

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: July 19, 2016)

JASON BLOUIN, INDIVIDUALLY, :
AND AS FATHER AND NEXT FRIEND :
OF QUENTIN BLOUIN, XAVIER :
BLOUIN, AND DECLAN BLOUIN, :
and HEATHER BLOUIN, :
INDIVIDUALLY :

V. :

C.A. No. PC-2015-3817

DIVYA KOSTER, M.D., JOSEPH :
SINGER, M.D., PATRICIA LYNCH- :
GADALETA, PA-C, RIVERSIDE :
PEDIATRICS, INC., KAREN L. :
MCGOLDRICK, M.D., SANTINA :
L. SIENA, and UNIVERSITY :
OB-GYN, INC. :

DECISION

“The law is reason free from passion.”
- Aristotle

LICHT, J. Plaintiffs—Heather Blouin (Mrs. Blouin) and Jason Blouin (Mr. Blouin) (collectively, Parents or Plaintiffs)—brought the instant Complaint alleging negligence against Defendants individually and on behalf of their sons Quentin Blouin (Quentin), Xavier Blouin (Xavier) and Declan Blouin (Declan) (collectively, Children or Plaintiffs). Defendants—Divya Koster, M.D. (Koster), Joseph Singer, M.D. (Singer), Patricia Lynch-Gadaleta, PA-C (Lynch-Gadaleta), Riverside Pediatrics, Inc. (Riverside), Karen L. McGoldrick, M.D. (McGoldrick), Santina L. Siena, M.D. (Siena), and University OB-GYN, Inc. (University) (collectively, Defendants)—have moved to dismiss all but four counts of the Complaint pursuant to Rule

12(b)(6) of the Superior Court Rules of Civil Procedure. For the reasons set forth in this Decision, the Court denies the Defendants' motions in part and grants them in part.

I

Facts and Travel

Mr. and Mrs. Blouin are the parents of Quentin, Xavier, and Declan, all of whom are minors. After the birth of their third child, Declan, Mr. and Mrs. Blouin became aware that they were both carriers for cystic fibrosis (CF). Due to the fact that both parents are carriers of CF, any children born to Mr. and Mrs. Blouin have a twenty-five percent chance of contracting the genetic disorder. Mr. and Mrs. Blouins' two youngest children, Xavier and Declan, have been diagnosed with CF. Following Xavier and Declan's diagnoses, Mr. and Mrs. Blouin brought the instant Complaint. The facts relevant to the motions as alleged in the Complaint are as follows.

Sometime after March 1, 2005, Mrs. Blouin became pregnant with her first child, Quentin. During that pregnancy, Mrs. Blouin was under the care of her OB-GYN, McGoldrick. Prior to Quentin's conception, McGoldrick did not conduct any genetic screening or testing to determine whether Mr. or Mrs. Blouin were carriers for CF. On January 21, 2006, Mrs. Blouin gave birth to Quentin, who was born without CF. Sometime thereafter, Mrs. Blouin discussed with McGoldrick her intention to conceive a second child. In December of 2008, Mrs. Blouin became pregnant with her second child, Xavier. Once again, neither Mr. Blouin nor Mrs. Blouin received genetic testing or screening to determine whether they were carriers for CF prior to conceiving Xavier or during that pregnancy.

Xavier was born on September 20, 2009. Two days later, he received a Newborn Screening Test (NST), which did not detect the presence of CF or any other genetic abnormality. However, over the next three years, Xavier paid numerous visits to Riverside where he was

treated by Koster, Singer and Lynch-Gadaleta for reoccurring CF symptoms including chronic coughs, severe congestion, chest and lung infections, abnormal bowel movements, malnutrition, and failure to thrive. Despite his symptoms, at no time during any of Xavier's visits to Riverside did Koster, Singer or Lynch-Gadaleta mention the possibility that Xavier might suffer from CF or diagnose Xavier with CF.

