

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

Shayla Jackson-Washington et. al.
Plaintiffs,

V.

Dexter Page, MD, et. al.
Defendants.

Civil Action File
No. 19 A 74207

PROPOSED CONSOLIDATED PRE-TRIAL ORDER

This PTO has gone back and forth between the parties several times.

1.

The name, address, and phone number of the attorneys who will conduct the trial are as follows:

PLAINTIFFS: Roger F. Krause, Esq.

Please note new street address.

Krause Law Firm
140 East Ponce de Leon Ave
Suite # 130
Decatur, Georgia 30030
(404) 835-8080

DEFENDANTS: Attorneys for Defendant Echols

Scott Bailey, Esq.
Lindsey L. Costakos, Esq
Huff, Powell & Bailey, LLC
999 Peachtree Street, NE | Suite 950
Atlanta, GA 30309

Attorneys for the Atlanta Perinatal Associates (APA); Dexter Page, M.D.; and Ruby Henderson (hereinafter after collectively referred to as "APA Defendants)

Paul E. Weathington, Esq.
Gabe Banks, Esq.
Weathington McGrew
191 Peachtree St. NE, Suite 3900
Atlanta, GA 30303

2.

The estimated time required for trial by plaintiff is 5 days.

The estimated time required for trial by Echols Defendant 5 is days.

The estimated time required for trial by the Page Defendants is 5 days.

3.

There are no motions or other matters pending for consideration by the court except as follows:

By Plaintiff:

- a. Plaintiffs Motion to Withdraw One Plaintiff (father) and Proceed with the Remaining Plaintiffs (Mother and Estate) filed on November 29, 2019.
- b. Plaintiffs Motion in Limine
- c. Defendant Echols Motion in Limine
- d. Defendant Page, Henderson and APA Motion in Limine.
- e. Plaintiffs pray for an order for early entry

By Defendant Echols:

Other than Plaintiffs' position set forth in subsection (b) above, Defendant Echols does not anticipate any further discovery.

By APA Defendants:

Other than Plaintiffs' position set forth in subsection (b) above, APA Defendants do not anticipate any further discovery. APA Defendants reserve their rights to raise any evidentiary matters and other legal issues that may arise between this filing and trial as well as during trial and, where necessary, address such matters by motion.

4.

The jury will be qualified as to relationship with the following:

By Plaintiff:

Relation by blood or marriage to the following:

1. Shirley Rigaud-Echols, MD, or officer or employee of Dekalb Medical Associates, P.C.
2. Dexter Page, MD, Ruby Henderson, CNM or Office or employee of Atlanta Perinatal Associates, Inc.
3. Officer or an employee of Dekalb Medical Center.
4. Office or employee of Emory HealthCare
5. Dr. Michelle Owens
6. Defendants' counsel Paul Weathington, Gabriel Banks, and their law firm Weathington McGrew for Defendant Page, Henderson and APA.
7. Defendants counsel, Scott Bailey, Lindsey Costako, and their law firm Huff, Powell, and Bailey;
8. Any officer, employee, agent or shareholder of MAG Mutual Insurance Company.

9. Any officer, employee, agent or shareholder of the Doctors Insurance Company
10. Any officer, employee, agent or shareholder of any other insurance company that will pay for the Defendants in the event of a verdict against the defendant that has not yet been disclosed. (Still waiting disclosure from Dr. Page on his insurance).

By Defendant Echols:

1. Shayla Jackson (a/k/a Shalya Washington);
2. Justin Washington;
3. Wonda Johnson;
4. Wonda Johnson's boyfriend;
5. Shayla Jackson's children, including Jalen Munoz, Julian Washington, Aidan Washington, Logan Washington, Julian Washington;
6. Shirley Rigaud-Echols, M.D.; and
7. Michelle Owens, M.D.
8. Roger Krause and The Krause Law Firm
9. Lone Star Alliance, Inc.

By APA Defendants:

1. Shayla Jackson (a/k/a Shayla Washington);
2. Justin Washington;
3. Wonda Johnson;
4. Wonda Johnson's boyfriend;
5. Shayla Jackson's children (Jalen Munoz, Julian Washington, Aidan Washington,

- Logan Washington);
6. Ruby Henderson, CNW;
 7. Dexter Page, M.D.;
 8. Atlanta Perinatal and Associates, P.C.;
 9. Michelle Owens, M.D.; and
 10. The Doctors Company

APA Defendants reserve the right to ask additional voir dire questions. APA Defendants further object to any jury qualification for any individual or entity that does not have a financial interest in the outcome of the case, including Defendants' lawyers and/or the Law Firm of Weathington McGrew, P.C.

5.

(a) All discovery has been completed unless otherwise noted, and the court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.

By Plaintiff:

Defendants should be precluded from using documents obtained from third parties but not provided to the Plaintiffs notwithstanding plaintiffs repeated request for the same. Defendants should be so precluded even for the purposes of impeachment.

The Problem.

- On March 11, 2019, Defendants served 21 third-party requests.

Plaintiffs have been seeking the production of the documents obtained by these third-party requests, but the Defendants have not produced these documents.

- On March 15, 2019, Plaintiffs filed their Objection

- On April 15, 2019, Plaintiffs served and filed their First Interrogatories and First Request for the Production of Documents on All Defendants, *electronically filed on April 15, 2019 and forwarded to the Defendants on or about the same day*. RPD #4, explicitly requests that Defendants produce all documents obtained from any and all third parties. However, no documents were produced.
- On September 25, 2019, Plaintiffs sent correspondence to the Defendants requesting supplementation.
- On October 21, 2019, Plaintiffs filed their Request for Supplementation of all Interrogatories and all Request for the Production of Documents.

