

Death

NO. 89-16747

JOE MONTOYA AND	§	IN THE DISTRICT COURT OF
JANET MONTOYA, INDIVIDUALLY	§	
AND AS PERSONAL REPRESENTATIVE	§	
OF THE ESTATE OF DENISE	§	
MONTOYA, DECEASED	§	
	§	
VS.	§	HARRIS COUNTY, T E X A S
	§	
DOUGLAS A. KARPEN AND	§	
WOMEN'S PAVILLION	§	_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, JOE MONTOYA and JANET MONTOYA, Individually and as Personal Representatives of the Estate of Denise Montoya, Deceased, hereinafter sometimes referred to as Plaintiffs, complaining of DOUGLAS A. KARPEN and WOMEN'S PAVILLION, hereinafter referred to as Defendants, and for cause of action would respectfully show unto the Court and Jury as follows:

I.

Plaintiffs are resident citizens of the State of New Mexico.

Defendant, DOUGLAS A. KARPEN is an osteopath practicing here in Houston. He may be served with citation herein by serving him at 5900 North Freeway, Suite 143, Houston, Harris County, Texas

Defendant, WOMEN'S PAVILLION, is either a corporation, partnership or proprietorship duly organized and existing

pursuant to law. It may be served with citation herein by serving any officer or agent for the service of process at 5900 North Freeway, Suite 143, Houston, Harris County, Texas.

II.

It has become necessary to institute this lawsuit because of the tragic and untimely death of Denise Montoya. The evidence will show upon a trial of this case that when Denise Montoya was 15 years of age, she became pregnant. Some period of time went by before the pregnancy was disclosed to her parents and thereupon after counseling with her parents, it was Denise Montoya's desire to have the pregnancy terminated. She and her parents were referred to the WOMEN'S PAVILLION here in Houston and on or about May 11, 1988, they traveled to Houston to obtain counseling and look into the feasibility of having the pregnancy terminated. By history and by ultrasound, it was determined by Denise Montoya was 25 1/2 weeks pregnant and notwithstanding that fact, Denise Montoya and her parents were counseled that the abortion could be safely performed and the pregnancy terminated. Accordingly, on May 13, 1988 the pregnancy was terminated; however, immediately, extremely foreseeable complications immediately developed with bleeding; Denise Montoya was thereafter taken to Ben Taub Hospital where she eventually died of complications both directly and indirectly associated with the abortion on May 29, 1988.

III.

Your Plaintiffs are the surviving parents of Denise Montoya and as such they are the necessary and proper party to institute this action under the Wrongful Death Act of the State of Texas. In addition, they also sue in their Representative capacity as Personal Representatives of the Estate of Denise Montoya for the conscious physical pain and mental anguish which she experienced from the date of the abortion until the date of her death. Suit is also brought for the reasonable and necessary medical expenses that were incurred in trying to save Denise Montoya from the date of the abortion to the date of her death. In addition, suit is brought for the reasonable and necessary burial expenses and expenses of last internment. There has been no Administration on the Estate of Denise Montoya for the reason that no Administration is necessary.

IV.

The evidence will show upon a trial of this case that DOUGLAS A. KARPEN was negligent in one or more of the following particulars:

1. In attempting to perform an abortion on Denise Montoya when she was 25 1/2 weeks pregnant.
2. In failing to adequately inform and advise Denise Montoya and her parents of the increased risks and increased mortality rates and complications in abortions that are attempted beyond 18 to 20 weeks gestation.
3. In failing to obtain an informed consent from both Denise Montoya and her parents prior to performing the abortion.
4. In selecting an abortion technique and procedure that is associated with increased complications in gestations beyond 20 weeks.

5. In even attempting to perform an abortion, using the technique that he did, given Denise Montoya's physical condition at the time of the abortion.

Each of the above and foregoing acts of negligence was a proximate cause of the occurrence in question and the Plaintiffs' resulting injuries and damages.

V.