On February 7, 2011, Mrs. Blouin was seen by Siena at University. During her appointment, Mrs. Blouin informed Siena that she was planning to conceive a third child within the next three or four months. On or about January 2012, Mrs. Blouin became pregnant with her third child, Declan. Siena did not offer Mr. Blouin or Mrs. Blouin preconception screening in order to determine whether they were carriers for CF prior to Declan's conception. On September 10, 2012, Mrs. Blouin gave birth to Declan. An NST performed on Declan two days later revealed that Declan had tested positive for CF. On September 10, 2012, Declan underwent a sweat test through Lifespan Laboratories, which confirmed the results of the earlier NST. Despite Declan's diagnosis, none of the Defendants recommended that Xavier or Quentin be retested for CF.

On December 21, 2012, Mrs. Blouin informed Singer that due to Declan's diagnosis, she had been advised to have Xavier and Quentin tested for CF. On January 2, 2013, Xavier underwent a sweat test, which showed abnormally high levels of chloride, a symptom of CF. On June 28, 2013, Mrs. Blouin reported to Singer that Xavier had tested positive for CF. On or about July 2013, both Declan and Xavier were positively diagnosed with CF. Further, on August 1, 2013, Xavier was diagnosed with Celiac Disease. During 2013, Mrs. Blouin continuously reported suffering from high stress and anxiety levels out of concern for the health and well-

being of Xavier and Declan. She has since been treated and prescribed medication for severe anxiety and stress.

On August 31, 2015, the Parents filed the instant Complaint. The Parents—individually and as next friends of the Children—allege that the Defendants negligently breached the required standard of care when they 1) failed to counsel or offer genetic counseling to the Parents regarding the likelihood that their Children would inherit CF; 2) failed to timely treat Xavier for CF; and 3) failed to timely diagnose Xavier with CF prior to the birth of Declan. The Complaint alleges that had the Parents known that they were carriers of CF they would not have conceived the Children. Moreover, the Complaint alleges that had the Defendants timely diagnosed Xavier, the Parents would not have conceived Declan.

In Counts 1-5 of the Complaint, the Parents seek damages for emotional distress and the extraordinary medical expenses they have incurred and will continue to incur for the treatment and care of Xavier and Declan. In Counts 6-11 of the Complaint, Xavier and Declan—through the Parents as next friends—seek damages for the extraordinary medical expenses they will incur upon reaching majority and in the event that they outlive their parents. In Counts 12-21 of the Complaint, the Parents seek damages for loss of consortium. In addition, in Counts 22-26 of the Complaint, Quentin—through the Parents as next friends—has alleged loss of consortium claims against the Defendants. In Counts 27-36, the Parents have alleged respondeat superior against Riverside and University for the alleged negligence of Singer, Koster, Lynch-Gadaleta, Siena, and McGoldrick.

Subsequently, the Defendants separately filed motions to dismiss all but four counts of the Complaint. This Court notes that McGoldrick has not moved to dismiss Count 1, which alleges that due to her negligent failure to offer genetic screening or properly counsel the Parents

as to the dangers of CF, McGoldrick is liable to the Parents for the wrongful births of Xavier and Declan. Moreover, McGoldrick has not moved to dismiss Counts 12, 17, and 22, which allege loss of consortium claims on behalf of Mrs. Blouin, Mr. Blouin, and Quentin. In her motion to dismiss, McGoldrick has only moved to dismiss Counts 6 and 7, which allege that due to her negligence, McGoldrick is liable for the extraordinary medical expenses of Xavier and Declan if they should outlive their parents. Koster, Singer, Lynch-Gadaleta, Riverside, Siena, and University have collectively moved to dismiss all of the remaining Counts.

Because many of the Defendants' arguments overlap, this Court will address the various motions to dismiss collectively. Essentially, the Defendants argue that the allegations in the Complaint fall outside of the framework of traditional medical malpractice suits. The Defendants contend that the Complaint alleges two new causes of action—wrongful birth and wrongful life—which have not been recognized in Rhode Island. Thus, the Defendants contend that this Court must grant the Defendants' motions to dismiss the Complaint for failure to state a claim for which relief can be granted. In addition, the Defendants argue that the loss of consortium and respondeat superior must also fail as derivative claims.