Wherefore, Plaintiffs objects to the Defendants using any documents obtained from third parties that were not given by the Defendants to Plaintiffs. (Excluding Dekalb Medical Center).

CVS One CVS Drive Woonsocket, RI 02895	Requested by Defendant Henderson March 11, 2019
Walgreens PO Box 4039 MS 735 Danville IL 61834	Requested by Defendant Henderson March 11, 2019
Karroll Lynnette Payne MD 220 J L White Drive, Suite 120 Jasper GA 30143	Requested by Defendant Henderson March 11, 2019
Mt. Vernon OBGYN 755 Mt. Vernon Hwy NE Ste 330, Atlanta GA 30328	Requested by Defendant Henderson March 11, 2019
Alliance OBGYN Dr. Karroll Payne 5670 Peachtree Dunwoody Rd Ste 1240 Sandy Springs GA 30342	Requested by Defendant Henderson March 11, 2019
Amerigroup Services Inc. 1201 Peachtree St. NE Atlanta GA 30361	Requested by Defendant Henderson March 11, 2019
Dekalb Medical Center 2701 North Decatur Road Decatur GA 30033	Requested by Defendant Henderson March 11, 2019
Carol Klingenberg, MD 2045 Peachtree Rd. Atlanta GA 30309	Requested by Defendant Henderson March 11, 2019
Dekalb Medical Center Billing Dept. 2701 N. Decatur Rd Decatur GA, 30033	Requested by Defendant Henderson March 11, 2019

Dekalb Medical Center/ Radiology Dept. 2701 N. Decatur Rd Decatur GA, 30033	Requested by Defendant Henderson March 11, 2019
Northside Emergency Associates PO Box 120153 Grand Rapids MI 49528	Requested by Defendant Henderson March 11, 2019
Northside Hospital Billing Dept. 1100 Johnson Ferry Rd NE Ste 780 Atlanta GA 30342	Requested by Defendant Henderson March 11, 2019
Northside Hospital Medical Records Dept. 1000 Johnson Ferry Rd NE Atlanta GA 30342	Requested by Defendant Henderson March 11, 2019
Northside Hospital Radiology Dept. 1000 Johnson Ferry Rd NE Atlanta GA 30342	Requested by Defendant Henderson March 11, 2019
Northside Radiology Associates PC 5775 Glenridge Dr NE Bldg B Ste 360 Atlanta GA 30328	Requested by Defendant Henderson March 11, 2019
Piedmont OBGYN 220 JL White Dr. Ste 120 Jasper GA 30143	Requested by Defendant Henderson March 11, 2019
Piedmont Urgent Care at Well street 2700 Clairemont Rd Atlanta GA 30329	Requested by Defendant Henderson March 11, 2019
Resurgents Orthopedics 270 Chastain Rd NW Kennesaw GA 30144	Requested by Defendant Henderson March 11, 2019
Resurgents Orthopedics Radiology Dept. 270 Chastain Rd NW Kennesaw GA 30144	Requested by Defendant Henderson March 11, 2019
Amerigroup Services Inc. 1201 Peachtree St. NE Atlanta GA 30361	Requested by Defendant Henderson March 11, 2019
Bayview Medical Center Dr. Diana L Wolan 7924 Chesapeake Blvd Norfolk VA 23518	Requested by Defendant Henderson March 11, 2019
Procreate Fertility Center of Virginia/ Katherine Duey, WHNP 300 Medical Pkwy Ste 200 Chesapeake, VA 23320	Requested by Defendant Henderson March 11, 2019
The New Hope Center for Reproductive Medicine 448 Viking Dr. Virginia Beach VA 23452	Requested by Defendant Henderson March 11, 2019
We Care Pediatrics and Adolescent Group Inc 1422 Cleveland Ave. East Point, GA 30344	Requested by Defendant Henderson March 11, 2019
Dexter Summerlin DDS 4686 S. Atlanta Rd SE Atlanta GA 30339	Requested by Defendant Henderson March 11, 2019

By Defendants:

Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete, and there is no question by any party as to the misjoinder or nonjoinder of any parties. However, Defendants notes that Plaintiffs' motion to withdraw a party is still pending before this Court.

Defendants reserve the right to engage in further discovery relating to those witnesses and documents that the Defendant discloses in the Pretrial Order if such witnesses and documents were not previously disclosed in the discovery process.

Defendants reserve the right to depose material witnesses who were not identified prior to the submission of the pre-trial order. Defendants object to any attempt of Plaintiffs to call at trial any (non-impeachment/rebuttal) witness who has not been expressly identified in the Pre-Trial Order and expressly reserve the right to seek to exclude said witnesses in such an event.

6.

The following is the Plaintiff's brief and succinct outline of the case and contentions.

This medical malpractice case arises from the defendants' failure to recognize and treat Shayla Jackson's incompetent cervix, identified on the ER ultrasound report on June 25, 2019. (The cervix is the passageway between the uterus, where the baby grows and delivers, and the vagina, where the baby must travel through to be delivered. The cervix must be closed until time of delivery). Ultimately, these failures resulted in the premature delivery of Baby Brooklyn Washington, who lived for just 3-4 hours before death, and causing the emergency D & C on Shayla Jackson.