The evidence will show upon a trial of this case that at all times material to this cause DOUGLAS A. KARPEN was acting as an employee and/or vice principal of WOMEN'S PAVILLION, within the course and scope of his employment. Accordingly, WOMEN'S PAVILLION is liable for the negligence of DOUGLAS A. KARPEN under the doctrine known as Respondeat Superior, as that term is defined and understood under the laws and statutes of the State of Texas.

Pleading further, the evidence will show upon a trial of this case that the agents, servants and employees of WOMEN'S PAVILLION were negligent in one or more of the following particulars:

1. In failing to adequately advise and inform Denise Montoya and her parents of the risks involved in attempting to perform an abortion at 25 1/2 weeks fetal gestation.
2. In failing to obtain informed consent from the parents of Denise Montoya prior to the time that the abortion was performed.
3. In failing to adequately advise and inform Denise Montoya and her parents of the surgical risks and complications that were foreseeable from the type of operative technique to be employed by DOUGLAS A. KARPEN for the abortion.

4. In failing to adequately inform and advise Denise Montoya and her parents of the increased risks of mortality and morbidity in abortions that are attempted at 25 1/2 weeks and how those increased risks and complications increase beyond the 10th week of fetal gestation.

Each of the above and foregoing acts of negligence was a proximate cause of the occurrence in question and the Plaintiffs' resulting injuries and damages.

VI.

The evidence will further show upon a trial of this case that the Defendants were well aware of the astonishing increase in complications in abortions attempted beyond 18 to 20 weeks gestation. The evidence will further show that the vast majority of those clinics in the United States that hold themselves out in performing abortions, refuse to perform abortions where fetal gestation has progressed beyond 20 weeks. In this particular case the evidence will show that the informed consents forms which were presented to Denise Montoya do not adequately convey those increased risks and increased mortality complications and for that matter, the evidence will further show that one of the forms was never even shown to the parents of Denise Montoya, nor signed by them, prior to the time that this abortion was performed. Had the parents of Denise Montoya been informed of the increased risks of mortality and foreseeable complications in attempting to terminate a pregnancy such as their daughter's, they would have

never consented to have the abortion performed. Such action on the part of the Defendants in failing to advise Denise Montoya and her parents of the increased risks and in failing to even obtain the proper written consent from the parents constitutes such a heedless and reckless disregard of the rights and safety of Denise Montoya and her parents as to constitute gross negligence as that term is understood under the laws and statutes of the State of Texas. Such gross negligence was also a proximate cause of the occurrence in question and the Plaintiffs resulting injuries and damages.

VII.

Under the applicable laws, statutes and court decisions of the State of Texas, your Plaintiffs are entitled to have the Jury in this case consider those elements of damage that are recognized under the laws and statutes of the State of Texas for the loss of Denise Montoya. Those elements of damage include the loss of care, maintenance, services, advice, comfort, counsel, companionship, guidance, attention, love, affection, society, consortium, and financial support which she in reasonable probability would have provided had she lived. Your Plaintiffs are also entitled to be compensated for the grief, sorrow, bereavement and mental anguish which they have suffered as the result of the untimely and tragic death of Denise Montoya.

Because of the above and foregoing, your Plaintiffs have been damaged and will be damaged in a sum well in excess of the

minimum jurisdictional limits of this Court. In addition, Plaintiffs bring suit for the recovery of punitive or exemplary damages by reason of the gross negligence as hereinabove set forth.

VIII.

Your Plaintiffs would also show unto the Court that they have notified the Defendants of their claims in this regard and that the requisite time has passed since the mailing of that notice, prior to the filing of this suit.

WHEREFORE, PREMISES CONSIDERED, your Plaintiffs pray that the Defendants be cited to appear and answer herein and that upon final trial they have judgment against the Defendants, jointly and severally, for their damages as specified above, plus costs of Court, pre-judgment and post-judgment interest at the legal rate, and for such other and further relief to which they are entitled under the facts and circumstances.

Respectfully submitted,

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Original signed by Craig Lewis

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