, Hope Johnson went to Dr. Zenon Bednarski and Auburn Urgent Care, Inc., with complaints of being short of breath, chest pain, cough, headache and sore throat. Hope Johnson reported to Dr. Bednarski and Auburn Urgent Care and/or one or more of the fictitiously described defendants, that she was taking birth control pills. She did not report the positive Factor V Leiden because it was still unknown to her.

20. Dr. Bednarski and Auburn Urgent Care, and/or one or more of the fictitiously described defendants, performed a physical examination and other assessments and diagnosed bronchitis and prescribed an antibiotic. Hope Johnson was given instructions to return if she got worse.

21. On or about December 3, 2014, Hope Johnson was much worse experiencing chest pain and extreme shortness of breath.

21.a. Hope Johnson returned to Auburn Urgent Care and told its employees, agents, and/or Dr. Willis that she now had sharp chest pain and shortness of breath “upon any activity.” Dr. Willis reported no physical exam, ordered a CBC, and diagnosed Hope Johnson with leukocytosis and dyspnea, and prescribed an inhaler.

22. On or about December 4, 2014, at about 10:30 a.m., Hope Johnson died of massive pulmonary emboli.

COUNT ONE
Breach of the Standard of Care

23. Plaintiff adopts and realleges each and every previously stated provision of this First Amended Complaint as if fully set out herein.

24. On or about October 20, 2014, Dr. Hensarling, Lee Obstetrics and Gynecology, P.A., and/or one or more fictitious defendants, assumed responsibility to assess and prescribe treatment to Hope Johnson for birth control. Defendants were under the legal duty to possess and

exercise that degree of care, skill and diligence commonly possessed and exercised by same or similar healthcare providers in the national medical community, acting under the same or similar circumstances as hereinafter described.

25. In the course of assessing and treating Hope Johnson, Dr. Hensarling, Lee Obstetrics and Gynecology, P.A., and/or one or more fictitious defendants, negligently and/or wantonly failed to exercise such reasonable care, skill, and diligence that similarly situated health care providers in the national medical community and in the same general line of practice, would have exercised in a like case.

26. Dr. Hensarling, Lee Obstetrics and Gynecology, P.A., and/or one or more fictitious defendants, negligently and/or wantonly breached the standard of care in their treatment of Hope Johnson by: 1) failing to diagnose Hope Johnson with positive Factor V Leiden, thereby depriving Hope Johnson of information important to making safe treatment choices; 2) telling Hope Johnson and her mother that all her clotting tests were normal or negative, and prescribing hormonal birth control pills; 3) failing to tell Hope Johnson that she had a positive Factor V Leiden clotting factor; 4) failing to give Hope Johnson patient counseling about her medical condition and its risks; 5) failing to give Hope Johnson patient counseling about the risks of hormonal birth control pills when she is positive for Factor V Leiden, and providing other birth control options; 6) failing to give Hope Johnson patient counseling and information about the symptoms of blood clots and what to do, if she decided to take hormonal birth control pills; 7) failing to correctly read, interpret and record lab reports of Factor V Leiden clotting factor; and 8) failing to care for and treat Hope Johnson.

26.a. Allegation removed because claims against defendants, Tabitha Strickland, Latressa Whitfield, and Tabitha Spratlin are dismissed.

26.b. Allegation removed because claims against defendants, Tabitha Strickland, Latressa Whitfield, and Tabitha Spratlin are dismissed.

27. On or about December 1 and 3, 2014, Dr. Bednarski, Dr. Willis, Auburn Urgent Care, and/or one or more fictitious defendants, assumed responsibility to assess and prescribe treatment to Hope Johnson for complaints of worsening chest pain and shortness of breath. Defendants were under the legal duty to possess and exercise that degree of care, skill and diligence commonly possessed and exercised by same or similar healthcare providers in the national medical community, acting under the same or similar circumstances as hereinafter described.

28. In the course of assessing and treating Hope Johnson, Dr. Bednarski, Dr. Willis, Auburn Urgent Care, and/or one or more fictitious defendants, negligently and/or wantonly failed to exercise such reasonable care, skill, and diligence that similarly situated health care providers in the national medical community and in the same general line of practice, would have exercised in a like case.