Defendant Echols is an OB/GYN who has been treating Shayla Jackson since 2015. Defendant APA is a maternal fetal medicine practice, who has also been treating Shayla since 2015. Defendant Dexter Page is a high risk maternal fetal medicine doctor, is the owners of the APA, and supervises Defendant Nurse Ruby Henderson is nurse midwife.

On Monday, June 27, Dr. Echols first saw Shayla Jackson. Dr. Echols sought consultation from Defendant Page and APA, including seeking information if a cerclage or progesterone, two treatment for an incompetent cervix.

On Monday evening, Defendant Ruby Henderson, a nurse-midwife to evaluate the pregnancy for the MFM consultation. Nurse Henderson saw the patient and reported back to Dr. Page. Defendant Page never physically examined the patient, never saw the patient, and never reviewed any records. Nurse Henderson and Dr. Page determined

the patient could be safely discharged and to return to Dr. Page's office in a few days for further evaluation.

On Tuesday, June 28, just hours after being discharged, Ms. Jackson returned to the hospital. At this point in time, the baby had already been delivered but was still inside the amniotic. Dr. Echols then broke the sack and preformed the D & C.

7.

The following is Echols Defendant' brief and succinct outline of the case and contentions.

As plaintiffs state, this is a medical malpractice/wrongful death case in which the plaintiffs allege the defendants are liable for the death of Baby Jackson. On June 25, 2016, the Plaintiff presented to the ER at DeKalb Medical Center with a chief complaint of migraine and vaginal bleeding. She was approximately 20 weeks pregnant at the time and the ED physician appropriately ordered an ultrasound. The sonogram revealed a concern over an incompetent cervix and premature labor. Ms. Jackson therefore was admitted to Labor & Delivery in the early morning hours of June 26, 2016 under the care of Yvonka Crenshaw, M.D. By the time she left the Emergency Department, Ms. Jackson was no longer in pain and felt otherwise normal.

After a few hours on the labor and delivery floor, Ms. Jackson left the hospital AMA in the early morning hours of June 26, 2018. Ms. Washington had her young infant with her and another child at home with no one to help her with childcare. She returned later that day and saw Dr. Echols.

Dr. Echols deferred a pelvic exam in fear of rupturing membranes or risking infection. She also did not expect the pregnancy to progress but consulted the maternal-fetal medicine defendants for consideration of cervical cerclage. Nurse practitioner, Ruby

Henderson, CNM, who was covering for the maternal-fetal service, received a call from Dr. Page, her supervising physician, to go see Ms. Jackson. After Ms. Henderson examined Ms. Jackson, she called Dr. Page to discuss the patient with him. Dr. Page and Ms. Henderson determined that she was not having active signs of pre-term labor and that it was safe for her to be discharged with follow up in one week for an ultrasound the office. The patient was instructed to abstain from sex and to remain on bed rest until she was seen in the office. After receiving discharge instructions from a nurse, Ms. Jackson went straight home.

Ms. Jackson woke up in the middle of the night on June 28, 2016 due to contractions. Her mother or husband called 911. Ms. Jackson recalled that EMS arrived within a few minutes after the call, and she delivered the baby in the ambulance right before she arrived at the hospital. Baby Jackson passed away hours later.

The following is APA Defendants' brief and succinct outline of the case and contentions.

Defendants' outline of this case is being written for the benefit of the Court. Defendants' object to Plaintiff's outline of the case and contentions being read to the jury, as facts other than contained herein may become important during the trial of the case, depending upon evidence presented during the Plaintiffs' case in chief. Should the Court wish to read an outline of the case to the jury, Defendants request the opportunity to draft a more thorough outline for the jury that is tailored to the evidence presented at trial.

This is a medical malpractice case where Plaintiffs contend Defendants are liable for the wrongful death of Baby Washington. Specifically, on June 25, 2016, Plaintiff presented to the ER at DeKalb Medical Center with a chief complaint of abdominal pain and headaches, as well as vaginal bleeding. She was approximately 20 weeks pregnant at the time and the ED physician appropriately ordered an ultrasound that revealed a cervical length of 3.67 cm and 1.75 dilation although it referenced a concern regarding an incompetent cervix. Ms. Jackson was admitted to Labor & Delivery in the early morning hours of June 26, 2016 under the care of Yvonka Crenshaw, M.D. At the time of

her admission, Ms. Jackson was no longer in any pain and felt otherwise normal. Importantly, Dr. Crenshaw examined Ms. Jackson's cervix while she was in labor and delivery.

Shortly after her admission to Labor and Delivery, Ms. Jackson left the hospital against medical advice (AMA) in the early morning hours (approximately 6 a.m.) of June 26, 2018. According to Ms. Jackson, she left due to childcare issues. Ms. Jackson returned mid-afternoon on the 26th (approximately 3 p.m.) and seen by Dr. Echols. Dr. Echols deferred a pelvic exam in fear of rupturing membranes or risking infection. She also did not expect the pregnancy to progress but consulted the maternal-fetal medicine defendants for consideration of a cervical cerclage.

Nurse practitioner Ruby Henderson, CNM, performed the initial consultation of Ms. Jackson on behalf of APA under the supervision of Dr. Page. During her consultation, Nurse Henderson called the radiologist to confirm the ultrasound measurements. After Nurse Henderson concluded her examination of Ms. Jackson, she called Dr. Page to discuss Ms. Jackson's clinical presentation, the ultrasound report previously performed by the ER doctor, as well as her discussion with the radiologist regarding the measurements in said ultrasound report. Dr. Page determined that Ms. Jackson was not a candidate for a cerclage and that it was appropriate to discharge her with instructions for her to follow up within one (1) week for an ultrasound. Nurse Henderson instructed Ms. Jackson to abstain from sex and to remain on bed rest until she was seen in the office. After she was discharged at approximately 10 p.m., Ms. Jackson returned home.

