

FILED
2014 FEB 13 P 12:19

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

LAYLA VARNEY, a Minor,
By and Through Her Parent,
Natural Guardian and Next Friend,
NICOLE ESSON
33255 Boulder Drive
North Ridgeville, Ohio 44039

and

NICOLE ESSON
33255 Boulder Drive
North Ridgeville, Ohio 44039

Plaintiffs,

vs.

KAISER PERMANENTE
12301 Snow Road
Parma, Ohio 44130

and

BARBARA RHOADS, M.D.
3609 Park East, North Building
Beachwood, Ohio 44122

Defendants.

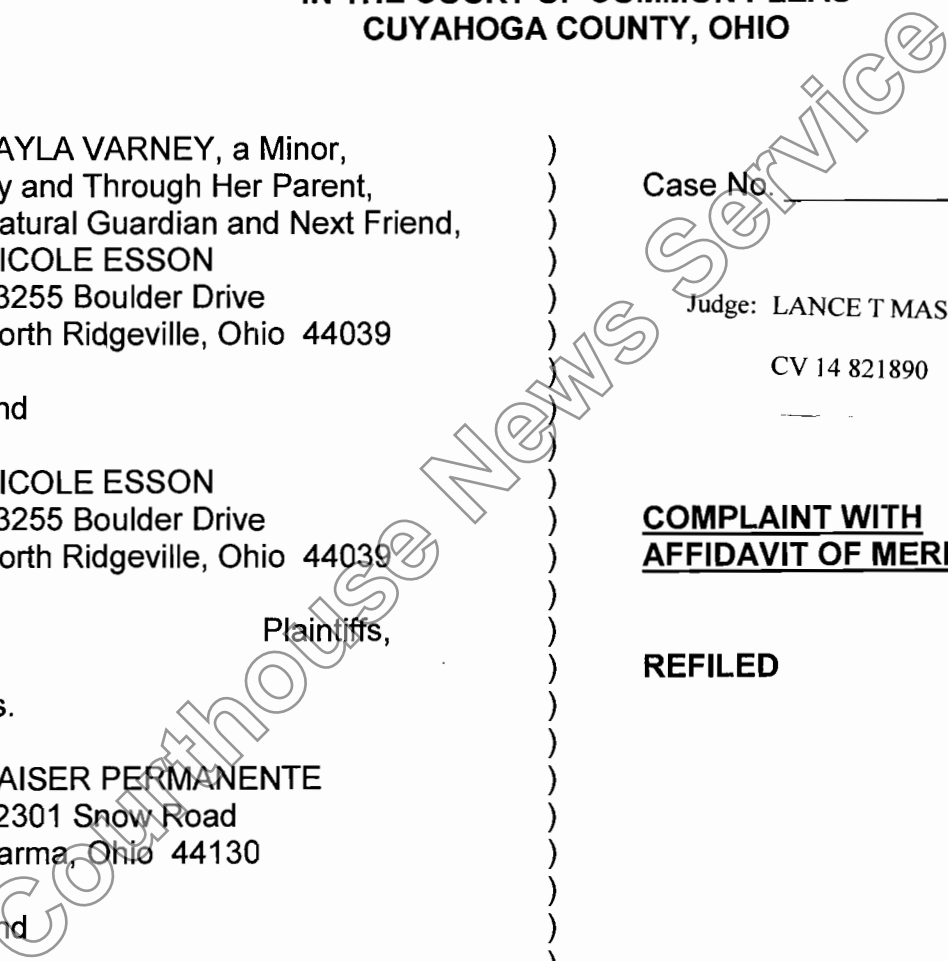
Case No. _____

Judge: LANCE T MASON

CV 14 821890

**COMPLAINT WITH
AFFIDAVIT OF MERIT,**

REFILED



COUNT I

1. This is a refiled action, Case No. CV-12-786106 having been voluntarily dismissed on January 29, 2014.

2. Minor Plaintiff Layla Varney was born on April 6, 2010. Her mother and natural guardian, Nicole Esson, brings this action individually and on her daughter's behalf.

