



Family: Hospital failed to recognize fetal distress prior to delivery

Type: Settlement

Amount: \$3,000,000

State: California

Venue: Contra Costa County

Court: Superior Court of Contra Costa County, Contra Costa, CA

Injury Type(s):

- *brain* - epilepsy; brain damage; encephalopathy
- *other* - ischemia; dysphagia; hypotonia
- *mental/psychological* - developmental delay
- *pulmonary/respiratory* - hypoxia

Case Type:

- *Government* - Counties
- *Medical Malpractice* - Childbirth; Birth Injury; Brain Injuries; Failure to Detect; Failure to Consult; Failure to Monitor

Case Name: Tammy Esquivel, Jesse Esquivel and Evelyn Esquivel, a minor, by and through her Guardian ad litem, Jennifer Barnes v. Contra Costa County, No. CIVMSC19-00553

Date: October 22, 2020

Plaintiff(s):

- Jesse Esquivel
- Tammy Esquivel
- Evelyn Esquivel (Female)

Plaintiff Attorney(s):

- Michael E. Gatto; Law Office of Michael E. Gatto; Walnut Creek CA for Evelyn Esquivel, Tammy Esquivel, Jesse Esquivel

Defendant(s):

- Contra Costa County

**Defense
Attorney(s):**

- John H. Dodd; Craddick, Candland & Conti; San Ramon, CA for Contra Costa County
- Pamela B. Shafer; Craddick, Candland & Conti; San Ramon, CA for Contra Costa County

Facts:

On March 8, 2018, plaintiff Evelyn Esquivel, an infant, was born at Contra Costa Regional Medical Center, in Martinez, via a forceps-assisted delivery.

Evelyn's mother, plaintiff Tammy Esquivel, had begun receiving prenatal care with Contra Costa County on Aug. 4, 2017. This was her first pregnancy, and the plan was to induce labor with Pitocin to augment contractions so that she could proceed with a vaginal delivery. She presented to Contra Costa Regional Medical Center with contractions on March 7, 2018, and she was admitted at about 10 a.m. At the time of Esquivel's admission, the unborn infant, Evelyn, was determined to be neurologically intact (good variability and reactivity on tracing) and initially tolerated labor well. As planned, labor was augmented with Pitocin, and Esquivel was given an epidural.

At 9:36 a.m. on March 8, 2018, the contraction pattern allegedly became markedly abnormal and remained that way through delivery. From 9:37 a.m. to 9:39 a.m., the tocodynamometer, which measures the tension of the maternal abdominal wall, showed that Esquivel had two episodes of short intra-abdominal pressure not indicative of pushing, but rather skeletal muscle contractions likely secondary to pain. After that, the tracing was allegedly inconsistent with a normal labor pattern while on Pitocin.

At 10:43 a.m., category-II tracing developed as the infant allegedly became hypoxic and could no longer compensate for ischemia. Fifteen minutes later, at 10:58 a.m., a 12-minute prolonged, severe, deceleration commenced. Nursing interventions of repositioning to the left and right side did not resolve the deceleration, and no oxygen or fluids were provided at that time. At 11:11 a.m., a family medicine doctor was at Esquivel's bedside, and a sterile vaginal exam was 6/80/-1 (with the previous most recent sterile vaginal exam documented as 5/90/-1 at 6:27 a.m.). Arrest of labor was not identified or noted at that time. The doctor placed a fetal scalp electrode for superior fetal monitoring but was unable to place an intrauterine pressure catheter due to the infant's head being stuck against the cervix with molding. As a result, Pitocin was stopped, but no terbutaline (a drug that can prevent and slow contractions of the uterus) was administered.

At 11:20 a.m., the family medicine doctor was again summoned to Esquivel's bedside for a new deceleration. The doctor charted the interventions of repositioning, oxygen and Pitocin being stopped. A special-response team was summoned at 11:34 a.m., and an obstetrician/gynecologist and another family medicine specialist responded. Esquivel was taken to an operating room, and the OB/GYN found the fetal station as +2 to +3. As a result, the OB/GYN decided to attempt a forceps-assisted delivery. Esquivel's baby, Evelyn, was born on March 8, 2018, but she was ultimately diagnosed with severe hypoxic ischemic encephalopathy.

Evelyn's parents, Tammy Esquivel and Jesse Esquivel, and Evelyn's guardian ad litem, Jennifer Barnes, acting in Evelyn's behalf, sued the operator of the hospital and the employer of its medical staff, Contra Costa County. The lawsuit alleged that the hospital's staff was negligent in the delivery of the infant, and in its failure to appreciate and/or monitor fetal distress/intolerance of labor.