On the early morning hours of June 28, 2016, Ms. Jackson began having contractions, and 911 was eventually called. EMS arrived within minutes and transported Ms. Jackson to the Hospital. Ms. Jackson delivered the baby in the ambulance approximately 4 hours after she was discharged from the hospital. Baby Jackson passed away hours later.

8.

The issues for determination by the jury are as follows:

By Plaintiff:

- 1) Whether Defendants Page, Henderson, Echols and APA, individually or collectively, were careless or otherwise professionally negligent in their care and treatment of Shayla Washington by failing to take the necessary steps to save Shayla's pregnancy and save the life of Baby Brooklyn Washington.
- 2) Whether it was foreseeable the professional negligence or carelessness of the Defendants by not treating the incompetent cervix could cause Shayla

Jackson to go into preterm labor, resulting in harms and injuries to Baby Brooklyn Washington and Shayla Jackson;

- 3) The harms and damages suffered, including the pain and suffering of Brooklyn Washington, Shayla Jackson, as well as the full value of the life lost of Brooklyn Washington;
- 4) If the Defendants are joint and severally liable under *Federal Deposit Insurance Corp v. Loudermilk*, 305 Ga. 558 (2019), or if the Defendants are proportionally accountable. If proportionally, what percentage fault among Defendants Page, Henderson and Echols.
- 5) If Defendants Page and Henderson were employees acting within the scope of their employment of APA, and APA's vicarious liability.

By Defendant Echols:

- 1) Whether Dr. Echols was professionally negligent in her treatment of Ms. Jackson on June 26-28, 2016;
- 2) Whether Dr. Echols' alleged professional negligence proximately caused the preterm delivery and death of Baby Brooklyn Washington;
- 3) Whether Plaintiffs suffered any damages;
- 4) The amount of damages, if any; and
- 5) The percentage fault of each party, if any, found to have caused damages to Ms. Jackson, including Ms. Jackson and each of the Defendants.

By APA Defendants:

- 1) Whether Dr. Page was professionally negligent in his treatment of Ms. Jackson on June 27, 2016;
- 2) Whether Dr. Page's alleged professional negligence proximately caused the preterm delivery and death of Baby Brooklyn Washington;
- 3) Whether Nurse Henderson was professionally negligent in his treatment of Ms. Jackson on June 27, 2016;
- 4) Whether Nurse Henderson's alleged professional negligence proximately caused the preterm delivery and death of Baby Brooklyn Washington;

- 5) Whether Plaintiffs suffered any damages;
- 6) The amount of damages, if any; and
- 7) The percentage fault of each party, if any, found to have caused damages to Ms. Jackson, including Ms. Jackson and each of the named Defendants.

9.

Specifications of negligence including applicable code sections are as follows:

By Plaintiff:

O.C.G.A. section 9-3-70 (2018) – an action for medical malpractice.

Plaintiffs contend that Echols, Page, Henderson and APA (“Defendants”) failed to meet the standard of care, were careless and otherwise negligent in diagnosing and treating Shayla Jackson’s pregnancy and in the care and treatment of her daughter, Brooklyn Washington, in the following ways:

1. The manner, methods, and personnel used to gather and communicate pertinent patient information;
2. In the information and testing which Defendants failed to gather, misread, misunderstood, and miscommunicated during the process of gathering information regarding the pregnancy;
3. In the manner and timeliness in which the Defendants collected, analyzed, synthesized and communicated the available information regarding the pregnancy;
4. In the manner and timeliness in which the Defendants assessed, evaluated and communicated about Shayla Jackson’s pregnancy, including the discharge;
5. In the decisions that the Defendants made regarding ongoing care and treatment which they prescribed for Shayla Jackson’s pregnancy, including the failure to reexamine the cervix and failure to perform a cerclage.

Plaintiffs specifically relies upon the standard of care as outlined in Doctor Rittenberg’s deposition, as well as the standard of care conceded by the Doctor Echols, Doctor Page, Nurse Ruby Henderson, and Dr. Owens

By Defendants:

Defendants deny they were negligent or that they caused or contributed to the alleged injuries to Ms. Jackson or to the death of Baby Brooklyn Washington.

Defendants further contend that fault, if any, may be apportioned to any parties pursuant to O.C.G.A. § 51-12-33.

Defendants request that Plaintiffs set forth their specific allegations of negligence fully and completely in this Consolidated Pretrial Order as required under the Georgia Civil Practice Act. Defendants object to the introduction of any testimony, reference, or any evidence whatsoever of the any negligence not identified with specificity in this Consolidated Pretrial Order.

10.

If the case is based on a contract, either oral or written, the terms of the contract are as follows (or the contract is attached as an Exhibit to this order):

Defendants agreed to provide professional services to Shayla Jackson, in exchange for a fee. Defendant Page agreed to supervise Defendant Henderson under a nurse-protocol and certain hospital privilege granting agreements.

By Defendants:

The allegations against Defendants arise from tort, not contract. This section therefore is inapplicable to this case.

11.

