

IN THE SUPERIOR COURT OF APPLING COUNTY
STATE OF GEORGIA

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|----------------------------|---|-------------------|
| JOYCE ELIZABETH CARTER and |) | |
| JAMES FRANK CARTER, |) | |
| |) | |
| Plaintiffs, |) | CIVIL ACTION FILE |
| |) | |
| v. |) | NO. 08-3-136-C |
| |) | |
| BAXLEY AND APPLING COUNTY |) | |
| HOSPITAL AUTHORITY d/b/a |) | |
| APPLING HEALTHCARE SYSTEM |) | |
| and DAVID M. CHENEY, |) | |
| |) | |
| Defendants. |) | |

PLAINTIFFS' FIRST AMENDED COMPLAINT

COME NOW, JOYCE ELIZABETH CARTER and JAMES FRANK CARTER, as Plaintiffs, and file this, their First Amended Complaint by striking paragraphs 1 through 18 of their original Complaint and inserting in lieu thereof, paragraphs 1 through 24 as set forth below:

COUNT ONE

PERTAINING TO THE CLAIMS OF JOYCE ELIZABETH CARTER

1.

This is an action based upon allegations of professional negligence, ordinary negligence or a combination of professional and ordinary negligence arising out of the medical care and treatment rendered to Plaintiff JOYCE ELIZABETH CARTER while a patient of Defendant BAXLEY AND APPLING COUNTY HOSPITAL AUTHORITY d/b/a APPLING HEALTHCARE SYSTEM and Defendant DAVID M. CHENEY during the period of September 19, 2006, through September 22, 2006.

2.

Defendant BAXLEY AND APPLING COUNTY HOSPITAL AUTHORITY d/b/a APPLING HEALTHCARE SYSTEM (hereinafter "HOSPITAL") is an organization created and

existing under the laws of the State of Georgia, and having its place of business in Baxley, Appling County, Georgia. Once service is perfected, Defendant HOSPITAL is subject to the jurisdiction and venue of this Court. Unless service is acknowledged, service may be perfected upon Defendant HOSPITAL by serving its Chief Executive Officer, **Dale Spell**, at its place of business located at **163 E. Tollison Street, Baxley, Appling County, Georgia 31513.**

3.

Defendant DAVID M. CHENEY (hereinafter "CHENEY") is a resident of Appling County, Georgia, and is subject to the jurisdiction and venue of this Honorable Court. Defendant CHENEY, by and through his counsel of record has acknowledged service of the original Complaint.

4.

At all times material to this action, Defendant HOSPITAL provided medical, nursing and other related services to Plaintiff JOYCE ELIZABETH CARTER through its physicians and other agents or employees acting incident to and within the course and scope of their agency or employment.

5.

At all times material to this action, Defendant HOSPITAL held Defendant CHENEY out to Plaintiff JOYCE ELIZABETH CARTER, its patients, and members of the general public as a physician skilled in the practice of General Surgery.

6.

At all times material to this action, Defendant CHENEY was a physician licensed to practice medicine in the State of Georgia and held himself out to Plaintiff JOYCE ELIZABETH CARTER, his patients, and members of the general public as a physician skilled in the practice of General Surgery.

7.

At all times material to this action, Defendant CHENEY was acting incident to and within the course and scope of his agency or employment with Defendant HOSPITAL.

8.

On September 19, 2006, Plaintiff JOYCE ELIZABETH CARTER presented to the Emergency Room of Defendant HOSPITAL with right-sided pain for the previous two days. A chest x-ray showed evidence of a pleural effusion on her right side.

9.

On September 20, 2006, Plaintiff JOYCE ELIZABETH CARTER was admitted to the Intensive Care Unit (“ICU”) of Defendant HOSPITAL where she was furnished with the services of Defendant CHENEY, as well as other additional agents or employees of Defendant HOSPITAL.

10.

On September 21, 2006, Plaintiff JOYCE ELIZABETH CARTER’s condition continued to decline and the decision was made to perform a thoracentesis to diagnose the etiology of the pleural effusion and to alleviate the pleurisy by removing some pleural fluid. Initial thoracentesis was unsuccessful and the procedure was turned over to Defendant CHENEY, a General Surgeon.

11.

After Defendant CHENEY made numerous unsuccessful attempts at thoracentesis, he recommended chest tube placement.

12.

Defendant CHENEY’s first attempt at chest tube placement was nonproductive as there was no fluid coming out of the tube.