II

Standard of Review

As a threshold matter, it is important to emphasize that on a motion to dismiss, the question before the court is not whether the plaintiffs should ultimately prevail in the underlying litigation. See Thompson v. Thompson, 495 A.2d 678, 680 (R.I. 1985) (noting that a court may not dismiss a complaint pursuant to Super. R. Civ. P. 12(b)(6) if it contains allegations which, if proven at trial, would entitle the plaintiff to relief). Rather, “the sole function of a motion to dismiss is to test the sufficiency of the complaint.” Narragansett Elec. Co. v. Minardi, 21 A.3d

274, 277 (R.I. 2011) (quoting Laurence v. Sollitto, 788 A.2d 455, 456 (R.I. 2002)). “The trial justice may grant the motion only if it appears beyond a reasonable doubt that a plaintiff would not be entitled to relief under any conceivable set of facts.” DeCiantis v. R.I. Dep’t of Corr., 840 A.2d 1090, 1092 (R.I. 2003) (citation omitted). “When ruling on a Rule 12(b)(6) motion [to dismiss], the trial justice must look no further than the complaint, assume that all allegations in the complaint are true, and resolve any doubts in a plaintiff’s favor.” Laurence, 788 A.2d at 456 (quoting R.I. Affiliate, ACLU, Inc. v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989) (internal quotation marks omitted)).

III

Analysis

Based on the applicable standard of review, this Court must assume—without deciding—that genetic testing for CF is the required standard of care. Whether in fact that is the case is a matter that will be decided at trial, if there is to be one. At issue in this case is whether the Parents and Children have alleged valid causes of action for which they can recover damages. In the various motions to dismiss, the Defendants essentially allege that although the Plaintiffs have attempted to couch their claims as traditional actions in negligence, in actuality, the Plaintiffs are asking this Court to recognize two new causes of action: wrongful birth and wrongful life.

As a threshold matter, this Court notes that the major difference between a wrongful birth action and a wrongful life action is the party seeking damages. The term “wrongful birth” is used to describe claims brought by the parents of a child born with a physical or mental impairment who allege that a physician’s failure to adhere to a reasonable standard of care deprived them of the choice to avoid the child’s conception. 62A Am. Jur. Actions for Wrongfully Causing Birth; Wrongful Life, Birth, Pregnancy, or Conception § 52 at 449-50

(2005). By contrast, in a “wrongful life” suit, an impaired child brings a claim on his or her own behalf alleging that but for the defendant’s negligent failure to properly screen or advise the child’s parents as to the risks of the child inheriting a genetic disorder, the child would not have been born. Id. at § 50 at 447.

The Defendants claim that because Rhode Island has not specifically recognized “wrongful birth” and “wrongful life” as causes of action, this Court must dismiss the instant Complaint for failure to state a claim. In response, the Parents contend that the Defendants’ arguments mischaracterize their claims. Rather, the Parents contend that the Complaint alleges negligence, a valid cause of action in Rhode Island.

Courts from other jurisdictions have labeled medical malpractice claims of the type at issue here—“wrongful birth” and “wrongful life”—as a means of differentiating between a parent’s cause of action and a child’s cause of action. See Procanik by Procanik v. Cillo, 478 A.2d 755, 760 (N.J. 1984) (“The terms ‘wrongful birth’ and ‘wrongful life’ are but shorthand phrases that describe the causes of action of parents and children when negligent medical treatment deprives parents of the option to terminate a pregnancy to avoid the birth of a defective child.”). Ultimately, however, these courts have analyzed “wrongful birth” and “wrongful life” claims through a traditional negligence framework. See id. This Court does not believe that it can create new causes of action. That is the province of our Supreme Court and the General Assembly. As such—and as the Court will discuss thoroughly below—this Court views the parties’ claims as a subset of medical malpractice and will analyze the claims using the principles of negligence. However, for the purposes of clarity and consistency, this Court will use the terms “wrongful birth” and “wrongful life” in discussing the parties’ arguments.