The types of damages and the applicable measure of those damages are stated as follows:

By Plaintiff:

1. Full value of the life of Brooklyn Washington. In Georgia the survivors, here the parents "may recover for the homicide of the spouse or parent the full value of the life of the decedent, as shown by the evidence" O.C.G.A. § 51-4-2(a). See South Fulton Med. Center, Inc. v. Poe, 224 Ga. App. 107, 112 (1996) (the "full value" of the child decedent's life "includes both the economic value of the deceased's normal life expectancy and the intangible element incapable of exact proof," such as the child's loss of "a parent's society, advice, example and counsel").

2. Pain and suffering of Brooklyn Washington. In Georgia, the estate of a decedent may recover for any pain and suffering, including emotional distress, that the decedent experienced prior to death. O.C.G.A. § 51-4-5(b), Monk v. Dial, 441 S.E.2d 857, 859 (1994) ("The fright, shock, and mental suffering experienced by an individual due to wrongful acts of negligence will authorize a recovery where attended with physical injury."). The amount of damages for such pain and suffering is determined by the fair and enlightened conscience of the factfinder. Monk, 441 S.E.2d at 859.

3. Pain and suffering of Shayla Washington for the subsequent surgery.

4. Medical charges for June 28, 2019 from Defendant Echols of \$1,270.46 and Dekalb Medical center for \$7,617.65, and total of \$8,888.11.

By Defendant Echols:

Defendant Echols denies that Plaintiffs are entitled to damages and specifically objects to pain and suffering damages.

By APA Defendants:

APA Defendants denies that Plaintiffs are entitled to damages and specifically objects to pain and suffering damages. APA Defendants further dispute Plaintiffs' right to recover damages and object to the admission of any damages evidence not specifically identified or produced in discovery. Defendants would further object to claims for damages that are speculative and lack sufficient evidentiary foundation for presentation at trial – e.g. future lost wages, lost earning capacity, etc. Defendants reserve the right to seek redress concerning any such proffer either via motion or objection at trial.

12.

The following facts are stipulated

Proposed by Plaintiffs

- Defendant Dexter Page, MD and Defendant Ruby Henderson were employees of Defendant APA, acting within the scope of their employment.
- The following records and documents from Dekalb Medical Center

Medical Records Shayla Jackson June 2016	DM-S 001-340
Medical Records of Brooklyn Washington - June 2016	DM-B 001-010
Ultrasound CD with authentication for Shayla Jackson Washington June 2016 + specifically and including the 23 ultrasound images	

- Records from the Defendants

Dekalb OB/GYN (Echols) Part 1	Echols 26-267
Dekalb OB/GYN (Echols) Part 2	Echols 271-3838
Medical records from APA, Page, Henderson	APA 1-31

By Defendant Echols:

The parties will prepare a joint exhibit of Ms. Jackson's medical records for use at trial.

By APA Defendants:

The parties will prepare a joint exhibit of Ms. Jackson's medical records for use at trial.

13.

The following is a list of all documentary and physical evidence that will be tendered at the trial by Plaintiff or Defendants. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

By Plaintiffs:

Please see attached Exhibit "1 - Documents".

At this time, the Plaintiff does not stipulate to the authenticity or admissibility of any document, record or other material identified in Defendants' portion of the consolidated pre-trial order and reserve the right to object to said documents. Plaintiffs will try to work with the Defendants to develop joint records as plaintiffs propose above. Plaintiff further reserves the right to object to any proposed documentary evidence until counsel has had the opportunity to examine same.

Plaintiff reserves the right to introduce any documentary evidence listed by Defendants. Plaintiff further reserves the right to amend its list of exhibits so as not to delay the trial of this matter.

Plaintiffs object to any documentary evidence submitted by Defendants not previously identified and/or produced to Plaintiff.

Plaintiff objects to any textbook, reference, treatise, article, medical literature, etc. being introduced into evidence by any expert not previously produced or identified in the expert's produced in discovery. Likewise, Plaintiffs demand that any such medical literature that is used, is given to Plaintiffs' counsel prior to cross examination of the witness with that material.

Demonstrative exhibits not to be tendered into evidence may be used as allowed by law regardless of whether they are listed in this pre-trial order. Exhibits may be re-numbered prior to trial. Portions of exhibits, redacted versions and enlargements may be used as allowed by law. Learned treatises and medical articles may be used as allowed by law without being listed in this pre-trial order. Transcripts or other documents used to impeach witnesses need not be listed in this pre-trial order.

Plaintiff reserves the right to supplement this list upon reasonable notice to opposing counsel prior to trial.

By Defendant Echols - See attached as Exhibit "2 - Documents"

Medical records, reports, and imaging studies of Shayla Washington from: Dekalb Medical Center and Dekalb OB/GYN Associates.

** Defendant Echols respectfully requests the right to supplement this list before trial with any document or evidence previously disclosed during discovery, by giving appropriate notice to opposing counsel prior to the trial. Additionally, Defendant Echols reserves the right to object to any proposed documentary and/or physical evidence until it is properly authenticated and tendered. Further, Defendant Echols reserves the right to use impeachment materials and demonstrative aids as allowed by law without being listed herein. Other than these materials, Defendant Echols objects to the admissibility of any documentary or physical evidence not previously identified and produced during discovery.

The parties have exchanged all documentary evidence or will exchange all documentary evidence. Except upon agreement of counsel or order of the Court, no additional documentary evidence or physical evidence will be allowed to be introduced unless that physical or documentary evidence has been made available for inspection by opposing counsel on or before 10 days prior to the call of this case for trial.

