Action number: 0601 - 08705

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

IN THE MATTER OF AN INTENDED ACTION

BETWEEN:

NAWAL BASHEER

Plaintiff

- and -

DR. THEODORE MITCHELL BUSHEIKIN, 492246 ALBERTA LTD. operating as KENSINGTON CLINIC, DR. JOHN L. BARROW, CALGARY HEALTH REGION, COLLEGE OF PHYSICIANS AND SURGEONS OF ALBERTA, HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA as represented by the MINISTER OF HEALTH, THE HONOURABLE IRIS EVANS

Defendants

STATEMENT OF CLAIM

KATHLEEN MAHONEY
Barrister & Solicitor
15 Biggar Heights Bay
Calgary, Alberta
T3R 1H4

Kathleen E. Mahoney, L.L.B., L.L.M., F.R.S.C.
Telephone: (403) 239-8982
Fax: (403)208-1714

The Plaintiff

1. The Plaintiff, Ms. Nawal Basheer, a Petroleum Engineer, born on December 24, 1977, resides at #1, 119 Huntington Park Green N.W., Calgary, Alberta. At all material times Ms. Basheer resided in the city of Calgary, Alberta.

The Defendants

2. Dr. Theodore Mitchell Busheikin (hereinafter Dr. Busheikin), a medical doctor who limits his practice to therapeutic abortions, operating out of 492246 Alberta Ltd. premises located at 2431 – 5th Avenue N.W., Calgary, Alberta, T2N 0T3.

3. 492246 Alberta Ltd. (hereinafter Kensington Clinic), a private clinic accredited by the College of Physicians and Surgeons of Alberta as a non-hospital facility, and which is under a contract with the Calgary Health Region to perform therapeutic abortions, operating as the Kensington Clinic, located at 2431 – 5th Avenue N.W., Calgary, Alberta, T2N 0T3.

4. Dr. John L. Barrow (hereinafter Dr. Barrow), a medical doctor, operating a general practice located at 10 – 6213 Centre Street N.W., Calgary, Alberta, T2K 0V2, and who at all material times was the family physician responsible for the welfare and best interests of the Plaintiff.

5. Calgary Health Region (hereinafter CHR), located at 10101 Southport Road S.W., Calgary, Alberta, T2W 3N2, who at all material times had a contract with the Kensington Clinic for the provision of therapeutic abortion services to the public, including to the plaintiff, Narwal Basheer.

6. College of Physicians and Surgeons of Alberta (hereinafter CPSA), located at #900 Manulife Place, 10180 – 101 Street N.W., Edmonton, Alberta, T5J 4P8, which is responsible for the accreditation and inspection of medical facilities and doctors in the Province of Alberta, including the Kensington clinic.

7. Her Majesty the Queen in Right of Alberta (hereinafter as represented by the Minister of Health, Iris Evans), Legal Legislative Services, 20th Floor, Telus Plaza North Tower, 10025, Jasper Avenue, Edmonton, AB T5J 2N3, who at all material times authorized the CHR to contract with the Kensington Clinic, a private clinic, to provide therapeutic abortion services.

Facts

8. In June of 2004, Ms. Basheer, the Plaintiff, was a student in the Applied Petroleum Engineering program at Southern Alberta Institute of Technology in Calgary, Alberta. She scheduled and attended an appointment with her family physician, Dr. Barrow. After a blood and urinary tests, she was informed by Dr. Barrow that she was pregnant.

9. Ms. Basheer suffers from degenerative hip disease and, as a result, cannot carry a pregnancy to term. Dr. Barrow assessed the gestational age of the fetus at approximately 3 to 4 weeks and recommended a therapeutic abortion immediately. Dr. Barrow referred Ms. Basheer to Dr. Busheikin at the Kensington Clinic.

10. On July 21, 2004, the Plaintiff attended an appointment with Dr. Busheikin at the Kensington Clinic for a therapeutic abortion. An ultrasound was performed at the

beginning of the procedure. According to the attending nurse at that time, the gestational age of the fetus cannot be determined because the equipment in the Clinic is not very good. Consequently, the Kensington Clinic was not sure of how many weeks the fetus was.

