

**IN THE DISTRICT COURT IN AND FOR MUSKOGEE COUNTY
STATE OF OKLAHOMA**

JENNIFER THOMAS, individually and as)
mother and next friend of R.W., a minor,)
)
Plaintiff,)
)
vs.)
)
KEVIN FRANCIS WADE, M.D.; and)
WADE PEDIATRICS, P.C., a domestic for-)
profit professional corporation,)
)
Defendants.)

Case No. CJ-17-331

JUDGE _____

STATE OF OKLAHOMA
COUNTY OF MUSKOGEE
2017 SEP 25 PM 12: 27
PAULA SEXTON
COURT CLERK

PETITION

COMES NOW the Plaintiff, Jennifer Thomas, individually and as mother and next friend of R.W., a minor, by and through her attorneys of record, and for her causes of action against the Defendants, Kevin Francis Wade, M.D. ("Dr. Wade") and Wade Pediatrics, P.C., a domestic for-profit professional corporation ("Wade Pediatrics), alleges and states as follows:

PARTIES & VENUE

1. Plaintiff Jennifer Thomas is a resident of Muskogee County, Oklahoma, and is the mother of a minor son, R.W.
2. Dr. Wade is a licensed medical doctor practicing pediatric medicine in Muskogee, Oklahoma.
3. Dr. Wade owns, operates, and administers his medical practice at his clinic, Wade Pediatrics, located at 3505 W. Broadway in Muskogee, Oklahoma.
4. The actions giving rise to this litigation related to medical treatment and care rendered to R.W. by Dr. Wade and Wade Pediatrics; such treatment and care occurred in Muskogee, Muskogee County, Oklahoma.
5. This Court has jurisdiction over the parties, and venue is appropriate in this county.

6. Plaintiff seeks damages in excess of the amount required for diversity jurisdiction pursuant to 28 USC §1332.

FACTS

7. Plaintiff re-alleges and re-incorporates all allegations contained in Paragraphs 1 – 14.

8. In the fall of 2016, 14-year-old R.W. started his freshman year at Haskell High School, and went out for the football team. He played running back and linebacker, and was on special teams.

9. In late August and early September of 2016, R.W. began experiencing headaches and associated nausea and/or vomiting.

10. On September 5, 2016, R.W. went to see his regular pediatrician, Dr. Wade, at Wade Pediatrics.

11. Dr. Wade initially diagnosed R.W. with a viral illness.

12. On September 12, 2016, R.W. was still experiencing headaches, nausea, and vomiting. He saw Dr. Wade that day, and Dr. Wade diagnosed a viral illness and discussed with R.W. and his mother the possibility of a concussion.

13. Dr. Wade's nurse practitioner ordered a CT scan of the brain, and it was performed on September 15, 2016.

14. The CT revealed a cystic lesion within the left temporal fossa measuring 5.1 by 3 centimeters, possibly indicating an arachnoid cyst.

15. Dr. Wade placed R.W. in "concussion protocol" on September 18, 2016, to continue through September 22, 2016.

16. Dr. Wade's nurse practitioner then ordered an MRI of R.W.'s brain, and it was performed on September 22, 2016.

17. The MRI revealed a 5 by 3.3. by 3 centimeter left middle cranial fossa arachnoid cyst.
18. R.W. returned to Dr. Wade on Friday, September 23, 2016, presenting with a headache accompanied by nausea and vomiting.
19. Dr. Wade noted on Friday, September 23, 2016 that R.W. had progressed successfully through "concussion protocol" and possessed no other sequelae.
20. Dr. Wade also noted on Friday, September 23, 2016 that the MRI was within normal limits, and classified the arachnoid cyst as an incidental finding. Dr. Wade's assessment /diagnosis at that time was "CONCUSSION – RESOLVED."
21. Also on Friday, September 23, 2016, Dr. Wade released R.W. to active, full-contact sports.
22. On the night of Friday, September 23, 2016, R.W. dressed and played very limited minutes in Haskell High School's varsity football game against Stigler High School.
23. R.W. also participated on a limited basis in football practice the following week.
24. On Friday, September 30, 2016, Haskell High School played a varsity football game against Henryetta High School. R.W. dressed and played in the game.
25. During the game, R.W. absorbed a hit while carrying the football. The hit caused the arachnoid cyst to rupture.
26. As a result, R.W. was severely injured, taken to the hospital in Henryetta, and then airlifted to Saint Francis Hospital in Tulsa, Oklahoma, where he underwent emergency brain surgery.
27. R.W. sustained a permanent traumatic brain injury as a result of the collision.
28. The injury occurred due to the acts and omissions of Dr. Wade and Wade Pediatrics, as Dr. Wade released R.W. to play contact sports without further evaluation of the