By APA Defendants - See Attached as Exhibit "3 - Documents"

Medical records, reports, and imaging studies of Shayla Washington from: Dekalb Medical Center, Dekalb OB/GYN Associates, and APA.

At this time, APA Defendants do not stipulate to the authenticity or admissibility of any document, record or other material identified in Plaintiff's portion of the consolidated pretrial order and reserve the right to object to said documents. APA Defendants agree to stipulate to authenticity and admissibility of exhibits as much as possible before trial. The Parties will discuss authenticity of various medical records.

APA Defendants reserve their rights to use additional documents for purposes of cross-examination, impeachment, or rebuttal. APA Defendants further reserve their rights to

object to any proposed documentary and/or physical evidence until counsel has had the right to examine the same.

APA Defendants reserve their rights to supplement the identification of any documentary evidence. APA Defendants further reserve their rights to amend their list of exhibits upon reasonable notice prior to the time of trial.

APA Defendants object to any documentary evidence submitted by Plaintiffs that has not been properly identified herein and/or produced in discovery responses.

APA Defendants object to any textbook, reference book, article or item of medical literature being introduced into evidence absent the showing of the necessary foundation. APA Defendants further object to any literature being read on direct examination. APA Defendants also request that prior to the introduction of any medical literature that the expert be permitted time to review and read the literature.

Demonstrative exhibits not to be tendered into evidence may be used as allowed by law regardless of whether they are listed in this Pre-Trial Order. Exhibits may be re-numbered prior to trial. Portions of exhibits, redacted versions and enlargements may be used as allowed by law. Learned treatises and medical articles may be used as allowed by law on cross examination without being listed in this pre-trial order.

14.

Special authorities relied upon by Plaintiff relating to peculiar evidentiary or other legal questions are as follows:

Federal Deposit Insurance Corp v. Loudermilk, 305 Ga. 558 (2019)(holding that joint and several liability is not extinguished by the appointment statute).

O.C.G.A. § 51-12-33 (regarding apportionment of fault amongst parties and certain non-parties).

Smith v. Rodillo, 330 Ga. App. 365 (2015)(doctor patient relationship established by consulting on the medical care of the patient, asking for test results, directing care).

Crisp Regional Hosp v. Oliver, 275 Ga. App. 578 (2005)(nurse could be held responsible for stating child seemed stable in the emergency room).

Plaintiffs direct the Court to their motion in limine. Plaintiffs also anticipate filing a trial brief on evidentiary issues.

15.(a)

Special authorities relied upon by Defendant Echols relating to peculiar evidentiary or other legal questions are as follows:

None, other than those submitted with requests to charge and any necessary trial briefs.

15.(b)

Special authorities relied upon by the APA Defendants relating to peculiar evidentiary or other legal questions are as follows:

APA Defendants anticipate filing motions in limine prior to trial on various evidentiary issues, as well as their Request to Charge.

APA Defendants reserve the right to rely upon special authorities should peculiar evidentiary or other legal matters arise during the trial of this matter and reserve the right to file appropriate trial briefs.

16.

All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

The defendants request that the jury charges go out with the jury during their deliberations. It is anticipated that the parties will be able to stipulate to many, if not all the jury charges.

17.

The testimony of the following persons may be introduced by depositions.

By Plaintiffs:

O.C.G.A. § 9-11-32 (a)(2) any party deposition, regardless if the party is available for trial, including Defendants Page, Henderson, Echols and APA.

O.C.G.A. § 9-11-32 (a)(1) any witness for purpose of impeachment

O.C.G.A. 9-11-32(a)(3) for any unavailable witness including medical personal.

By Defendants:

Any witness that is unavailable for trial. Defendants objects to the Plaintiffs' introduction of testimony by deposition absent a showing of unavailability.

Any objection to the depositions or questions or arguments in the depositions shall be called to the attention of the court prior to trial.

Defendants request that any depositions taken for evidentiary purposes be played in full at trial except where (1) all parties stipulate to the removal of a certain question/answer; or (2) the Court rules to remove a question and/or answer in response to objections stated on the record at the time of the deposition and called to the Court's attention prior to that witness's testimony.

19.

The following are lists of witnesses

By Plaintiffs

See Plaintiff's witnesses attached as **Exhibit "1 - witnesses"**

Plaintiff reserves the right for any witness called solely for purposes of impeachment or rebuttal; and

Any witness identified by any party in this Pre-Trial Order;

Plaintiffs object to the identification of Mark Boddy, MD, Defendants prior expert witness. This witness was removed by Defendant Page, Henderson and APA and thus, should not be identified nor called at trial.

Defendant Echols, without ever identifying Mark Boddy as an expert witness, has after 5:00 pm on 11/29/2019, now identified Mark Boddy, MD as an expert witness.

Plaintiffs object to the list of witnesses that Defendants identify that were not identified in the interrogatory responses. Likewise, Plaintiffs objects to any witnesses' names not specifically listed, and objects to Defendants blankly listing unnamed witnesses "listed in the Medical Records". This is witness identification via ambush and violates the principals of the Civil Practice Act, specifically, 9-11-26.

Plaintiffs object to the listed Exhibits of the Defendants not produced to Plaintiffs.

By Defendant Echols – See attached as Exhibit “2 - witnesses”

Defendant reserves the right to amend and/or supplement this portion of the Consolidated Pre-Trial Order in accordance with Georgia law.

By APA Defendant See attached as Exhibit “3-witnesses”

Defendants reserve the right to amend and/or supplement this portion of the Consolidated Pre-Trial Order in accordance with Georgia law.

