

What Caused This Stillborn Death?

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In the following 2024 Supreme Court of Alaska case, parents of a stillborn male infant sued a direct entry midwife and a certified nurse midwife, for failing to obtain informed consent for their delivery at a birth center and, as a result of this failure, for the stillborn death of their male child (Kimberly Wallace Goodwin and Jonathan Goodwin, individually and as the parents of Jackson Wallace Goodwin, v. Mat-Su Midwifery, Inc., Judy Davidson, and Darcy Lucey, Nos. S-18401, S-18411, No. 7733, Supreme Court of Alaska, December 6, 2024).

Particulars Leading Up to the Case

The mother-to-be was 39 years old and experienced several miscarriages. She and her husband sought care from a physician who later transferred the mother's care to a midwifery clinic.

About 40 weeks into her pregnancy, the woman was seen at the midwifery clinic. The woman was concerned that she was overdue. A direct entry midwife (a non-nurse) and a certified nurse midwife attended to her care. The mother-to-be was told to return to the clinic in one week.

The woman was seen in one week and she was told to return in one week again. She did so. On her next visit, which was 42 weeks into her pregnancy, a test indicated that the fetus was "reactive". The woman was told to return in two days. On the next day, she returned to the clinic in active labor.

The nurse midwife monitored the female, noting that the fetal heart rate was 130-140 and a half-hour later, the rate was 120. However, the nurse midwife was not certain if she was detecting the fetal heart rate or the female's heart rate.

The direct entry midwife checked the fetal heart rate 45 minutes later and again 10 minutes after that and determined the rates was 70-80.

Both transported the mother-to-be to the hospital where the male infant was delivered stillborn by way of caesarean section.

After the stillborn birth, the female and her husband successfully lobbied the state legislature to pass a law for a cause of action based on the wrongful death of an unborn child.

Called "Jackson's Law" (after their stillborn son), it was to take effect "on or after" the effective date of the law, which was nearly two years after the stillbirth.

Shortly thereafter, the parents (plaintiffs) of the stillborn boy filed a lawsuit against the midwifery clinic and the direct entry midwife and certified nurse midwife (defendants).

Their allegations included professional negligence and a failure to obtain informed consent for “delivery by a midwife at a birth center, instead of delivery by a physician at a hospital.” In addition, they alleged that the plaintiffs didn’t disclose the risks of a midwife delivery for a mother-to-be like the plaintiff who was of advanced maternal age with a history of miscarriages.

Trial Court Proceedings

After each party filed the names of their expert witnesses, the defendants filed a Motion for Summary Judgment, arguing that there was no cause of action in the state for the death of an unborn child under the state’s [wrongful death statute](#). The plaintiffs countered with the fact that a majority of states allow wrongful death claims for “viable unborn children” and the same approach should be applied in their state.

The court denied the Motion for Summary Judgment holding that the state’s general wrongful death statute allowed the plaintiffs to file their suit.

The defendants then filed a motion to exclude the plaintiffs’ expert witness. This motion was not immediately ruled on by the court due to, among other reasons, the plaintiffs’ divorce, trial continuance, and whether the attorney for the plaintiffs could continue representing them.

In addition, the plaintiffs did not cooperate with required case obligations, including verifying discovery requests. In addition, court-imposed sanctions were not paid by the plaintiffs.

The court did grant the defendants’ motion to exclude the plaintiffs’ expert witness but allowed the parents to file an updated witness list, which they did.

Several legal challenges followed regarding the plaintiffs’ expert witness testimony regarding causation of the death of the stillborn boy.

The defendants then filed another Motion for Summary Judgment based on the inability of the plaintiffs to prove the cause of the stillborn death. The plaintiffs did not contest this motion, and the court granted the Motion for Summary Judgment.

The Defendants’ Motion for attorney fees and litigation fees was also granted by the court.

The plaintiffs appealed to the state supreme court, basing their appeal on the granting of the Motion for Summary Judgment and the awarding of attorney fees. The defendants [cross-appealed](#), arguing that the court erred in its interpretation of the wrongful death statute and in declining to prevent the plaintiffs arguments about the statute.

State Supreme Court Decision

The court affirmed the trial court's decision to grant Summary Judgment to the defendants and also affirmed the awarding of attorney fees. Its decision was based on the fact that the plaintiffs had not presented evidence that the defendants' treatment caused the stillborn birth.

Talking Points of this Case

This case was a legally complicated one and its details and analysis are beyond the scope of this blog. Even so, it does provide some considerations for discussion.

One important consideration in any midwifery practice is a careful and complete assessment of a patient who is seeking delivery services. If an impending birth is evaluated as a high risk one, applicable safeguards to provide monitoring and delivery care consistent with standards of practice to the mother and fetus is essential.

Second, the case underscores the importance of expert witness testimony, in this case, to identify the cause of the stillbirth. Clearly, the expert witnesses retained by the plaintiffs' could not connect the care of the direct entry midwife and the certified nurse midwife's care to the infant's death.

Because of the inability to identify the cause of death generally and specifically due to the direct entry midwife and certified nurse midwife's treatment, the lack of informed consent allegation by the plaintiffs also failed.

The case also highlights the collaborative care of a direct entry midwife and a certified nurse midwife. According to the [American College of Nurse Midwives](#), non-nurse midwives provide hands-on support and assistance during pregnancy, labor, birth, and care immediate postpartum care.

If you are a certified nurse midwife and provide care with a direct entry midwife (other terms include certified midwife and certified professional midwife), know that your collaborative practice must conform to your state's definition of your respective scopes of practice and role responsibilities.

The parents' lobbying for a law that allowed for a suit alleging the wrongful death of an unborn child is an interesting development in the case. It amended the state's wrongful death statute (or allowed a new law) to include a stillborn death, which the plaintiff's relied on in their case.

Even though most, if not all, wrongful death statutes apply when a living person dies as a result of negligence, the trial court allowed the wrongful death statute's application to the plaintiff's case.

On appeal, the direct midwife and certified nurse midwife raised this as an error.

The appellate court did not rule on this specific issue since the plaintiffs failed to prove causation of the stillborn death so all other matters were deemed "immaterial". It remains to be seen how this state

would apply the amended (or new) statute to a future case of a stillborn death.

Last, informed consent for the delivery of the fetus was the essential issue in the case. Informed consent for treatment in any circumstance requires certain elements to be met. You can read about informed consent [here](#).

As a nurse practitioner in obstetrics who is the health care provider during a delivery, you have the obligation to obtain the informed consent of your patient. Be certain to obtain that informed consent consistent with legal requirements and the necessary standards of practice for delivery services.

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