

Third Circuit Upholds Dismissal of Civil Rights Claims Arising from Report of Suspected Child Neglect

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The United States Court of Appeals for the Third Circuit has rejected civil rights claims brought by parents against healthcare providers arising from a report of suspected child neglect in *Ferris v. Milton S. Hershey Medical Center* (July 12, 2017). The court held that the refusal by parents of a neonate to consent to medically-necessary treatment and provide information needed to evaluate the child were sufficient grounds for the medical providers to conclude that the child was in imminent danger of serious bodily harm, justifying the report of neglect and subsequent seizure of the child by the authorities. The Third Circuit's decision in *Ferris* represents yet another victory for White and Williams in the emerging area of civil rights liability for medical providers.

PLAINTIFFS' OBSTRUCTIVE CONDUCT PROMPTED A REPORT OF SUSPECTED CHILD NEGLECT WHICH RESULTED IN REMOVAL OF THE CHILD FROM THEIR CUSTODY

The operative facts identified by the Third Circuit are as follows: Plaintiffs are the parents of an infant born prematurely in an ambulance in the parking lot of the Milton S. Hershey Medical Center in June 2010. The infant was born near death with life-threatening complications, including respiratory distress. Following the delivery of the infant, plaintiffs refused to consent to certain medical interventions, were unable to provide necessary information to evaluate the need for certain treatments, and provided false information regarding the mother's medical history. The court described plaintiff-mother's interactions with the medical staff as being "uncooperative" and "unhelpful."

Faced with an increasing risk of infection absent medical treatment, members of the medical staff ultimately made a report of suspected child neglect to social services. Social services arrived at the hospital and conducted an investigation which culminated in the police taking custody of the infant to allow for the necessary medical treatment to be administered. Custody of the child was returned to plaintiffs shortly thereafter.

Plaintiffs subsequently brought suit against the medical staff and social worker under 42 U.S.C. § 1983, alleging violations of their rights to substantive and procedural due process under Amendments IV and XIV of the Constitution. In October 2016, the United States District Court for the Middle District of Pennsylvania granted all defendants' motions for summary judgment and dismissed plaintiffs' claims in their entirety prior to trial. Plaintiffs appealed.

THE MEDICAL PROVIDERS REASONABLY BELIEVED THAT THE CHILD WAS IN IMMINENT DANGER AND, THUS, WERE NOT SUBJECT TO LIABILITY

The Third Circuit adopted the District Court's comprehensive analysis of the factually-intensive record and affirmed the dismissal of plaintiffs' claims. The court held that the medical providers possessed a reasonable belief that the infant was in imminent danger of serious bodily harm based on:

(1) Plaintiffs' refusal to consent to three medical treatments;

- (2) Plaintiffs' refusal to consent to the infant undergoing a stay for observation;
- (3) Plaintiffs' refusal/inability to provide information relating to plaintiff-mother's pre-natal care and medical history;
- (4) Plaintiff-mother's provision of false information relating to the identity of her midwife; and
- (5) Plaintiff-mother's "unorthodox" behavior, including insisting on holding the infant while urinating and undergoing a surgical procedure.

In short, because of the emergent nature of the situation, the court held that the report of suspected neglect and the subsequent seizure of the infant were justified and, consequently, plaintiffs' rights to substantive and procedural due process were not violated.

The Third Circuit's opinion in *Ferris* culminated five years of litigation for the White and Williams team of Thomas M. Goutman, Kim Kocher, and Geoffrey F. Sasso. This team has extensive experience defending medical providers from a variety of constitutional claims, including those involving suspected child abuse and child neglect, and has an outstanding track record with securing victories for the firm's clients.

This opinion follows the authors' May 2017 presentation at White and Williams MEDx Talks. Listen to their podcast, "Patient Care of Constitutional Proportions: Exposure to Civil Rights Litigation," for more on the broad spectrum of potential civil rights claims in the medical arena.

If you have questions or would like additional information, please contact Kim Kocher (kocherk@whiteandwilliams.com; 215.864.6332) or Geoffrey Sasso (sassog@whiteandwilliams.com; 215.864.6245).

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