3. At all times relevant, Defendant Kaiser Permanente was a hospital/medical center/health system licensed by the state of Ohio to provide medical care to their patients through their agents, servants and employees, both actual and apparent. At all times relevant, said Defendant provided care to Nicole Esson and Layla Varney by and through their agents, servants and employees, all of whom were acting within the course and scope of their agency/master servant relationship/employment, in rendering said care. Said Defendant is vicariously liable for the negligent conduct of their agents, servants and/or employees.

4. Defendant Barbara Rhoads, M.D. was at all times relevant a physician licensed to practice medicine in the state of Ohio, held herself out to the public as specializing in obstetrics, and was required to render care and treatment to her patients, including Nicole Esson and Layla Varney, within acceptable standards of obstetric care. Dr. Rhoads was an employee and/or actual/apparent agent of Defendant Kaiser Permanente.

5. On August 12, 2009, Ms. Esson presented to Kaiser Permanente for prenatal care. Her due date was April 13, 2010.

6. On April 6, 2010 at 11:44 a.m., Ms. Esson presented to Fairview Hospital following a spontaneous rupture of membranes. Pitocin augmentation was started at 1:44 p.m.

7. Plaintiff Layla Varney was born on April 6, 2010 at 10:47 p.m. Her delivery was complicated by a nonreassuring fetal heart pattern, vacuum extraction, macrosomia, shoulder dystocia, cephalohematoma, scalp lacerations, and left brachial plexus injury.

8. Defendants, their agents and employees deviated from accepted standards of obstetric care and were otherwise negligent in the manner in which they managed Ms. Esson's pregnancy, labor and delivery, including the failure to manage shoulder dystocia within standards of care once it occurred.

9. As a direct and proximate result of the aforementioned negligence/substandard care, minor Plaintiff Layla Varney sustained severe permanent injuries, including but not limited to significant injury to her brachial plexus.

10. As a further direct and proximate result of the aforementioned negligence, Plaintiff Layla Varney sustained a permanent injury, permanent disability, permanent loss of function and use of her left upper extremity, other deformities and disabilities, pain and suffering, medical expenses, loss of enjoyment of life and a decreased earning capacity.

COUNT II

11. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 10 of this Complaint as though fully set forth herein and state further that Defendants, their agents and employees were negligent when they failed to disclose to Plaintiff

Nicole Esson the material risks and dangers associated with a vacuum-assisted vaginal delivery in light of Ms. Esson's obstetric history and high risk status.

12. A reasonable person in Plaintiff's position who received adequate informed consent would not have proceeded with a vacuum-assisted delivery at Fairview Hospital on April 6, 2010. The unrevealed risks and dangers which these Defendants negligently failed to disclose actually materialized and proximately caused Plaintiffs' injuries and damages for which these Defendants are liable.

COUNT III

13. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 12 of this Complaint as though fully set forth herein.

14. At all times pertinent, Plaintiff Nicole Esson was and is the natural parent of minor Plaintiff Layla Varney.

15. As a direct and proximate result of the Defendants' negligence, Plaintiff Nicole Esson has lost the society, services and consortium of her minor child, Layla Varney. Additionally, she has incurred medical expenses to treat the injuries, and will incur such expenses in the future.

COUNT IV

16. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 15 of this Complaint as though fully set forth herein and state further that they have attached to this Complaint an Affidavit of Merit in compliance with the requirements of Civil Rule 10, as amended, effective July 1, 2005.

17. Plaintiffs state that the requirements of Civil Rule 10 as amended effective July 1, 2005, are unconstitutional and are in violation of the Ohio and federal

Constitutions on the basis of equal protection under the law and due process, and impose an undue burden on the class of plaintiffs bringing medical claims in the state of Ohio.

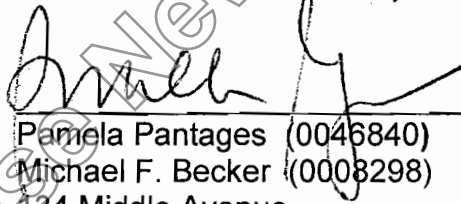
WHEREFORE, Plaintiffs demand judgment against the Defendants in an amount in excess of \$25,000.00 for each of the aforementioned counts and whatever relief the Court deems just and equitable.

JURY DEMAND

Plaintiffs hereby demand a trial by jury for all issues raised herein.

Respectfully submitted,

THE BECKER LAW FIRM, L.P.A.



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