Opposing counsel may rely on representation by the designated party that he will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

20.

The form of all possible verdicts to be considered by the jury are as follows:

The parties will submit a mutually agreeable verdict form prior to the charge conference.

21.

- (a) The possibilities of settling the case are **little to none**.
- (b) The parties do want the case reported.
- (c) The cost of take-down will be shared equally by the parties.
- (d) Other matters:

Plaintiffs prays that the Court specially set this trial. A trial date of April 15, 2019 was identified and has been blocked off on Plaintiffs counsel’s calendar. Plaintiff’s expert is in South Carolina and will need to travel to Atlanta for trial testimony. Plaintiffs request at least one alternative juror to be selected.

Defendants acknowledged that this Court specially set this case for trial to commence on December 9, 2019 to accommodate the appearances of the out of town medical experts in the case. Defendants respectfully request a pre-trial hearing to discuss motions *in limine* and any other outstanding issues. Defendants also request that at least one alternate juror be selected.

Respectfully submitted,

The Krause Law Firm
150 East Ponce de Leon Ave
Suite # 336
Decatur, Georgia 30030
T: (404) 835-8080; F: (404) 207-1454
roger@kgwlegal.com

WEATHINGTON MCGREW, P.C.
191 Peachtree St., NE, Suite 3900
Atlanta, Georgia 30303
Phone: 404-524-1600
pweathington@weathingtonmcgrew.com
gbanks@weathingtonmcgrew.com

Huff, Powell & Bailey, LLC
999 Peachtree Street, NE | Suite 950
Atlanta, GA 30309
sbailey@huffpowellbailey.com
acheek@huffpowellbailey.com

/s/Roger Krause
Roger F. Krause, Esq.
Georgia Bar No. 429285
Attorney for Plaintiffs

/s/ Gabe Banks
Paul E. Weathington, Esq.
Georgia Bar No. 743120
Gabe Banks, Esq.
Georgia Bar No. 721945
Attorneys for APA Defendants

/s/ Lindsey L. Costakos
Scott Bailey
Georgia Bar No. 032201
Lindsey L. Costakos, Esq.
Georgia Bar No. _____
*Attorneys for Defendant Shirley Rigaud-
Echols, M.D.*

It is hereby ordered that the foregoing, including the attachments thereto, constitutes the PRE-TRIAL ORDER in the above case and supersedes the pleadings which may not be further amended except by order of the court.

This ____ day of _____, 2019.

Honorable Judge Alvin Wong
Judge, State Court of Dekalb County

STATE COURT OF
DEKALB COUNTY, GA.
12/2/2019 4:31 PM
E-FILED
BY: Kelly Flack

EXHIBIT "1" PLAINTIFFS DOCUMENTS AND WITNESSES.

Exhibit 1: Plaintiffs Documents.

1. Documents and medical records of Defendants Page, Henderson and APA.
2. Documents Produced in Discovery by Defendants Page, Henderson and APA.
3. Interrogatory and RPD responses from By Defendants Page, Henderson and APA.
4. Documents produced by Defendants Page, Henderson and APA expert witness(es)
5. Documents and medical records of Defendant Echols and/or Dekalb OB/GYN Affiliates.
6. Documents Produced in Discovery by Defendant Echols or by DeKalb OB/GYN Affiliates
7. Interrogatory and RPD responses from By Defendant Echols.
8. Documents produced by Defendant Echols expert witness(es)
9. Page's Response to Plaintiffs First Request for Admissions filed in the 2017 matter, affirmed.
10. APA's Response to Plaintiffs First Request for Admissions filed in the 2017 matter and re-filed in this instant matter, coupled with the Webpages from APA.
11. All Defendants Reponses to Plaintiffs Second Request for Admission to All Parties.
12. Documents from third party Emory/ Dekalb Medical Center

Medical Records Shayla Jackson - June 2016	Bates: DM- S 001-340
Medical Records of Brooklyn Washington - June 2016	DM-B 001-010
Other business records from Dekalb Medical Center, including policies, procedures, training power points, credentialing file of Henderson including applications, job descriptions, supervision agreements, cover letters, applications, and photographs	Bates: NTP 001-1875

Ultrasound CD with authentication for Shayla Jackson Washington June 2016 + specifically and including the 23 ultrasound images	
---	--

13. Nurse Protocol Laws and Regulations
14. Plaintiffs Letters of Administration/Estate documents
15. Any documents brought with any witnesses.
16. All exhibits attached to any and all depositions.
17. All medical literature produced by Dr. Rittenberg, including the supplementation of medical literature provided after depositions at the request of Defendant APA.
18. Jackson & Washington family (15 photos).
19. Any and all documents necessary for impeachment.
20. Any demonstrative anatomical diagrams, models, or medical devices which any witnesses, including expert witnesses, believe will help them explain their testimony;
21. Any exhibits identified by and/or used by Defendant Echols at trial
22. Any exhibits identified by and/or used by the Page Defendants at trial.