11. The therapeutic abortion was carried out by Dr. Busheikin. Because of the Plaintiff's condition, bilateral hip disorder or degenerative hip disease, Ms. Basheer was in significant pain during the procedure. A tissue sample was collected for testing. Additionally, 2 blood tests were required post-procedure which Ms. Basheer attended. Three days following the procedure, Ms. Basheer received confirmation from the Kensington Clinic that the pregnancy was terminated. Ms. Basheer was informed that this was determined from the blood tests.

12. Oral contraceptives were both prescribed and several weeks worth given to Ms. Basheer. Ms. Basheer took the oral contraceptives given to her by the clinic as directed. She continued to experience severe pain in her hips and saw Dr. Barrow many times attempting to find out why the pain in her hips was increasing. Dr. Barrow prescribed Celebrex, Viox, and 30 mg Codeine for the pain. Still the pain increased and finally Ms. Basheer insisted Dr. Barrow schedule an ultrasound to find out what was causing such pain.

13. The ultrasound was scheduled for Friday, October 8, 2004, and Ms. Basheer attended the appointment. It was during this procedure that the ultrasound technician discovered that Ms. Basheer was still pregnant. Gestational age of the fetus was determined at approximately 21 weeks. Ms. Basheer experienced 12 weeks of increasingly severe pain uncontrolled by the drugs prescribed by Dr. Barrow.

14. Ms. Basheer was unable to attend Dr. Barrow until Tuesday, October 12, 2004, due to the Thanksgiving Holiday. Ms. Basheer tried contacting Dr. Barrow over the weekend on an emergency number but was told that he was unavailable due to a family function. Ms. Basheer spent the weekend without advice. This resulted in extreme emotional distress for Ms. Basheer.

15. Between October 8 and 11, 2004, Ms. Basheer tried to commit suicide. She overdosed with the prescription medications that she had in her house. Her fiancée, who was home at that time, forced her to vomit. Ms. Basheer also attempted to drive out and crash her car but was prevented from doing so because her fiancée at that time held her back.

16. When the Plaintiff was able to see Dr. Barrow the following Tuesday, he sent Ms. Basheer back to the Kensington Clinic to speak with Dr. Busheikin.

17. Dr. Busheikin refused to see Ms. Basheer instead requiring the report from the ultrasound technician and a report from Dr. Barrow.

18. Ms. Basheer did not speak with Dr. Busheikin but spoke with the head nurse at the Kensington Clinic who stated the equipment, specifically the ultrasound equipment, at the clinic is not adequate for determining whether or not the pregnancy had been terminated. At this time the nurse informed Ms. Basheer that the tissue sample taken at the July 21, 2004 procedure had come back negative for pregnancy tissue or did not have any pregnancy tissue which would, according to Kensington Clinic, indicate that they had terminated the pregnancy.

19. The nurse also informed Ms. Basheer that because she was over 21 weeks pregnant the Kensington Clinic would not perform another therapeutic abortion on her. Ms. Basheer was told she would have to go to Quebec or to the United States of America to obtain a post-20 week therapeutic abortion. This induced panic and hopelessness in Ms. Basheer because, as a student, Ms. Basheer could not afford to travel to have a second procedure performed. Furthermore, Ms. Basheer was suffering from intolerable pain as well as severe emotional and mental distress.

20. The head nurse then brought in a social worker to discuss adoption. The social worker was already informed about Ms. Basheer's degenerative hip disease, however, the social worker continued to talk about adoption and carrying the pregnancy to term. Ms. Basheer argued that she had the abortion in the first place because of her illness and nothing else. Ms. Basheer also informed the social worker that she has taken so much medication already that might have damaged the fetus. The argument with the social worker caused additional stress to Ms. Basheer and increased her mental distress.

21. Ms. Basheer returned to Dr. Barrow and begged him for help stating she could not handle the increasing pain for the remainder of the pregnancy. Ms. Basheer stated she would kill herself if she had to endure any more of the agonizing pain she had suffered since the procedure at the Kensington Clinic. Ms. Basheer suffered pain constantly twenty four hours a day. Ms. Basheer's pain was so severe she only had about two hours sleep every night.

