

FILED

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

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RICHARD R. ROOKER, CLERK

RR D.C.

GILBERT OLERUD and Wife,)
ANNETTE RAE OLERUD,)
Individually and as Next of Kin of)
RACHEL CAMILLE OLERUD,)

Plaintiffs,)

v.)

Civil Action No. 07C2101

DR. WALTER M. MORGAN, III,)
PEDIATRIC SURGICAL ASSOCIATES,)
and VANDERBILT UNIVERSITY)
MEDICAL CENTER,)

Defendants.)

AFFIDAVIT OF ANNETTE RAE OLERUD

1. The undersigned, Annette Rae Olerud, is a resident of Smyrna, Rutherford County, Tennessee, residing at 5971 Lee Road. I reside at that address with my husband, Gilbert Olerud, and my two surviving children, Gil and Shelby. Rachel Camille Olerud was my daughter, and died as a result of an undiagnosed cancerous lump which was first observed on her neck, near the hairline, in November 2005. Rachel was referred by our pediatrician for a "biopsy" in an expedited office meeting with Dr. Walter Morgan at Vanderbilt Children's Hospital on December 23, 2005. Dr. Morgan did not complete the biopsy on that date, and instead indicated that the lump appeared to be a "sebaceous cyst," which required nothing more than antibiotics and continued observation. The records of Dr. Morgan and Vanderbilt Children's Hospital from that office visit have been lost or misplaced, according to Dr. Morgan.

2. Because of the facts described above, my family commenced litigation against Dr. Walter M. Morgan, III and Vanderbilt University alleging medical malpractice.

3. I have never previously been involved in litigation, and do not know any of the Davidson County judges. Prior to this litigation, I have never known of Judge Barbara Haynes and knew nothing about her background or experiences. Accordingly, after commencement of the case, all I knew about Judge Haynes is what I have been advised by my attorney, Ken Burger. Mr. Burger was very complimentary of Judge Haynes, based upon his years of experience in trying cases in her courtroom.

4. On or about January 21, 2010, Mr. Burger called me and advised me that Judge Haynes had dismissed our medical malpractice case against Dr. Morgan and Vanderbilt. Since we had previously prevailed in an earlier summary judgment motion (on what I understand to be the same medical evidence), I felt shocked and very saddened. Following my lengthy telephone discussion with Mr. Burger regarding his advice that we appeal the decision, I felt emotionally devastated by what had occurred. My family is still grieving the loss of our beloved daughter, who would have turned 15 this past year. Considering the loss of Rachel's medical records from the date of her first evaluation at Vanderbilt Children's Hospital, and the strong medical evidence that Rachel would have survived if proper follow up had occurred at Vanderbilt, I had experienced many sleepless nights searching for answers to understand what has occurred in my case. I decided to look on the internet. I was shocked beyond belief to learn that the judge who had dismissed our case against Dr. Morgan and Vanderbilt was on the Board of Directors as a "voting member" for Vanderbilt Children's Hospital, I immediately called Mr. Burger and advised him of what I had learned. Mr. Burger advised me that that was not possible and that I must be mistaken. While we were on the telephone, I asked Mr. Burger to go to the Vanderbilt University website and guided him

to the information, copies of which are attached to this affidavit. After discussing the matter with Mr. Bürger, he agreed that he would file a motion with the Court to request that the dismissal order be set aside, and that Judge Haynes withdraw from further involvement in the case. For obvious reasons, I am concerned that Judge Haynes cannot be impartial and unbiased in deciding the case for a Defendant hospital which relies upon her judgment and assistance in determining its policies and its welfare. The attached statement regarding the Board of Directors indicates that they are "advocates" for the benefit of Vanderbilt Children's Hospital. Knowing that Dr. Morgan is an employee of Vanderbilt (as he states in his deposition), I honestly do not see how she can fairly decide the issues in our case, as a member of the Board of Directors for the Defendant.

5. In addition to being a member of the board at Vanderbilt Children's Hospital, I discovered in the information which I located following Mr. Burger's call, that Judge Haynes is very actively and closely involved with the Vanderbilt Children's Hospital, and the personnel who are at least indirectly involved in my case. Dr. Morgan testified that, as a Vanderbilt employee, he answers directly to the chairman of his department, Dr. Wallace Neblett. Dr. Neblett's name appears on the internet posting of the Vanderbilt Children's Hospital's "leadership team," along with the "Board of Directors." Further, the attached documents reflect that Judge Haynes has received various awards from Vanderbilt Children's Hospital. The hospital's news releases reflect Judge Haynes' active involvement in the activities of the hospital. She and her husband are also listed as annual contributors of more than \$1,000.00.

6. The loss of our child due to the terrible medical negligence of Dr. Morgan and Vanderbilt Children's Hospital is undoubtedly the worst event experienced by our family. Learning that the judge who has dismissed the case, without a jury trial, is on the Board of Directors of the