A

Counts 2-5 Wrongful Birth

The Defendants have moved to dismiss Counts 2-5 of the Complaint, which allege claims against Koster, Singer, Lynch-Gadaleta and Siena for the wrongful births of Xavier and Declan. The Defendants urge that wrongful birth falls outside of the realm of traditional medical malpractice suits and that, therefore, it is the province of the legislature to recognize wrongful birth as a separate cause of action, not the court. However, this Court disagrees with the Defendants' characterization of wrongful birth.

As noted above, the term wrongful birth describes a parent's cause of action following the preventable birth of a child born with a physical or mental impairment. 62A Am. Jur., supra at § 52 at 449-50. An action for wrongful birth is intended to compensate parents for the extraordinary medical expenses which they will necessarily incur through raising a disabled child, as well as for the emotional pain and suffering that the parents will endure throughout the disabled child's life. Id. at 451. "The gist of the claim is that the physician . . . failed to provide the parents with an opportunity to make an informed decision of whether to have the child, and that breach was a proximate cause of the birth of a child with congenital defects." Id. at 450. In other words, an action for wrongful birth contains the same elements as any other negligence action and arises when a physician breaches the required standard of care, which results in damages to the plaintiffs.

Thus, a claim alleging wrongful birth is simply a medical malpractice claim and does not constitute a separate cause of action in tort. See Robak v. U.S., 658 F.2d 471, 476 (7th Cir. 1981) (noting that states have accepted wrongful birth as a cause of action because it "is little different from an ordinary medical malpractice action"); Viccaro v. Milunsky, 551 N.E.2d 8, 10

(Mass. 1990) (holding that “almost all courts” have recognized wrongful birth claims and allowed parents to recover the extraordinary medical, educational, and other expenses associated with raising a child born with a congenital disorder from negligent physicians); Smith v. Cote, 513 A.2d 341, 347 (N.H. 1986) (noting that the failure to recognize wrongful birth as a cause of action would “leave [] a void in the area of recovery for medical malpractice” (quoting Kingsbury v. Smith, 442 A.2d 1003, 1005 (N.H. 1982))); 62A Am. Jur., supra at § 49 at 446 (noting that although legal commentators often speak of wrongful birth claims as separate torts, “[t]hey are essentially forms of medical malpractice actions”). Therefore, the Parents’ claims do not require this Court to recognize a new theory of tort law. Rather, the Parents’ claims fit easily into a typical medical malpractice action.

Moreover, this Court notes that in Emerson v. Magendantz, 689 A.2d 409 (R.I. 1997), the Rhode Island Supreme Court granted damages to the parents of a child born with congenital defects under a similar theory of recovery. In Emerson, following the birth of the plaintiffs’ first child, the defendant physician performed an unsuccessful surgical tubal ligation on the mother. Id. at 410. After the birth of their second child, who suffered from congenital problems, the parents brought a suit alleging negligence against the defendant. Id. The parents sought damages for the medical expenses of the ineffective sterilization procedure, pregnancy, loss of consortium, lost earnings and wages as well as expenses of raising the unhealthy child born as a result of the defendant’s negligence. Id. at 410-11. After noting that an overwhelming majority of states allowed for recovery in similar situations, the Emerson Court held that the parents were entitled to damages given that the physician’s negligence had proximately caused the birth of an unhealthy child. Id. at 411, 414.

Although Emerson involved a negligently performed sterilization procedure and this case involves the alleged negligent failure to perform genetic screening, the public policy concerns at the heart of the Court’s decision in Emerson, are applicable in the instant case. See id. In discussing the damages available to the plaintiffs in Emerson, the Court noted that “the extraordinary costs”—both monetary and emotional—of raising a handicapped child reach well beyond childhood. Id. at 414. The Court stated that when a physician is on notice that there is a reasonable possibility that a child is likely to be born with genetic abnormalities—or should be placed on notice due to statistical information—“then the entire cost of raising such a child would be within the ambit of recoverable damages.” Id.