22. Dr. Barrow wrote a letter to the Foothills Hospital, in Calgary, Alberta, informing them that Ms. Basheer is at risk with pregnancy until corrective surgery to her hips has been done. The Foothills Hospital contacted the Peter Lougheed Hospital, the only other facility in Calgary, Alberta, which performs therapeutic abortions. A doctor at the Peter Lougheed Hospital agreed to perform a therapeutic abortion on Ms. Basheer.

23. The second procedure was successfully performed over October 13 and 14, 2004, with a hospital stay needed for Ms. Basheer on October 14 to 15, 2004.

24. Ms. Basheer was unable to write her midterm exams on October 12 and 13 and had to arrange for private tutoring in order to complete the requirements for her semester.

25. Following the second procedure Ms. Basheer had to arrange for the burial of the fetus which she found extremely distressing. To accomplish this, Ms. Basheer had to compromise her religious beliefs which caused her further distress and continuing potential for permanent harm. In her religious belief, therapeutic abortion is only acceptable if pregnancy causes harm to the individual and the abortion has to be performed immediately when the fetus is still in the tissue stage and there is no body to bury. Arranging the burial added more distress to Ms. Basheer's already distressful condition. The burial took place approximately 10 days after the second procedure.

26. The emotional turmoil, anxiety, depression, and pain have resulted in the demise of Ms. Basheer's relationship with her fiancée.

27. Ever since the blotched abortion, Ms. Basheer has experienced ongoing and continuing distress. Her experiences since July 21, 2004 have resulted in:

a. Emotional trauma and harm giving rise to psychological pain and suffering;

b. Physical pain and suffering from the failed procedure

c. Additional physical pain and suffering for carrying fetus for 3.5 months;

d. Depression and anxiety which led to suicide attempts;

e. Sleeping difficulties;

f. Post Traumatic Stress Disorder;

g. Nightmares and flashbacks;

h. Lack of trust in service providers;

i. A sense of shame, fear and isolation;

j. Impaired ability to form and sustain intimate relationships;

k. Humiliation;

l. Religious compromise;

m. Requirement for future psychiatric treatment and psychological counseling; and

m. Extra time to study, extra-time in re-writing the exam, time out of the work force.

The Plaintiff claims that:

n. The Defendant, Dr. Busheikin, was negligent in the performance of the July 21, 2004 therapeutic abortion, and that through not providing reasonable access to procedures, through the use of substandard equipment provided by the Kensington Clinic, lack of following proper operative procedure or proper follow-up procedures, and non-disclosure of pertinent information in a timely manner did not meet the standard of care causing the failure of the July 21, 2004 procedure which, in turn, caused Ms. Basheer's injuries;

b. The Defendant, Kensington Clinic, was negligent in the performance of the July 21, 2004 therapeutic abortion, and that through not providing reasonable access to procedures, through the use of substandard equipment provided by the Kensington Clinic, lack of following proper operative procedure or proper follow-up procedures, and non-disclosure of pertinent information in a timely manner did not meet the standard of care causing the failure of the July 21, 2004 procedure which, in turn, caused Ms. Basheer's injuries;

c. The Defendant, Dr. Busheikin, by not completing the abortion and by not determining if the abortion was successful, was negligent and breached his fiduciary duty to Ms. Basheer by refusing to meet with her on October

12, 2004, and did not act in a manner that considered her welfare and best interests as a patient thus directly contributing to her injuries;

d. The Defendant, Kensington Clinic, is vicariously liable for the actions of the head nurse and social worker in causing extreme distress and anxiety to Ms. Basheer when she attended the clinic on October 12, 2004, and for failure by the head nurse to disclose pertinent information in a timely manner thus directly contributing to Ms. Basheer's injuries;

e. The Defendant, Dr. Barrow, is negligent in not diagnosing the failed abortion much earlier and thus directly contributed to Ms. Barrow's injuries;

f. The Defendant, CHR, was negligent in failing to provide the Plaintiff with healthcare services in the Calgary Region and is negligent and is vicariously liable for the Kensington Clinic in failing to maintain reasonable access, adequate equipment or adequate procedures which directly caused the injuries of Ms. Basheer;

g. The Defendant, CPSA, is liable for failing to exercise reasonable care in continuing the accreditation of a private non-hospital facility which does not maintain adequate equipment or procedures and which directly caused Ms. Basheer's injuries; and

h. The Defendant, Her Majesty the Queen in Right of Alberta, as represented by the Minister of Health, The Honourable Iris Evans, is vicariously liable and has breached its fiduciary duty to the Plaintiff to provide proper healthcare in the province of Alberta by continuing to give ministerial approval for the CHR to continue to contract with the private non-hospital facility, Kensington Clinic, to perform therapeutic abortion services which it has performed negligently thus directly causing Ms. Basheer's injuries.

