IN THE

Supreme Court of Virginia

RECORD NO. 161230

KAYLA HOLT, an INFANT, by and through
her PARENT and NEXT FRIEND,
MICHELE HOLT,

Appellant,

v.

DIANA CHALMETA, *et al*.,

Appellees.

OPENING BRIEF OF APPELLANT

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IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

KAYLA HOLT, AN INFANT, BY AND THROUGH HER PARENT AND NEXT FRIEND, MICHELE HOLT	*	
Appellant,	*	
vs.	*	**RECORD NO. 161230**
DIANA CHALMETA, M.D. et. al.	*	
Appellee.	*	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE AND OF THE MATERIAL PROCEEDINGS IN THE TRIAL COURT

On May 6, 2006, at 1:02 a.m. Kayla Holt was born in Fauquier Hospital with a condition, piriform aperture stenosis, or nasal stenosis, in which the nostrils are smaller than normal, thereby restricting the amount of air she could move through her nose. Babies are obligate nose breathers, such that if the nose is blocked, they do not automatically breathe through their mouths unless while crying. Diana Chalmeta, M.D., working on behalf of her medical practice, Piedmont Pediatrics P.C., was the pediatrician on call at Fauquier Hospital and arrived at the hospital at 2:08 am with the information that nursing assessments noted Kayla's nose was blocked. Dr.

Chalmeta placed baby Kayla under an oxy-hood, a device that concentrates oxygen but does not alleviate nasal stenosis. For approximately eight hours, baby Kayla was under Dr. Chalmeta's care and presented with objective evidence of respiratory distress. Dr. Chalmeta failed to properly assess the respiratory distress, failed to use an oral airway (a plastic insert which forces the baby's mouth open to allow adequate respiration when the nose is blocked), failed to timely intubate the baby, and failed to timely transfer the baby to a hospital with a neonatal ICU for appropriate care. When the baby was finally intubated and transferred to The University of Virginia's NICU, she had already suffered a hypoxic brain injury due to the lack of adequate respiration. The hypoxic brain injury causes her to suffer from cerebral palsy, learning disabilities, spastic diplegia, cognitive impairment and other injuries as a result of the hypoxic brain injury. As a result of her injuries, she has incurred extensive medical expenses in an effort to treat her condition, and she will continue to require treatment for the remainder of her life.

Kayla, through her mother, brought an action against the nurses and hospital who employed them, as well as her treating pediatrician, Dr. Chalmeta, and Piedmont Pediatrics, Dr. Chalmeta's employer. Pursuant to Virginia Code §8.01-581.20, plaintiff named a pediatrician and

neonatologist, Dr. Funlola Aboderin as her expert witness to opine on causation and also the standard of care applicable to Dr. Chalmeta. Following *voir dire* of the expert, the Trial Court, relying specifically on Hinkley v. Kohler, 269 Va. 82, 606 S.E. 2d 803 (2005), struck Dr. Aboderin as a standard of care expert, holding that she did not meet the requirements for an active clinical practice. Dr. Aboderin was plaintiff's only standard of care expert. Thereafter, Dr. Chalmeta, by counsel, moved for summary judgment, which was granted.

STATEMENT OF FACTS

Kayla Holt, an infant, by and through Michele Holt, her parent and next friend filed suit in Fauquier County, alleging medical negligence by her pediatrician Dr. Diana Chalmeta and her practice. In the lawsuit, plaintiff alleged that Dr. Chalmeta breached the standard of care in thirteen different ways. However, the trial testimony of Dr. Aboderin focused on three main breaches that proximately caused Kayla Holt's brain injury: (1) failing to failing to adequately assess the respiratory distress of the plaintiff, (2) failing to transfer the plaintiff to another facility better equipped to care for her nasal stenosis, and (3) failing to secure plaintiff's airway, which could be accomplished either through intubation or use of an oral airway guard (Appendix, pages 79 and 80; Revised Amended Complaint).

Dr. Aboderin's expected testimony regarding the defendants' breaches of the standard of care was also set forth in the expert designation. Therein, plaintiff specifically stated that Dr. Aboderin would testify that when presented with an infant in respiratory distress, the standard of care required Dr. Chalmeta to secure her airway, either through intubation or use of a mouth guard (also called oral airway), and that Dr. Chalmeta breached this duty. The plaintiff's expert designation also stated that Dr. Aboderin would opine that Dr. Chalmeta breached the standard of care by failing to transfer the infant to another facility equipped to deal with her condition. Dr, Aboderin was designated to testify that Dr. Chalmeta's breaches, including the failure to secure an airway proximately caused Kayla Holt's brain injury.(Appendix page 96; Plaintiff's Expert Designation).