Exhibit 1: Plaintiffs Witnesses

Will have a trial

Shayla Jackson-Washington

Dr. Charles Rittenberg

Plaintiffs request the defendants are at trial – specifically

Defendant Echols

Defendant Page

Defendant Henderson

Corporate Rep of Defendant APA

May have at trial

Wanda Johnson

Joseph Holder, PA - ER

Dr. Jeremy Chou – ER

Dr. Eric Benson – ER

Dr. Stephen Lindsey – ER

Dr. Katie Bailey

Dr. Jesse Jones

Corp. rep of Radiology Associates, LLC

Ellen Hargett, RN

Nancy Curdy, RN

Greg Hinseley, BSN

Wal Wiley, RN

Adrienne Ficco, RN

Elizabeth Nyako, RN

Nichole Mathis, RN

Nurse Parrott

Any witnesses necessary for impeachment, including Justin Washington

EXHIBIT "2" DEFENDANT ECHOLS DOCUMENTS AND WITNESSES.

Defendant Echols – Documents

1. Medical records and radiology images maintained by the following providers:
 - a. DeKalb Medical Center
 - b. DeKalb OB/GYN Associates
 - c. Atlanta Perinatal Associates
 - d. Northside Hospital
 - e. Mt. Vernon OB/GYN Associates
 - f. Walgreens Pharmacy
2. Charts and timelines of events
3. Diagrams and illustrations
4. Enlargements and/or highlighted portions of medical records
5. Curriculum vitae of all expert witnesses
6. Curriculum vitae of all physician witnesses
7. Any document produced by any party or third party during discovery
8. All materials contained in the files of Plaintiffs' expert, including literature, all notes and affidavits
9. Any medical journal or other article written by Plaintiffs' expert
10. Medical literature referenced by experts during discovery
11. All pleadings, including discovery responses
12. All exhibits and documents identified by the Plaintiffs
13. All exhibits and documents identified by Atlanta Perinatal Associates, Dr. Page, and/or Ms. Henderson
14. All deposition exhibits

Defendant Echols – Witnesses

1. Will have present at trial:
 - a. Shirley Rigaud-Echols, M.D.
2. May have present at trial:
 - a. Dexter Page, M.D.
 - b. Ruby Henderson, C.N.M.
 - c. Michelle Owens, M.D.
 - d. Mark Boddy, M.D.
 - e. Yvonka Crenshaw, M.D.
 - f. Jeremy Chou, M.D.
 - g. Eric Berenson, M.D.
 - h. Joseph Holder, P.A.
 - i. Adrienne Ficco, R.N.
 - j. Nicole Mathis, R.N.
 - k. Fitya Abasha, R.N.
 - l. Elizabeth Nyako, R.N.
 - m. J. Roach, R.N.
 - n. S. Campbel, R.N.
 - o. M. Brown, R.N.
 - p. Carrie Culver
 - q. Shayla Jackson-Washington
 - r. Wonda Johnson
 - s. Justin Washington

- t. Any person necessary to authenticate a document
- u. Any person necessary for rebuttal
- v. Any other physicians or persons listed in the medical records of Shayla Jackson or
in the parties' exhibit lists
- w. Any person listed by the Plaintiffs as a will call or may call witness

Exhibit 3

APA Defendants – Documents

1. DeKalb Medical Center medical and billing records for Shayla Jackson;
2. DeKalb Medical Center medical and billing records for Baby Jackson;
3. DeKalb Medical Center ultrasound or imaging studies of Shayla Jackson/Washington;
4. DeKalb OB/GYN Associates ultrasound or imaging studies of Shayla Jackson/Washington;
5. DeKalb OB/GYN Associates medical and billing records for Shayla Jackson;
6. DeKalb OB/GYN Associates medical and billing records for Baby Jackson;
7. APA medical and billing records for Shayla Jackson;
8. Northside Hospital Medical records of Shayla Jackson/Washington;
9. All exhibits to all depositions in this case;
10. The curriculum vitae of plaintiff's expert;
11. All medical literature relied upon by any expert witness to form his/her opinions in this case;
12. Any document produced by any party or third party during discovery;
13. Charts, illustrations, exemplar devices, and other demonstrative exhibits;
14. All unobjectionable exhibits identified by any other party in this Pre-Trial Order;
15. All discovery responses (including materials produced therewith) and pleadings filed by Plaintiffs or Defendants in this action, including but not limited to the Complaint, any amendments, and any affidavits attached thereto;
16. All documents and other materials produced in response to discovery requests in this case;
17. Any demonstrative anatomical diagrams, models, or medical devices which any defense witnesses, including expert witnesses, believe will help them explain their

testimony;

14. Any timelines or demonstrative aids created by defense fact or expert witnesses to assist with presentation of the evidence;
15. Any exhibits identified by and/or used by Plaintiffs at trial; and
16. APA Defendants reserve their rights to amend or supplement this portion of the Consolidated Pre-Trial Order.

APA Defendants – Witnesses

a. APA Defendants **will** have present at trial:

Dexter Page, M.D.
Ruby Henderson, CNM

b. APA Defendants **may** have present at trial:

- Michelle Owens, M.D.
- Wonda Johnson
- Joseph Holder, PA
- Dr. Jeremy Chou
- Dr. Eric Benenson
- Radiology Associates
- Dr. Katie Bailey
- Nurse Adrienne Ficco
- Nurse F. Abasha
- Nurse Elizabeth Nyako
- Nurse J. Roach
- Nurse S. Campbel
- Nurse M. Brown
- Nurse Nichole Mathis
- Yvonka Crenshaw, M.D.
- Carrie Culver
- Shayla Jackson-Washington
- Wonda Johnson
- Justin Washington
- Any medical records custodian necessary to authenticate records to which the parties cannot stipulate and agree on their authenticity or admissibility;
- Any health care provider referenced in the medical records of Plaintiff Shayla Jackson/Washington; and
- Any witness identified by any party in this Pre-Trial Order;