Damages

28. The Plaintiff claims against the Defendants, jointly and severally, damages in the amount of $250,000 as the Court sees fit to award under the following heads:

a. General damages;

b. Special damages;

c. Exemplary damages;

d. Aggravated damages;

e. Punitive damages;

f. Interest pursuant to the *Judgment Interest Act, R.S.A 2000, c. J-1;*

g. Costs; and

h. Such further and other relief as to which this honorable Court may deem just and equitable.

PLACE OF TRIAL: Calgary, Alberta

DATED: at the City of Calgary, in the Province of Alberta, this 20th day of July, 2006.

Kathleen Mahoney, *Solicitor for the Plaintiff*

ISSUED at the Office of the Clerk of the Court of Queen's Bench, Judicial District of Calgary, at Calgary, Alberta, July 20th, 2006.

Clerk of the Court

Plaintiff's Address: Ms. Nawal Basheer
#1, 119 Huntington Park Green N.W.,
Calgary, Alberta

Defendants Addresses (so far as is known to the Plaintiff):

Dr. Theodore Mitchell Busheikin
2431 5th Ave NW
Calgary, Alberta, Canada, T2N 0T3

492246 Alberta Ltd. operating as Kensington Clinic
2431 - 5 Ave N.W.
Calgary, AB T2N 0T3

Dr. John Barrow (Gen Practioner)
10-6213 Centre St NW
Calgary, Alberta, Canada, T2K 0V2

CHR
10101 Southport Road SW
Calgary, AB Canada T2W 3N2

CPSA
#900 Manulife Place, 10180-101 Street NW
Edmonton, Alberta T5J 4P8

Her Majesty the Queen in Right of Alberta
As Represented by the Minister of Health
Legal Legislative Services
20th Floor, Telus Plaza North Tower
10025 – Jasper Avenue
Edmonton, AB T5J 2N3

TO THE DEFENDANTS

You have been sued. You are a Defendant. You have only 15 days to file and serve a Statement of Defense or Demand of notice. You or your lawyer must file your Statement of Defense or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Calgary, Alberta. You or your lawyer must also leave a copy of your Statement of Defense or Demand of Notice at the address for service for the Plaintiff named in this Statement of Claim.

WARNING: If you do not do both things within 15 days, you may automatically lose the law suit. The Plaintiff may get a Court judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

Action number: 0601-08705

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF CALGARY

BETWEEN:

NAWAL BASHEER

Plaintiff

-and-

SCANNED
JUL 21 2006

DR. THEODORE MITCHELL BUSHEIKIN, 492246 ALBERTA LTD. operating as KENSINGTON CLINIC, DR. JOHN L. BARROW, CALGARY HEALTH REGION, COLLEGE OF PHYSICIANS AND SURGEONS OF ALBERTA, HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA as represented by the MINISTER OF HEALTH, THE HONOURABLE IRIS EVANS

Defendants

SCD- #250,000

JUDICIAL DISTRICT OF CALGARY
FILED
JUL 20 2006
CLERK OF THE COURT

STATEMENT OF CLAIM

$200.00

This Statement of Claim is issued by Kathleen E. Mahoney, Barrister & Solicitor, Solicitor for the Plaintiff, whose place of business and address for service is 15 Biggar Heights Bay, Calgary, Alberta, T3R 1H4, Fax: 403-208-1714.

TOTAL $200.00
Visa $200.00
Item count: 1
Trans:38117
20020042-001001
2006-07-20 09:51 PM
DOCUMENT #: 0601-08705
QUEENS BENCH FEES
$200.00