29. Dr. Bednarski, Dr. Willis, Auburn Urgent Care, and/or one or more fictitious defendants, negligently and/or wantonly breached the standard of care in their treatment of Hope Johnson on or about December 1 and 3, 2014, by: 1) failing to diagnose Hope Johnson with pulmonary emboli; 2) failing to properly assess Hope Johnson's risk for pulmonary emboli and failing to perform, recommend and/or refer her for diagnostic testing, further treatment and intervention; 3) failing to perform a physical examination and proper evaluation for worsening symptoms; 4) failing to perform an adequate evaluation of worsening respiratory symptoms and thereby missing the diagnosis of pulmonary emboli; 5) failing to care for and treat Hope Johnson; and 6) failing to possess the medical knowledge and/or skills necessary to provide treatment for Hope Johnson.

30. The above-described negligent and/or wanton conduct of Dr. Hensarling, Dr. Bednarski, Dr. Willis, Lee Obstetrics and Gynecology, P.A., Auburn Urgent Care, and/or one or more fictitious defendants, separately and/or in combination and concurrence, proximately caused the death of Hope Johnson on December 4, 2014.

WHEREFORE, Plaintiff, Cortney Johnson, as Administrator of the Estate of Hope Johnson, deceased, demands judgment against Defendants and fictitious party defendants, separately and severally, for punitive damages for the wrongful death of Hope Johnson.

COUNT TWO
(Legal Status: Respondeat Superior/Agency –Corporate Defendants)

31. Plaintiff adopts and realleges each and every previously stated provision of this Complaint as if fully set out herein.

32. On or about October 20, 2014 and thereafter, Dr. Hensarling, and/or employees, servants and/or agents of Lee Obstetrics and Gynecology, P.A., and/or one or more fictitious defendants, undertook to and did provide medical services to Hope Johnson. At all times relevant herein, they acted as an agent and/or employee of Lee Obstetrics and Gynecology, P.A., and/or one or more fictitious defendants, within the line and scope of their employment or agency; and/or acted on behalf of and for the benefit of Lee Obstetrics and Gynecology, P.A., and/or one or more fictitious defendants; and their conduct and action was authorized and ratified by said defendants, and done for the benefit of defendants. Lee Obstetrics and Gynecology, and/or one or more fictitious defendants, are liable to Plaintiff under the doctrine of *respondeat superior* and under the principles of agency, for the wrongful death of Hope Johnson.

33. On or about December 1 and 3, 2014, Dr. Bednarski, Dr. Willis, and/or employees, servants and/or agents of Auburn Urgent Care, Inc., and/or one or more fictitious defendants, undertook to and did provide medical services to Hope Johnson. At all times relevant herein, they

acted as an agent and/or employee of Auburn Urgent Care, Inc., and/or one or more fictitious defendants, within the line and scope of their employment or agency; and/or acted on behalf of and for the benefit of Auburn Urgent Care, Inc., and/or one or more fictitious defendants; and their conduct and action was authorized and ratified by said defendants, and done for the benefit of defendants. Auburn Urgent Care, Inc., and/or one or more fictitious defendants, are liable to Plaintiff under the doctrine of *respondeat superior* and under the principles of agency for the wrongful death of Hope Johnson.

WHEREFORE, Plaintiff, Cortney Johnson, as Administrator of the Estate of Hope Johnson, deceased, demands Judgment against Defendants and fictitious party defendants, separately and severally, for punitive damages for the wrongful death of Hope Johnson.

COUNT THREE
(Direct liability)

34. Plaintiff adopts and realleges each and every previously stated provision of this Complaint as if fully set out.

35. In addition to their vicarious liability, Defendants Dr. Zenon Bednarski, acting as employee, agent, servant and/or sole owner of Auburn Urgent Care, and Auburn Urgent Care are directly liable for the following actions and inactions:

a. Negligently and/or wantonly directing, instructing, allowing, encouraging, sustaining, ratifying, and otherwise permitting Dr. David Willis to bypass the electronic medical record system at Auburn Urgent Care on December 3, 2014;

b. Negligently and/or wantonly failing to train, instruct, require, and otherwise permit Dr. David Willis to bypass the electronic medical record system at Auburn Urgent Care on December 3, 2014;

c. Negligently and/or wantonly failing to provide Dr. David Willis with login credentials on the electronic medical record system at Auburn Urgent Care on December 3, 2014, thereby depriving him of access to patient records with information about prior patient visits, including laboratory data, diagnoses, treatments and physical examination information;

Thereby leading to incomplete and/or total loss of access to vital medical information necessary for Hope Johnson to be adequately, properly and correctly diagnosed and treated on December 3, 2014, thereby leading to her death on December 4, 2014.

