

IN THE SUPREME COURT OF MISSISSIPPI

**MALIYAH ASHUNTI HUBBARD,
MINOR, BY AND THROUGH
TIFFANY HUBBARD, HER MOTHER
AND NATURAL GUARDIAN**

APPELLANT

v.

CASE NO. 2009-IA-00464-SCT

**McDONALD'S CORPORATION;
MICHAEL L. RETZER D/B/A
McDONALD'S; AND
JOHN DOE DEFENDANTS A-D**

APPELLEES

ORAL ARGUMENT REQUESTED

REPLY BRIEF FOR APPELLANT

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ARGUMENT

Understandably, Defendants/Appellees, recognizing that the Trial Judge committed error by deciding facts, simply decides to call some facts "theory" and other facts "speculation" hoping that this Court will ignore all the facts actually in the record. Thus, Defendants choose completely to ignore the uncontroverted medical literature relied upon in part by Plaintiff's expert. Indeed, some facts of record are just ignored—apparently because of some squeamishness or to divert the Court's attention from what are really facts, e.g., Defendants never admit that the clear liquid admittedly a fact of record was not green and yellow as would be required if the leakage was trichomonas rather than water. Most amazingly, and probably because it most clearly refutes Defendants' sole real argument that the nitrazene test showed no amniotic fluid, is Defendants' refusal to even admit, what is medically undisputed, that the nitrazene test does not test specifically for amniotic fluid nor for trichomonas but does test for a positive pH, which positive pH occurs when either or both amniotic fluid or trichomonas is present. Since the nitrazene test did not find an increased pH but a subsequent test

determined that the trichomonas (which would have an increased pH) was present, the nitrazene test could not have been performed properly. This is not speculation. This is medicine. This is reaching logical conclusions based on facts of medical record and required by the relevant medical literature.

Facts are not made theories by refusing to call a fact a fact. Conclusions are not made unsupported speculation when they are the result of scientific analysis of facts supported by relevant medical literature. A review of some of the facts and medically supported conclusions are succinctly repeated below:

1. Tiffany Hubbard presented herself to Grenada Lake Medical Center where she underwent a physical examination.
2. She returned to Grenada Lake Medical Center on April 26 and reported that her water had broken on April 23.
3. A nitrazene test was performed which gave a negative result for pH.
4. The negative result for pH indicated both that there was no amniotic fluid present and that she did not suffer from trichomonas.
5. By performing a different test for trichomonas but not for amniotic fluid, the hospital discovered that she did, in fact, suffer from trichomonas.
6. Fluid that was reported was clear.
7. The trichomonas fluid is not clear. Trichomonas infections are green, yellow, and frothy.
8. After her high intermittent water leak which began on April 23 developed

into a full rupture she still had a bulging bag of water.¹

CONCLUSION

Defendants/Appellees brief is nothing more than "You call evidence facts. I call it speculation" without otherwise dealing with the evidentiary material before the Trial Court. For these reasons and for the reasons set forth in Plaintiff's/Appellant's Brief in Chief, it is respectfully submitted that the Trial Court's ruling should be reversed and this case remanded.

RESPECTFULLY SUBMITTED, this the 25th day of January, 2010.

MALIYAH ASHUNTI HUBBARD,
MINOR, BY AND THROUGH
TIFFANY HUBBARD, HER MOTHER
AND NATURAL GUARDIAN
Appellant

BY: 
WILLIAM C. WALKER, JR.

¹ Defendants/Appellees relegate to a footnote the undisputed fact of the bulging membranes and say without any citation to any medical authority, "Dr. DeSalvo ignores the fact that her membranes have just ruptured and attempts to connect the bulging nature of the membranes to a previous undiagnosed rupture— pure speculation yet again." (p.13).

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CERTIFICATE OF SERVICE

I, WILLIAM C. WALKER, JR. , do hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the above and foregoing to the following counsel of record and to the Trial Judge:

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Honorable Joseph H. Loper, Jr.
Circuit Court Judge
Post Office Box 616
Ackerman, MS 39735

This the 25th day of January, 2010.


WILLIAM C. WALKER, JR.