

Child Care Liability

SERVICES

Personal Injury

August 24, 2018

On April 28, 2009 a jury in Fall River Superior Court returned a defense verdict in favor of Defendants Luke Courtmanche, Christine Jasinski, Carolyn Burrell and Vincent Marturano, four employees of the Old Colony YMCA in Taunton (“YMCA”). Boyle | Shaughnessy Law represented Mr. Courtmanche, the YMCA program director, and Ms. Jasinski, the YMCA group leader. Mark Shaughnessy represented Mr. Burrell, the YMCA program administrator, and Mr. Marturano, the chief executive officer of the YMCA. The Plaintiff alleged that eight-year-old Trent Tevlin suffered a heart attack while participating in an after-school program at the YMCA and as a result of the Defendants’ negligence suffered traumatic brain injuries. The Plaintiff demanded \$11 million in damages, but after three weeks of trial the jury returned a verdict in favor of all defendants.

Specifically, the Plaintiff alleged that prior to entering the YMCA after-school program, Tevlin’s mother informed the YMCA that Tevlin was diagnosed with hypertrophic cardiomyopathy (HCM). Because of this condition, Tevlin was a patient at the pediatric cardiology department at Children’s Hospital in Boston and he was being monitored by doctors David Fulton and Frank Cecchin at Children’s Hospital. Despite a letter authored by Dr. Fulton releasing Tevlin to participate in “recreational activity” appropriate for children his age, the Plaintiff alleged that the YMCA violated the Code of Massachusetts Regulations for failing to develop a specific medical plan for Tevlin in light of his documented medical condition.

On November 13, 2002, Tevlin complained of being tired while participating in the YMCA after-school program and the group leader, Ms. Jasinski, allowed him to rest in the gymnasium. After sitting down, Tevlin suffered a cardiac arrest and was the subject of a prolonged resuscitation and lifesaving effort at the YMCA which carried over into the emergency room at nearby Morton Hospital. Due to oxygen loss, Tevlin suffered an anoxic brain injury that left him severely and permanently impaired. The Plaintiff alleged the negligence of the YMCA employees, including the failure to develop a specific medical plan, caused Tevlin’s brain injury. The Plaintiff also alleged the YMCA failed to execute proper resuscitative efforts following Tevlin’s cardiac arrest.

In 2007, five years after the incident, it became apparent that Tevlin’s heart condition was failing due to his HCM. A lengthy process commenced to consider Tevlin for heart transplant including an application considered by the Children’s Hospital heart transplant team overseen by Dr. Elizabeth Blume, a witness in the case. After weeks of medical testing, psychological

analysis and social assessment, on February 2008, the heart transplant team denied Tevlin's application, primarily because of so-called "psychosocial" concerns.

During trial the Plaintiff alleged that Tevlin's psychosocial needs— presented as insufficient family support and severe brain injury— could be solved if a life-care plan could be funded. Dr. William Burke, a life-care plan expert, testified that it would cost \$4.3 million to fund this plan. The Plaintiff called three cardiologists from Children's Hospital, a radial neurologist and physiatrist to testify with regard to the diagnosis, and Tevlin's needs. The Plaintiff further argued that if the jury were to award the cost of the life care plan, then Tevlin would become a candidate for heart transplant.

In addition to disputing the Plaintiff's specific allegations of negligence, the Defendants denied that the anoxic brain injury occurred during their response to Tevlin after his cardiac arrest. To this end, the defense called a Pediatric Neurologist Dr. David Mandlebaum, Hasbro Childrens' Hospital, in Providence. Mandlebaum testified that the anoxic injury occurred during the resuscitative period while being treated by the medical professionals, not while Tevlin was in the care of the YMCA. The defense also called Cardiologist Dr. Thomas Piemonte who debunked the Plaintiff's expert cardiologist who offered a forensic opinion that Tevlin was unconscious and undetected for a number of minutes while in the YMCA's care. The Plaintiff's expert Dr. Frank Cecchin, an electro-physiologist, testified that due to extensive cardio version he was able to pin point Tevlin's cardiac arrest on a timeline that alleged the YMCA failed to detect Tevlin needed medical attention for eight minutes. The defense showed that Dr. Cecchin's opinion was not credible because he did not consider factual testimony that contradicted his theory.

Similarly, the defense attacked the Plaintiff's theory that the Code of Massachusetts Regulations required the YMCA to have a specific medical plan in place for Tevlin. It was the Defendants' position that the plan was not called for by the treating cardiologist, who testified that this cardiac arrest was both unpredictable and unforeseeable. The Plaintiff argued, to the contrary, that there were warning signs documented in the medical records possessed by the YMCA, both on the day of the incident and prior days, indicating that Tevlin repeatedly suffered from symptoms foreshadowing his cardiac arrest. The Plaintiff further argued that it was the YMCA's burden, pursuant to the Code of Massachusetts Regulations, for the Defendants to learn more about Tevlin's condition and alert and educate YMCA employees about the signs and symptoms of cardiac arrest and, in particular, hypertrophic cardiomyopathy.

In addition to undermining plaintiff's arguments through cross-examination of Tevlin's treating physician, Dr. Fulton, the Defendants retained an expert witness, Ardith Wieworka, who was the former commissioner of the Office of Childcare Services ("OCCS") in Massachusetts from 1996 to 2004. Ms. Wieworka testified that the OCCS did not expect licensed programs, like

the YMCA's, to initiate involvement with medical treatment absent express direction of a parent, or a treating physician. Accordingly, the defense successfully argued that the YMCA did not violate any applicable regulations.