Thus, the Emerson Court recognized that physicians who perform procedures relevant to reproductive decisions have a duty to their patients to adhere to a reasonable standard of professional care. See id. Thus, the cause of action at the root of both Emerson and this case is essentially medical malpractice. See id. at 415. In his concurrence in Emerson, Justice Bourcier articulated the essence of this issue. He stated succinctly: “I believe that the true legal nature of the cause of action that we all recognize and acknowledge in this certification proceeding is nothing more and nothing less than a medical malpractice cause of action.” Id. (Bourcier, J., concurring in part and dissenting in part).

This Court has an obligation to litigants to resolve the “important and doubtful questions” that come before it. Richardson v. Bevilacqua, 115 R.I. 49, 51-52, 340 A.2d 118, 119 (1975) (“[M]any questions, when presented to a trial court, may appear difficult of solution, but which with deliberate examination lose their complexity. . . . The responsibility of passing upon important and doubtful questions rests upon the trial court in the first instance.” (quoting Easton v. Fessenden, 63 R.I. 11, 14, 6 A.2d 714, 715 (1939) (internal quotation marks omitted))). The

Parents have alleged that the Defendants owed them a duty of care, which they breached when they failed to 1) adequately counsel the Parents regarding the risks of CF; 2) conduct genetic screening on the Parents prior to the conception of their children; and 3) timely diagnose Xavier. The Parents assert that had they known that they were both carriers of CF, they would not have conceived Xavier or Declan. Further, the Parents contend that had Xavier been timely diagnosed with CF, they would not have conceived Declan. Thus, the Parents claim that as a result of the Defendants' negligence, both Xavier and Declan were born with severe genetic disorders, which has caused the Parents to incur serious financial and emotional harm.

Since the Court must accept that all of the allegations in the Complaint are true for the purposes of these motions, the Parents have made out a claim of medical malpractice for which they would be entitled to relief. See DeCiantis, 840 A.2d at 1092; see also Emerson, 689 A.2d at 415 (laying out the elements of medical malpractice). Accordingly, this Court denies the Defendants' motions to dismiss Counts 4 and 5 of the Complaint. With respect to Counts 2 and 3, the Parents acknowledge that because Koster and Singer began treating Xavier after he was born, they cannot be held liable for his birth. Therefore, this Court partially grants Koster and Singer's motion to dismiss those portions of Counts 2 and 3 which relate to Xavier's birth, but not those portions which relate to Declan's birth.

B

Counts 6-11 Wrongful Life

The Defendants have also moved to dismiss Counts 6-11 of the Complaint, which seek extraordinary damages from Koster, Singer, Lynch-Gadaleta and Siena under a theory of wrongful life. The Defendants argue that this Court should dismiss the claims of Xavier and Declan for extraordinary damages on the basis that Rhode Island has not recognized wrongful

life as a cause of action. In support, the Defendants argue that the vast majority of states have rejected wrongful life as a cause of action for ethical reasons. In response, the Parents, as next friends of Xavier and Declan, argue that this Court should adopt the reasoning of several out-of-state jurisdictions and allow Xavier and Declan to recover the extraordinary medical expenses which they will continue to incur after they reach their majority because such damages are reasonably calculable under a traditional tort analysis.

As noted above, in a wrongful life suit, the child brings a claim on his or her own behalf alleging that his or her birth with impairments constitutes a legal injury. See Smith, 513 A.2d at 352. Thus, “[w]rongful life is the child’s equivalent of the parents’ wrongful birth action.” Harbeson v. Parke-Davis, Inc., 656 P.2d 483, 494 (Wash. 1983). Although wrongful birth has been accepted by the majority of jurisdictions, courts have been reluctant to recognize wrongful life as a cause of action. Turpin v. Sortini, 643 P.2d 954, 957 (Cal. 1982); see also 62A Am. Jur., supra at § 54 at 453-54 (“The courts have generally declined to recognize a cause of action by or on behalf of an infant for wrongfully causing his or her birth, or, as generally termed an action for ‘wrongful life’ . . .”).