Plaintiffs' counsel asserted that the hospital's staff failed to recognize obvious and worsening signs of fetal distress/intolerance of labor over the 26 hours after Ms. Esquivel was admitted to the hospital. Counsel contended that Esquivel suffered an initial placental abruption at 9:36 a.m. on March 8, 2018, and that the contraction pattern became, and remained, markedly abnormal through delivery. Counsel also contended that from 9:37 a.m. to 9:39 a.m., Esquivel had two episodes of short intra-abdominal pressure that were related to skeletal muscle contractions and that this intense abdominal pain is the hallmark of placental abruption or uterine rupture in the presence of an epidural. Counsel further contended that even though the tracing was inconsistent with a normal labor pattern while on Pitocin, those facts were never appreciated or timely communicated to the attending physician. Plaintiff's counsel maintained that at the time of the initial abruption, the infant's "reserve," the physiological buffer fetuses possess to get through the expected stressors of labor/expected hypoxia from contractions and moving through the birth canal without sustaining neurologic insult, was not only intact, but not even tapped, but that following the abruption, the infant was not fully perfused until delivery. Counsel asserted that the abruption did not appear to be severe initially, but that a category-II tracing developed at 10:43 a.m., as the infant became hypoxemic and could no longer compensate for ischemia. Counsel also asserted that a 12-minute prolonged, severe deceleration commenced at 10:58 a.m., and the nursing interventions did not resolve the deceleration as of 11:08 a.m., but no oxygen or fluids were provided at that time even though a deceleration over 12 minutes long constituted a category-III tracing. Counsel contended that after the initial family medicine doctor arrived at Esquivel's bedside, the doctor failed to identify or note an arrest of labor, and failed to administer terbutaline. In addition, counsel contended that when the family medicine doctor was summoned back to the bedside at 11:20 a.m., she failed to call the special-response team or for an emergency Caesarean section until almost 15 minutes later.

Plaintiffs' counsel asserted that once the OB/GYN and the other family medicine specialist responded (as part of the special-response team), Esquivel was initially taken to an operating room that was not sterile and had to be brought to another operating room. Counsel also asserted that once Esquivel got to a sterile operating room, the OB/GYN decided to attempt a forceps-assisted delivery, as the doctor seemed to be unaware of the arrest of labor and molding, but no forceps were found in the operating room. Counsel asserted that as a result, the infant's delivery was further delayed as nursing staff had to go to Esquivel's labor room to retrieve forceps. Counsel asserted that, most notably, none of the county's charting reflected going to the wrong operating room or the delay related to retrieving forceps.

Defense counsel asserted that the hospital's staff complied with the standard of care and that the tracing was not indicative of a placental abruption. Counsel asserted that as a result, there was no reason to intervene prior to the deceleration at 10:59 a.m. on March 8, 2018, and that after that time, the staff's response was timely and appropriate, and the C-section was timely performed. Thus, defense counsel contended that the infant's condition was an unfortunate outcome due to an unforeseeable obstetrical emergency.

Injury:

Evelyn suffered severe perinatal asphyxia. Super cooling was ordered, but Evelyn began seizing at one hour thirty-five minutes of life. As a result, she was loaded with phenobarbital, a drug used to treat or prevent seizures. Evelyn was then transferred to UCSF Benioff Children's Hospital Oakland, formerly known as Children's Hospital Oakland, where she remained in the neonatal intensive care unit from March 8, 2018, to April 12, 2018.

Evelyn was diagnosed with severe hypoxic encephalopathy, and alternate causes for brain damage were ruled out. An MRI of the brain on March 13, 2018, showed heterogenous diffusion restriction involving the corpus callosum and basal ganglia structures. A neuroradiologist noted that Evelyn's condition was in keeping with the clinical history of hypoxic-ischemic encephalopathy. There was also signal abnormality throughout the motor cortex and hippocampi bilaterally as well as diffusion restriction involving the dorsal brain stem. Serial EEGs were abnormal but improved over time. Evelyn required nasal feeding tubes for nutrition, and her primary discharge diagnosis was HIE with flat EEG background. Evelyn then underwent an extensive course of steroids in August 2018 to treat infantile spasms. (Medi-Cal paid approximately \$77,000 for that regimen.)

On Oct. 17, 2018, Evelyn underwent the placement of a gastrostomy tube (G-tube), but she struggles with control of oral secretions, which requires frequent suctioning. Botox injections were given on Nov. 14, 2019, and they seemed quite helpful and are expected to be repeated.

Evelyn continues to suffer from G-tube dependence, global developmental delay and intractable seizures due to Lennox-Gastaut syndrome, a severe form of epilepsy. She does not demonstrate the ability to visually fixate or track, and she has vertical nystagmus, a vision condition in which the eyes make repetitive, uncontrolled movements up and/or down. Evelyn also has truncal hypotonia (poor muscle tone to the trunk of the body) and appendicular hypertonicity (abnormally high muscle tone affecting the musculature of the arms and legs). In addition, she has poor to no head control, and when held erect, she bears no weight upon her feet and she cannot sit up.

Evelyn and her parents now reside in Ukiah. Evelyn receives services through Redwood Coast Regional Center, in Ukiah. Plaintiffs' counsel contended that Evelyn will continue to require 24-hour care for the rest of her life, but that Evelyn's life expectancy is 11 years of age.

Evelyn's family sought recovery of over \$400,000 for past attendant care, approximately \$225,000 per year for future attendant care for the rest of Evelyn's life, and \$283,000 for past paid medical costs. The family also sought recovery of damages for Evelyn's past and future pain and suffering. (However, recovery for all claimants were subjected to the MICRA general damages cap.)

Defense counsel asserted that Evelyn only had a life expectancy of five years, at best, and that future care needs through self-hire would only total approximately \$170,000 per year.

Result:

The parties agreed to a \$3 million settlement prior to trial. Of the total settlement, \$2.7 million was for Evelyn; \$175,000 was for Evelyn's mother, Tammy Esquivel; and \$125,000 was for Evelyn's father, Jesse Esquivel.

Trial Information:

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.