36. Auburn Urgent Care, by and through its employees, agents and servants, including but not limited to Dr. Zenon Bednarski, senior partner, owner and supervising physician at Auburn Urgent Care, negligently and/or wantonly failed to properly train and supervise Dr. David Willis on his first day at work for Auburn Urgent Care, by the following actions and inactions, for which Auburn Urgent Care and Dr. Zenon Bednarski are directly responsible:

a. Failing to provide Dr. David Willis with login credentials on the electronic medical record system at Auburn Urgent Care on December 3, 2014, thereby depriving him of access to patient records with information about prior patient visits, including laboratory data, diagnoses, treatments and physical examination information;

b. Requiring Dr. David Willis to examine, diagnose and treat 50-90 patients on December 3, 2014, thereby creating the potential for Dr. Willis to deliver inadequate, inappropriate and substandard care and treatment to Hope Johnson;

c. Failing to instruct, train, and orient Dr. David Willis on the established Auburn Urgent Care processes, procedures, and protocols that ensured the proper flow of patients seeking medical attention at Auburn Urgent Care so that every patient who needed medical attention would be examined, diagnosed and treated by a physician for their immediate medical needs.

c. Allowing prescriptions to be submitted, administered, and/or dispensed without a doctor ever seeing a patient, evaluating a patient's vitals, or taking and/or charting a physical exam.

Thereby contributing and leading to the incorrect, incomplete, improper and/or complete absence of a physical examination and assessment, diagnoses and treatment for Hope Johnson on December 3, 2014, thereby leading to her death on December 4, 2014.

WHEREFORE, Plaintiff, Cortney Johnson, as Administrator of the Estate of Hope Johnson, deceased, demands Judgment against Defendants, Auburn Urgent Care and Dr. Zenon Bednarski, and Dr. David Willis, and fictitious party defendants, separately and severally, for punitive damages for the wrongful death of Hope Johnson.

COUNT FOUR
(Fictitious Defendants)

37. Plaintiff adopts and realleges each and every previously stated provision of this Complaint as if fully set out herein.

38. Plaintiff alleges that the wrongful conduct of the fictitious party defendants combined and concurred with the wrongful conduct of the named Defendants and as a proximate consequence Hope Johnson died on December 4, 2014.

WHEREFORE, Plaintiff, Cortney Johnson, as Administrator of the Estate of Hope Johnson, deceased, demands Judgment against fictitious party defendants, separately and severally, for punitive damages for the wrongful death of Hope Johnson.

COUNT FIVE
(Joint and several liability)

39. The above-described negligent and/or wanton conduct of Dr. Hensarling, Dr. Bednarski, Dr. Willis, Lee Obstetrics and Gynecology, P.A., Auburn Urgent Care, and/or one or

more fictitious defendants, separately and/or in combination and concurrence, proximately caused the death of Hope Johnson on December 4, 2014.

Dated: April 18, 2018

s/Leila H. Watson

Leila H. Watson (WAT052)
Attorney for Plaintiff
CORY WATSON, P.C.
2131 Magnolia Avenue
Birmingham, AL 35205
Telephone No.: (205) 328-2200
Telecopier No.: (205) 324-7896

and

s/Nina Towle Herring

Nina Towle Herring (TOW015)
Attorney for Plaintiff
CORY WATSON, P.C.
2131 Magnolia Avenue
Birmingham, AL 35205
Telephone No.: (205) 328-2200
Telecopier No.: (205) 324-7896

JURY DEMAND

Plaintiff demands a trial by struck jury on all issues in this cause.

s/Leila H. Watson

Leila H. Watson

CERTIFICATE OF SERVICE

I do hereby certify that on this the 18th day of April, 2018, I served a copy of the foregoing upon the following attorneys of record by electronic service or by placing a copy of same in the United States mail, postage prepaid and properly addressed as follows:

**ATTYS FOR DEFENDANTS DR. ZENON
BEDNARSKI & AUBURN URGENT
CARE, INC.:**

Robert L. Williams, Esq.
Andrew C. Knowlton, Esq.
HAND ARENDALL, LLC
1801 5th Avenue North, Suite 400
Birmingham, AL 35203
rwilliams@handarendall.com
aknowlton@handarendall.com

Dr. David Willis
1416 Katie Lane
Auburn, AL 36830

Robert T. Meadows, III, Esq. (Courtesy Copy)
3120 Frederick Road, Suite B
Opelika, AL 36801

**ATTYS FOR DEFENDANTS DR. KERRI F.
HENSARLING & LEE OBSTETRICS &
GYNECOLOGY, P.A.:**

Mark W. Lee, Esq.
PARSONS, LEE & JULIANO, P.C.
Shelby Building, Suite 300
600 Vestavia Parkway
Birmingham, AL 35216
mlee@pljpc.com

s/Leila H. Watson

Leila H. Watson