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Med-Mal Defense Win Marks Fred Gleaton's Final Jury Trial

Owen, Gleaton, Egan, Jones & Sweeney founding partner Fred Gleaton said the emotional case involving the death of a newborn was his last trial.

By Greg Land | August 08, 2019



Fred Gleaton. (Courtesy photo)

Lawyers for a nurse anesthesiologist accused of medical malpractice in the death of a newborn notched a win in Habersham County following what the defense said was a “very emotional” trial.

It’s also the last trial for Owen, Gleaton, Egan, Jones & Sweeney

(<https://www.owengleaton.com/>) founding partner Frederick Gleaton, who's wrapping up 43 years of trial work to take of counsel status at the firm.

Gleaton said the details of the case, while undeniably tragic, did not play into his decision to hang up his courtroom spurs.

"The trial didn't play any role in that," he said. "I just really liked the guy I was representing, and I thought I could do a better job than anybody else would have."

"I'm just ready to do something else," Gleaton said. "I started [in the law] at 23 and I'm 66 now, so I've squeezed in about two-thirds of my life doing this. So I'm going to be of counsel here and not try anymore cases."

Gleaton, who handled the trial with firm partner David Hayes, said the only plaintiff's pretrial demand had been for defendant Joshua Newby's \$1 million insurance policy limit.

"Mr. Newby did not consent; he wanted to try the case," Gleaton said. "He didn't think he'd done anything wrong."

The parents of the deceased child are represented by Clayton solo Michael Cummings II (<http://mikehcummings.com/>), who did not respond to requests for comment.

The case involved a 2015 incident at the Habersham Medical Center in Demorest in northeast Georgia.

The child's mother was in labor and admitted to a "birthing room" in the small hospital. Her pediatrician had been notified but had not arrived.

Shortly before she gave birth, nurses notified Newby that the child was likely to need his airway cleared after delivery because they noticed large amounts of meconium, or fecal matter, in the amniotic fluid when the placenta ruptured.

When the nurse midwife delivered the baby he was "blue, floppy and not breathing. There was a true knot in his umbilical cord and it was wrapped around his neck," according to the defense portion of the pretrial order (<https://images.law.com/contrib/content/uploads/documents/404/34442/Bragg-v.-Newby-Habersham-CPTO.pdf>).

Newby took the baby and suctioned out his airway and began resuscitation efforts.

The baby began breathing and four minutes after birth “he was nice and pink,” Gleaton said. “The father, God bless him, took a picture. I don’t know how we would have had a case without that picture.”

The baby seemed fine for a few hours then his oxygen levels began to fall, and he was transferred to Northeast Georgia Hospital in Gainesville and intubated.

“They were never able to wean him off the intubator,” Gleaton said.

He was transferred to Egleston Hospital in Atlanta, and died there 12 days after being born.

In 2016, parents David and Bree Bragg sued (<https://images.law.com/contrib/content/uploads/documents/404/34442/Bragg-v.-Newby-Habersham-CPTO.pdf>) Newby and his practice, Habersham Anesthesiology Associates, in Habersham County Superior Court, for negligence. Among the claims, he was accused of not intubating the newborn or using a catheter suction to remove any additional meconium in his airway.

During a weeklong trial before Judge Chan Caudell in Clarkesville, Gleaton said the plaintiffs’ counsel also argued that Newby was not immediately available when the nurses realized the child would need his assistance.

“They made a big to-do that he should have been right there. In our view, he responded quickly,” he said.

There was also an issue as to whether Newby was covered under Georgia’s “emergency provider statute,” under which the standard of care is heightened and a defendant must be found to have committed gross negligence to be liable.

“That did come into play,” Gleaton said. “There was verdict interrogatory that found Mr. Newby was providing emergency services, and was not grossly negligent.”

Key plaintiff witnesses included neonatologist Jerrold Schlessel of Manhasset, New York, and DeKalb County Medical Examiner Gerald Gowett, he said.

The defense called Jackson, Tennessee, neonatologist Scott Guthrie and pediatrician Edwin Travathan of Vanderbilt University

The trial wrapped up Aug. 2, and the jury took about 90 minutes to return a defense verdict, Gleaton said.

He did not speak to the jurors afterward.

“This was one of those cases that was tried very emotionally on the other side,” he said. “And when Mr. Newby got on the stand, he was pretty emotional too: ‘I’ve lived for three years with people accusing me of killing their child.’”

“The tension was so great the judge gave an instruction to the courtroom before the verdict was read telling everyone that outbursts would not be tolerated,” he said.

He said the jury foreman included a note saying that “after tearful consideration they had no choice but to decide that the preponderance of the evidence did not prove negligence.”

Afterward, “the jury went out the backdoor and I just looked straight ahead,” he said. “I didn’t want to bother any of them anymore.”

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