large arachnoid cyst in his left temporal fossa. In this case, it is not within the scope of practice for a general pediatrician to make the decision to return to contact sports without an opinion from a pediatric neurosurgeon. Had this referral been made, this trauma would have been prevented.

29. The medical care and treatment provided to R.W. by Dr. Wade and Wade Pediatrics departed from accepted standards of medical care.

30. These departures from accepted standards of medical care caused R.W. to suffer permanent and continuing injuries and damages.

31. These departures from accepted standards of medical care caused Plaintiff Jennifer Thomas to suffer continuing injuries and damages.

32. Plaintiff Jennifer Thomas files this action seeking damages on behalf of herself and her minor son, R.W.

33. Defendants' medical treatment of R.W. was not only negligent, but also grossly negligent, reckless, and in disregard of the safety of R.W. and the public at large, meaning that Plaintiff is also entitled to an award of exemplary or punitive damages against Dr. Wade and Wade Pediatrics.

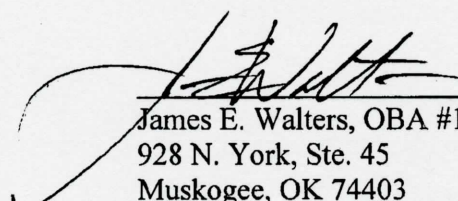
34. Plaintiff further contends that the affidavit requirements of 12 O.S. § 19.1 are unconstitutional. Without waiving any constitutionality arguments, Plaintiff states that, prior to filing this lawsuit, her attorneys consulted with a qualified medical expert witness. The qualified medical expert witness has prepared a written report critical of the care provided by the Defendants.

WHEREFORE, Plaintiff Jennifer Thomas, individually and as mother and next friend of R.W., a minor, demands a jury trial and prays that this Court award her compensatory damages in excess of the amount required for diversity jurisdiction pursuant to 28 USC §1332 against all

Defendants, plus punitive or exemplary damages, attorney fees, costs, interest and any such other relief this Court deems just and proper.

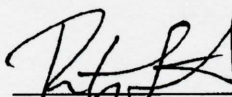
Respectfully submitted,

WALTERS LAW OFFICE


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ATTORNEY'S LIEN CLAIMED

AFFIDAVIT OF JAMES WALTERS AND RUSTY SMITH

STATE OF OKLAHOMA)
) SS:
COUNTY OF MUSKOGEE)

We, James E. Walters and Rusty Smith, state under penalty of perjury under the laws of Oklahoma that the following is true and correct:


1. We are the attorneys for Plaintiff Jennifer Thomas. We, on behalf of the Plaintiff, have consulted and reviewed the facts of this claim with a qualified expert.

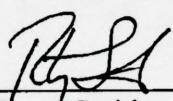
2. We, on behalf of the Plaintiff, have obtained a written opinion from the expert that identifies the Plaintiff and includes the determination, based on a review of the available relevant material, that a reasonable interpretation of the facts supports a finding that the acts or omissions of Defendants, Kevin Francis Wade, M.D. and Wade Pediatrics, constitute professional negligence.

3. Based on this review and consultation with the expert, we and the Plaintiff believe this claim is meritorious and based on good cause.

We state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

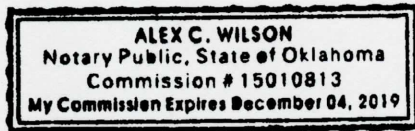
Further Affiants sayeth naught.

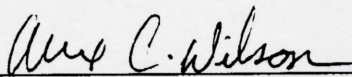


James E. Walters


Rusty Smith

Subscribed and sworn to before me, a Notary Public, on this 25th day of September, 2017.





Notary Public, Commission No. 15010813

My Commission Expires: December 4, 2019