

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 19, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 02-2576

Cir. Ct. No. 99-CV-26

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**MEGAN MASON, A MINOR, BY HER GUARDIAN AD LITEM,
BRIAN MCGRAW, BRENDA MASON AND MICHAEL MASON,
INDIVIDUALLY AND AS THE PARENTS OF MEGAN MASON,**

PLAINTIFFS-RESPONDENTS,

**PRINCIPAL MUTUAL LIFE INSURANCE COMPANY AND
STATE OF WISCONSIN, MEDICAL ASSISTANCE
PROGRAM-TITLE 19,**

**INVOLUNTARY-PLAINTIFFS-
RESPONDENTS,**

v.

WISCONSIN PATIENTS COMPENSATION FUND,

DEFENDANT-CO-APPELLANT,

**PRAIRIE DU CHIEN MEMORIAL HOSPITAL ASSOCIATION,
INC., D/B/A PRAIRIE DU CHIEN MEMORIAL HOSPITAL,**

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Crawford County:
EDWARD E. LEINEWEBER, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Prairie du Chien Memorial Hospital and the Wisconsin Patients Compensation Fund (collectively, the hospital) appeal a medical malpractice judgment entered against them in favor of Megan Mason, her parents, Principal Mutual Life Insurance Company and the State of Wisconsin Medical Assistance Program (collectively, the Masons). The hospital claims there was insufficient evidence to support the verdict and that it is entitled to a new trial because the jury’s findings were contrary to the weight of the evidence and because it was prejudiced by violations of evidentiary rulings. The Masons contend that the hospital lost its right to review of those issues because they were not decided until more than ninety days after the jury rendered its verdict. We conclude it is unnecessary to decide whether the issues may be raised as of right or only in the context of a request for discretionary reversal because we would deny relief under either standard of review. Accordingly, we affirm.

¶2 Megan Mason was born in distress—blue, not breathing or moving and with almost no heart function. Blood gas tests on the umbilical cord showed that Megan had begun suffering oxygen deprivation during labor. The attending physician provided external cardiac and respiratory support for Megan for about an hour after her birth until a helicopter transport team arrived and took over the resuscitation effort. Although Megan ultimately survived, she suffered permanent brain damage resulting in cerebral palsy.

¶3 The Masons filed suit and argued at trial that Megan’s injuries were caused by the failure of the attending nurses to properly monitor and chart

Megan's heart rate during labor and/or by the attending physicians' failure to properly intubate Megan after her birth. The jury found the hospital (as the employer of the nurses), but not the doctors, negligent.

¶4 The hospital does not dispute that there was expert testimony stating that the nurses had failed to properly identify and monitor variations in Megan's heart rate during labor. It contends that any evidence to that effect was outweighed by other testimony indicating that the nurses' actions met the standard of care. We are satisfied, however, that the jury could properly resolve the conflict among the opinions given by the experts and conclude that the hospital was negligent based on the action of one or more of the nurses. The trial court acted within its discretion when denying a new trial on the grounds that the verdict was against the great weight of the evidence.

¶5 The hospital further maintains there is no evidence in the record that any substandard care in monitoring Megan's heartbeat during labor caused Megan's injuries because there was uncontradicted testimony that whatever brain damage might have occurred during labor would have been less extensive than that which occurred during the extended resuscitation effort following birth, and the nurses were not directly involved in the resuscitation effort.

¶6 The hospital's contention ignores evidence in the record relating to actions which the doctors could have taken prior to Megan's birth if the doctors had been put on notice that Megan's heartbeat during labor indicated that she was in distress. There was testimony that the doctors could have had a neonatal team present; they could have given the mother oxygen and hydration; and could have turned the mother on her side to try to relieve cord compression. From this, the jury could reasonably have found that the extended resuscitation effort during

which Megan suffered the most significant brain damage could have been avoided if the nurses had been more diligent in monitoring Megan's heartbeat. There was also testimony that Megan's sluggish response to resuscitation efforts could have signified that her brain function was already significantly impaired by the time of birth. Therefore, there was sufficient evidence for the jury to conclude that the nurses' actions were a substantial cause of Megan's injuries, and the trial court properly refused to direct a verdict on the question of causation.

¶7 Finally, we are not persuaded that the trial court misused its discretion when it refused to grant the hospital a new trial based on the Masons' counsel's violations of the trial court's evidentiary rulings. Counsel asked six questions relating to how often the nurses had taken the mother's temperature and about whether the charting had been properly done, in violation of a pretrial order. Three of the questions were never answered because the trial court sustained prompt objections. The answers to the other questions were stricken, and the court went on to advise the jury:

There has been no evidence that the taking or recording of vital signs and temperatures or the lack of taking and recording of vital signs and temperature have caused any injury to Megan Mason. These matters have been the subject of legal rulings made by the court earlier, and I have concluded that they're irrelevant and should not in anyway be received in evidence or considered by you in evaluating whether the nurses have met the standard of care.

¶8 The trial court was in the best position to observe the violations and gauge their effect over the course of a three-week trial. Its conclusion that the remedial instruction was sufficient was reasonable, and we see no miscarriage of justice which would prompt us to exercise our own discretionary reversal power.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5 (2001-02).