Some courts which have rejected wrongful life have concluded that being born is not a cognizable injury. See Turpin, 643 P.2d at 957 (discussing the reasoning of the various courts which have rejected wrongful life as a cause of action). The courts which have refused to recognize wrongful life claims have noted that there are disturbing implications in allowing courts to “become involved in deciding whether a given person’s life is or is not worthwhile.” Smith, 513 A.2d at 352. These courts have recognized that “[t]o characterize the life of a disabled person as an injury would denigrate . . . the handicapped themselves.” Id. at 353 (citation omitted).

Courts which have rejected wrongful life as a cause of action have also noted that even if the impaired child did suffer a cognizable legal injury by being born impaired, it is impossible to calculate general damages, such as pain and suffering in such a case. Turpin, 643 P.2d at 963. These courts have found that to do so would require an undue amount of speculation in that the jury would have to calculate the value of the child's life had he or she been born unimpaired compared to the value of the child's life with impairments. Id.; see also Smith, 513 A.2d at 353 (noting that in such a calculation "[t]he danger of markedly disparate and, hence, unpredictable outcomes is manifest").

The Defendants deny that they were negligent. However, they contend that ultimately the question of their negligence is irrelevant, because but for their alleged negligence, the Children would not have been born at all. Thus, they contend that the Children cannot have suffered an injury simply because they were born, even if they were born with genetic abnormalities. This Court will not wade into deep philosophical, and perhaps theological, waters in an attempt to compare the value of not having a life to the value of a life impaired by a severe genetic disorder. Moreover, the Children have not asked the Court to do so. Rather, the Children have asked for the extraordinary medical expenses which they will incur upon reaching majority or in the event that they outlive their parents.

Several courts have recognized a limited wrongful life action and allowed an impaired child to recover the extraordinary medical damages that he or she will incur after reaching majority. See Turpin, 643 P.2d at 963; Harbeson, 656 P.2d at 496-97; Cillo, 478 A.2d at 762. These courts have acknowledged that although general damages are nearly impossible to calculate in a wrongful life suit, extraordinary damages for medical expenses are "readily measurable" and fit within a traditional tort framework. See Turpin, 643 P.2d at 965. Thus, the

calculation of extraordinary damages, such as future necessary medical expenses, would not result in undue speculation or require juries to determine the monetary value of human life, impaired or otherwise. See id. at 965-66.

Moreover, the courts which have allowed impaired children to recover extraordinary damages in a wrongful life action have recognized that it would be inherently unjust not to allow impaired children to recover the “crushing burden of extraordinary expenses visited by an act of medical malpractice” Cillo, 478 A.2d at 762 (citing Turpin, 643 P.2d at 965). Specifically, these courts have stressed that the impaired child’s medical expenses will not end after the child attains majority, at which point the child’s parents or the state will have to shoulder the financial burden of caring for the child. See Harbeson, 656 P.2d at 495. Thus, the burden of the child’s ongoing financial needs are placed “on the party whose negligence was in fact a proximate cause of the child’s continuing need for such special medical care and training.” Id. Several courts have also noted that it would be illogical to allow the parents to collect under a theory of wrongful birth and yet disallow the child to recover extraordinary medical expenses under a theory of wrongful life. See Turpin, 643 P.2d at 965; Cillo, 478 A.2d at 762. As the Turpin Court aptly stated,

“[i]f such a distinction were established, the afflicted child’s receipt of necessary medical expenses might well depend on the wholly fortuitous circumstance of whether the parents are available to sue and recover such damages or whether the medical expenses are incurred at a time when the parents remain legally responsible for providing such care.” Turpin, 643 P.2d at 965 (footnote omitted).

