

\$9.4M deal ends birth injury case

Winnebago County child, now 9, born in Wisconsin hospital

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The family of a child born with severe brain injuries has settled their Winnebago County case for \$9.4 million.

A settlement agreement was reached one week before a May 28 scheduled trial date. The case was dismissed Thursday by Associate Judge Donna R. Honzel, according to one of the plaintiff's attorneys Francis P. Morrissey of Wise Morrissey LLC.

On Sept. 19, 2009, Anna Little, then a 42-year-old mother, went to Beloit Memorial Hospital in Wisconsin to give birth to her daughter.

Little was admitted and placed on a fetal monitor and other monitoring systems, court records stated. She was treated by a hospital nurse and defendant Dr. Russell Albert, a hospital employee who also works for Beloit Clinic S.C.

During the second stage of labor, also known as the pushing stage, Albert disconnected some of the monitors but kept others in place, Morrissey said.

He said Albert should not have disconnected the ones he did because about an hour after the mother was first admitted the fetal monitor showed "variable decelerations" indicating the umbilical cord could be compressed and the fetus was not getting proper blood flow.

Morrissey said the monitor in place was picking up both the fetal and maternal heart rates and it was difficult to tell whose they were seeing at times. Meanwhile, the decelerations were worsening, Morrissey said.

Mercy Little was born but has since been diagnosed with cerebral palsy, spastic quadriplegia and hypoxic is-chemic encephalopathy, a neonatal birth injury caused by an insufficient flow of oxygen and blood to the brain.

Anna Little filed a lawsuit in Winnebago County, where they reside, against Albert, the hospital, the clinic where Albert also worked and the Injured Patients and Families Compensation Fund. The fund provides excess medical-malpractice coverage to Wisconsin health-care providers.

Morrissey said if the case had gone to trial it would have been tried in Winnebago County but Wisconsin law would have applied.

Wisconsin caps its noneconomic damages at \$750,000.

Defense attorneys contended the heart rate readings they observed during labor were accurate and belonged to the fetus, Morrissey said.

They also planned to argue at trial that the brain damage was caused by an infection which existed days before Mercy's mother went into labor, he said.

Now 9, Mercy requires lifelong care including constant stretching so her muscles stay loose and medication. She is also fed through a gastrostomy tube.

"I think this type of money is going to be life-changing, not only for the child but for the entire family," Morrissey said. "Now she's going to get some help and the whole family is going to get some help."

The plaintiffs were also represented by Michael L. Gallagher of Wise Morrissey LLC as well as Joseph Shannon and Patrick D. Cummings of Shannon Law Group P.C. in Woodridge.

The Injured Patients and Families Compensation Fund was represented by James R. Gutglass and Maria K. Schneider of Gutglass Erickson Bonville & Larson S.C. in Milwaukee.

Albert, Beloit Clinic and Beloit Memorial Hospital were represented by Samuel J. Leib and Sean Gaynor of Leib Knott Gaynor LLC in Milwaukee.

They could not be reached.

The Winnebago County case is *Anna Little v. Russell Dale Albert M.D., et al.*, 14 L
375.