

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

LAURA COONEY-KOSS and	)	
JEROME KOSS,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. N10C-10-230 WCC
	)	
JENNIFER H. BARLOW, M.D.,	)	
A. DIANE MCCRACKEN, M.D.,	)	
and ALL ABOUT WOMEN	)	
OF CHRISTIANA CARE, INC.,	)	
	)	
Defendants.	)	

Submitted: August 15, 2012  
Decided: August 29, 2012

On Defendants' Motion for Partial Summary Judgment – **GRANTED**

**OPINION**

Robert J. Leoni, Esquire. Shelsby & Leoni, P.A., 221 Main Street, Wilmington, DE 19804. Attorney for Plaintiffs Laura Cooney-Koss and Jerome Koss.

Gregory S. McKee, Esquire, and Joshua H. Meyeroff, Esquire. Wharton Levin Ehrmantraut & Klein, P.A. 300 Delaware Avenue, Suite 1220, P.O. Box 1155, Wilmington, DE 19899. Attorneys for Defendants Jennifer H. Barlow, M.D., A. Diane McCracken, M.D., and All About Women of Christiana Care, Inc.

**CARPENTER, J.**

Defendant Jennifer H. Barlow, M.D., performed a Cesarean section on Plaintiff during the delivery of Plaintiff's first child. Over a week later, when Plaintiff began hemorrhaging, Defendant A. Diane McCracken, M.D., performed a hysterectomy to stop Plaintiff's uterine bleeding. Plaintiff then initiated this suit against Doctors McCracken and Barlow.

Defendants move for summary judgment as to all claims against Dr. Barlow because no medical expert has testified to a causal relationship between the C-section and Plaintiff's later hemorrhaging. For the reasons discussed below Defendants' Motion for Partial Summary Judgment is hereby GRANTED.<sup>1</sup>

### **BACKGROUND**

Plaintiff Laura Cooney-Koss delivered her first child via Cesarean section without complication. Dr. Barlow performed the C-section and closed the incision with a single-layer suture. Ten days later Plaintiff suffered postpartum hemorrhaging and was treated by Dr. McCracken, who stopped the uterine bleeding by removing Plaintiff's uterus.

Plaintiff's main argument is that Dr. McCracken violated the standard of care by removing Plaintiff's uterus to stop her hemorrhaging before more conservative measures were proven to be unsuccessful. In addition Plaintiff

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<sup>1</sup> The Court's decision to grant Defendants' Motion for Partial Summary judgment renders moot their motion *in limine* to exclude evidence as to Plaintiff's Cesarean section.

argues that Dr. Barlow was negligent by failing to close Plaintiff's C-section with a double-layer suture, and Plaintiff argues that this negligence complicated the eventual surgery performed by Dr. McCracken.<sup>2</sup> Defendants move for summary judgment as to all claims against Dr. Barlow, alleging that no evidence causally connects Dr. Barlow's C-section to Plaintiff's hemorrhaging or any other medical complications.

### STANDARD OF REVIEW

A party is entitled to summary judgment where there are no genuine issues of material fact.<sup>3</sup> The moving party bears the burden of showing that there are no genuine issues of material fact so that it is entitled to judgment as a matter of law.<sup>4</sup> The Court views all factual inferences in the light most favorable to the non-moving party and will not grant summary judgment if it appears there is a material fact in dispute or that further inquiry into the facts would be appropriate.<sup>5</sup>

In Delaware a plaintiff can only recover for a defendant's alleged negligence if that negligence proximately caused the plaintiff's injury.<sup>6</sup> The Supreme Court notes that "[p]roximate cause exists if a natural and continuous

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<sup>2</sup> Plaintiff's other expert, Berto Lopez, M.D., made no such claims.

<sup>3</sup> Super. Ct. Civ. R. 56(c), *Wilmington Trust Co. v. Aetna*, 690 A.2d 914, 916 (Del. 1996).

<sup>4</sup> *Moore v. Sizemore*, 405 A.2d 679 (Del. 1979).

<sup>5</sup> *Alabi v. DHL Airways, Inc.*, 583 A.2d 1358, 1361 (Del. 1990), *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. Super. 1962), rev'd in part on proc. grounds and aff'd in part, 208 A.2d 495 (1965).