Moreover, such a distinction would bar impaired children—whose parents have perished or who are unavailable to bring suit—from collecting necessary medical expenses which they have incurred due to a physician’s negligent treatment. See Cillo, 478 A.2d at 762 (allowing an

impaired child to collect extraordinary medical expenses in a case where the parents' claim was barred by the statute of limitations because the child should not be forced to forego medical treatment for his ailments when the medical expenses are "reasonably certain, readily calculable, and of a kind daily determined by judges and juries").

This Complaint alleges that due to the Defendants' negligence, the Parents conceived Xavier and Declan in total ignorance that any children born to them had a twenty-five percent chance of contracting CF. Thus, the Complaint alleges that due to the Defendants' negligent failure to advise the Parents, offer genetic screening, or timely diagnose Xavier, both Xavier and Declan were born with severe genetic disorders. The Complaint further alleges that both Xavier and Declan are likely to reach an age of majority; however, due to their poor state of health, neither child will have the ability to live independently. As such, Xavier, Declan, their Parents—and perhaps eventually the state—will incur millions of dollars for medical care and associated expenses. If genetic testing for CF falls within the required standard of care that the Defendants were expected to meet, then it was totally foreseeable that the Defendants' failure to test for CF could lead to the birth of children with the genetic disorder. It is further foreseeable that such children will have extraordinary medical expenses as a result of the disorder. Thus, the Defendants' alleged medical malpractice is the proximate cause of those expenses. As such, the Children's extraordinary medical expenses are compensable under traditional principles of negligence.

In Emerson, the Rhode Island Supreme Court acknowledged that "the extraordinary costs of maintaining a handicapped child would not end when the child reached majority. Nor would the physician's liability necessarily end at that point." Emerson, 689 A.2d at 414. Following the logic of Emerson, and assuming all allegations in the Complaint are true, this Court finds that

Xavier and Declan have stated a claim for damages—stemming from a medical malpractice action—which are reasonably certain and calculable. Accordingly, the Defendants’ motion to dismiss Counts 6-11 of the Complaint is denied.

C

Counts 12-36 Loss of Consortium & Respondeat Superior

Next, the Defendants argue that in the event that this Court finds that there is no cause of action for a wrongful birth claim, this Court should dismiss the claims of Quentin and the Parents—Counts 12-26 of the Complaint—which allege loss of consortium. In addition, the Defendants argue that this Court should also dismiss the Parents’ respondeat superior claims—Counts 27-36—against University and Riverside for the wrongful births of Xavier and Declan. However, as the Defendants acknowledge, these claims are derivative and hinge upon the viability of the underlying action for wrongful birth. See Sama v. Cardi Corp., 569 A.2d 432, 433 (R.I. 1990). This Court has denied the Defendants’ motions to dismiss the Parents’ wrongful birth claims. Therefore, assuming all allegations in the Complaint are true, the loss of consortium and respondeat superior claims are sufficient to survive a Super. R. Civ. P. 12(b)(6) Motion to Dismiss. See Laurence, 788 A.2d at 456. Accordingly, this Court denies the Defendants’ motion to dismiss the claims related to loss of consortium and respondeat superior.

IV

Conclusion

After careful consideration of the arguments set forth by the parties and the applicable law, the Defendants’ motions to dismiss are granted in part and denied in part. The Court partially grants the Defendants’ motion to dismiss those portions of Counts 2 and 3 which relate to Xavier’s birth, but not those portions which relate to Declan’s birth. The Court denies the

Defendants' motions to dismiss Counts 4-36 of the Complaint. Counsel shall submit the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Blouin v. Koster, et al.

CASE NO: PC-2015-3817

COURT: Providence County Superior Court

DATE DECISION FILED: July 19, 2016

JUSTICE/MAGISTRATE: Licht, J.

ATTORNEYS:

For Plaintiff: Paul P. Baillargeon, Esq.

For Defendant: Paul F. Galamaga, Esq.; Joshua E. Carlin, Esq.;
Michael G. Sarli, Esq.; Matthew D. Kelly, Esq.;
Kathryn M. Rattigan, Esq.