13.

Defendant CHENEY's second attempt at chest tube placement resulted in a return of blood coming out of the tube. Plaintiff JOYCE ELIZABETH CARTER continued to bleed into the chest tube, filling at least three (3) canisters.

14.

Plaintiff JOYCE ELIZABETH CARTER subsequently lost consciousness and went into cardiac arrest on two separate occasions.

15.

Plaintiff JOYCE ELIZABETH CARTER was taken to the operating room for possible thoracotomy and laparotomy. After multiple units of packed red blood cells and fresh frozen plasma, Plaintiff JOYCE ELIZABETH CARTER was deemed stabilized and was returned to ICU.

16.

On September 22, 2006, Plaintiff JOYCE ELIZABETH CARTER was transferred to St. Joseph's/Candler Health System, Inc. in Savannah, Georgia, for multi-specialty care, and was discharged home on November 3, 2006.

17.

Defendant HOSPITAL, through the acts and/or omissions of its agent or employee, Defendant CHENEY, negligently failed to exercise that degree of care, skill, and diligence ordinarily employed by healthcare providers generally under the same or similar circumstances and like surrounding conditions in its care and treatment of Plaintiff JOYCE ELIZABETH CARTER.

18.

Defendant CHENEY negligently failed to exercise that degree of care, skill, and diligence ordinarily employed by physicians generally under the same or similar circumstances and like surrounding conditions in his care and treatment of Plaintiff JOYCE ELIZABETH CARTER.

19.

As a direct and proximate result of the joint and several negligence of Defendants, Plaintiff JOYCE ELIZABETH CARTER has suffered, and will continue to suffer, great pain of body and mind, and has incurred and will continue to incur medical and other related expenses throughout the remainder of her lifetime.

20.

The affidavit of Michael L. Hawkins, M.D., an expert witness who is competent to testify as to the standard of care required of Defendant CHENEY and Defendant HOSPITAL, acting through its agents or employees, identifying at least one negligent act or omission on the part of the Defendants and the factual basis for such claim, is attached hereto as Exhibit "A" as required by O.C.G.A. § 9-11-9.1.

WHEREFORE, Plaintiff JOYCE ELIZABETH CARTER, respectfully demands a trial by jury and judgment against Defendant BAXLEY AND APPLING COUNTY HOSPITAL AUTHORITY d/b/a APPLING HEALTHCARE SYSTEM and Defendant DAVID M. CHENEY, jointly and severally, in an amount in excess of Ten Thousand Dollars (\$10,000.00), together with costs of this action.

COUNT TWO

PERTAINING TO THE CLAIMS OF JAMES FRANK CARTER

21.

Plaintiff JAMES FRANK CARTER hereby re-alleges and incorporates by reference paragraphs 1 through 20 of Plaintiffs' First Amended Complaint as if fully set forth herein.

22.

Plaintiff JAMES FRANK CARTER is the husband of Plaintiff JOYCE ELIZABETH CARTER and is a proper party to bring an action for the significant loss of consortium of his wife.

23.

As a direct and proximate result of the joint and several negligence of Defendants, Plaintiff JAMES FRANK CARTER has suffered the significant loss of consortium of his wife.

WHEREFORE, Plaintiff JAMES FRANK CARTER respectfully demands a trial by jury and judgment against Defendant BAXLEY AND APPLING COUNTY HOSPITAL AUTHORITY d/b/a APPLING HEALTHCARE SYSTEM and Defendant DAVID M. CHENEY, jointly and severally, in an amount in excess of Ten Thousand Dollars (\$10,000.00), together with costs of this action.

This 5th day of September, 2008.

Thomas William Malone
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STATE OF GEORGIA

JOYCE ELIZABETH CARTER and)
JAMES FRANK CARTER,)
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Plaintiffs,) CIVIL ACTION FILE
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v.) NO. 08-3-136-C
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BAXLEY AND APPLING COUNTY)
HOSPITAL AUTHORITY d/b/a)
APPLING HEALTHCARE SYSTEM)
and DAVID M. CHENEY,)
)
Defendants.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of **Plaintiffs' First Amended Complaint** upon all parties to this action by depositing a copy in the United States Mail, postage prepaid, and addressed as follows:

Matthew S. Coles, Esq.
Smith, Gambrell & Russell, LLP
Suite 3100, Promenade II
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309-3592

This 5th day of September, 2008.

Denise Y. Asbell
Paralegal

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