<sup>6</sup> *Culver v. Bennett*, 588 A.2d 1094, 1096-97 (Del. 1991).

sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.”<sup>7</sup> Applied to this case, Plaintiff can only recover against Dr. Barlow if she can show that Dr. Barlow’s alleged negligence in the suturing of Plaintiff’s C-section was one of the proximate causes of the hemorrhaging that led to Plaintiff’s hysterectomy.

### **DISCUSSION**

Plaintiff offers two expert witnesses: Berto Lopez, M.D., and William Spellacy, M.D.. Only Dr. Spellacy alleged any negligence on the part of Dr. Barlow.<sup>8</sup> Dr. Spellacy testified that Dr. Barlow breached the applicable standard of care by performing a single-layer rather than a double-layer suture to close Plaintiff’s C-section incision. According to Dr. Spellacy, the double-layer suture was necessary to ensure Plaintiff could have children in the future without rupturing her C-section incision. However, Dr. Spellacy did not relate the single-layer suture with any risk of hemorrhaging. In fact, during his deposition Dr. Spellacy explicitly testified that it was not his opinion that the single-layer suture led to Plaintiff’s postpartum hemorrhaging:

Q Is it your opinion that the one-layer closure lead in part to the postpartum hemorrhage?

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<sup>7</sup> *Wilmington Country Club v. Cowee*, 747 A.2d 1087, 1097 (Del. 2000).

<sup>8</sup> Despite his noting that his opinions are “pretty much consistent” with those of Dr. Lopez. Dr. Spellacy Dep. 26.

A No. No. The hemorrhage is coming from a different thing.

Q Okay.

A. This is bleeding from the scar, out of the uterus, inside the abdomen.

Q All right. And let me just close this. I appreciate your opinion as far as the 2-layer versus the one-layer suture.

Did the decision to use the one-layer suture play any role in the subsequent events as it relates to the postpartum hemorrhage at issue in this case?

A I don't know, but when they went back in there was a hole in that line.

Q Okay.

A The one layer closure did not completely close the uterus. Or if it did, it opened up subsequently, because when they went back in there was – I think they said 2-centimeter hole in the – in that scar. And there shouldn't be any hole.

Now, how much of that was contributing to the bleeding, I don't know.<sup>9</sup>

In the course of Plaintiff's treatment for postpartum hemorrhaging Dr.

McCracken discovered that Plaintiff's C-section incision had partially reopened.

Dr. McCracken referenced this discovery in her operative note, writing:

There was a dehiscence of the previous hysterotomy site on the lower aspect of the hysterotomy. This dehiscence was approximately 2 cm in diameter and pt continued to have active bleeding from the uterus.

While it is obvious that the C-section incision should have been completely closed, there is nothing to suggest that Dr. Barlow's suturing caused the C-section

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<sup>9</sup> Dr. Spellacy Dep. 31-32.

incision to reopen ten days later. In fact, Dr. McCracken testified that it was possible the C-section incision ruptured while she was massaging Plaintiff's uterus in an attempt to stop the hemorrhaging.<sup>10</sup>

The medical experts all agree that Plaintiff's hemorrhaging was due to her uterus relaxing, a known and common post-operative C-section complication. It is equally clear that the incision itself had no causal relationship to the uterine bleeding or the organ's failure to contract. The reopening in the C-section incision did cause the already pooling blood from Plaintiff's relaxed uterus to seep into her abdominal cavity, but this was not the medical complication that led to Plaintiff's hysterectomy. Dr. McCracken was primarily concerned with stopping, not diverting, Plaintiff's bleeding. Even if the Court was accepted Dr. Spellacy's testimony that the standard of care for Plaintiff's first delivery mandated a double-layer suture closure, the Court finds that violation had no causal connection to the condition that eventually led Dr. McCracken to perform a hysterectomy.

Looking at the doctors' testimonies in the light most favorable to Plaintiff, there is no genuine issue of material fact with regard to the claims against Dr. Barlow. Even though one medical expert took issue with Dr. Barlow's suturing practice, no medical expert testified that the suturing of the C-section incision

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<sup>10</sup> Dr. McCracken Dep. 35.

proximately caused any of the complications that led to Plaintiff's hysterectomy.

Therefore, the Court grants Defendants' motion for partial summary and the claims against Dr. Barlow are dismissed.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.  
Judge William C. Carpenter, Jr.