At trial, plaintiff called Dr. Aboderin as a witness and asked her several questions regarding her qualifications to testify regarding the standard of care. With regard to knowledge of the standard of care, it was noted that Dr. Aboderin was licensed to practice medicine in the Commonwealth of Virginia, and was so licensed in 2006, and is a board certified pediatrician and neonatologist (Appendix page 379, CV of Dr. Aboderin). She also noted that she teaches neonatal resuscitation to physicians and nurses in the Commonwealth of Virginia, and she also

supervises pediatricians working in the area of neonatal resuscitation and caring for newborns. With regard to her active clinical practice, as required under 8.01-581.20 (1950), Dr. Aboderin testified that she had an active clinical practice in 2006, the year that the negligence occurred.

Although there were several instances of negligent conduct by the defendant, the trial testimony of Dr. Aboderin during *voir dire* centered around three specific actions: (1) assessing respiratory distress in an infant (2) timely making the decision to secure an infant's airway either through intubation or use of an oral airway mouth guard, and securing an infant's airway, and (3) making the decision to transfer an infant to another facility for better care. Dr. Aboderin testified that her active clinical practice in 2006 encompassed all three areas. (Appendix page 315, lines 5-25; page 312, lines 107; page 332 line 20 through page 333 line 4; and page 339 lines 3-11).

Dr. Aboderin is a board certified pediatrician and also a board certified neonatologist working in a hospital with a Neonatal ICU (hereinafter referred as a NICU). Although Dr. Chalmeta was practicing in a hospital lacking a NICU, Dr. Aboderin testified that in 2006 there were no differences in the standard of care for treatment of newborns in respiratory distress regardless of whether the hospital had a NICU. (Appendix page

333 lines 14-20) Dr. Aboderin testified that whether or not a hospital did or did not have a NICU, all pediatricians have the same standard of care when assessing respiratory distress, making the decision to intubate or use an oral airway and intubating a newborn. (Appendix page 316)

During voir dire, Dr. Aboderin testified she had an active clinical practice in 2006 assessing newborns to determine if they had a patent airway (assessing respiratory distress). She further testified that the standard of care of pediatricians assessing newborns for this respiratory distress was the same whether the hospital had a NICU or not. (Appendix page 311 lines 15-25; page 338, lines 5-16). Dr. Aboderin was asked whether she had the opportunity in her clinical practice in 2006 to place oral airways (mouth guards) and to intubate newborns. She testified affirmatively that she did. Dr. Aboderin was asked whether she had the opportunity to do those things and whether she had an active clinical practice placing oral airways and intubating infants back in 2006. She answered, "Yes, I did." (Appendix page 315, line 14) She was next asked whether she knew the standard of care for making the decision to secure an airway through the use of either an oral airway or intubation, to which she answered affirmatively. Again she was questioned as to whether she had an active clinical practice making such decisions back in 2006. Her

answer was again “Yes, I did.” (Appendix page 315, lines 5-25; page 338, lines 5-15). Dr. Aboderin further testified that despite the fact that she worked in a hospital with a NICU, she knew the standard of care and she had an active clinical practice in making the decision to transfer the baby to an institution with a higher level of care. Although Dr. Aboderin made those decisions from an institution with a NICU receiving the baby rather than from an institution without a NICU transferring the baby, she had an active clinical practice making the decision to transfer during consultations with pediatricians who called her to consult on the baby’s care. (Appendix page 338, line 17 through page 339 line 11)

The evidence of the case at trial would have been that Dr. Chalmeta’s negligence in failing to properly assess the respiratory distress, failing to timely transfer the child to an institution that could care for her, failing to secure the infant’s airway through intubation and failing to secure the infant’s airway through use of a mouth guard (oral airway) proximately caused the infant to suffer a hypoxic brain injury. The evidence would have shown that the infant suffers a myriad of issues due to the brain injury, including but not limited to cerebral palsy, cognitive deficits, and spastic diplegia in her lower extremities, all of which will require a lifetime of care,

diminished earning capacity, and the need for some level of care for her entire life. (May 16, 2016 trial transcript page 69 lines 17-20)

ASSIGNMENTS OF ERROR

1. The Circuit Court erred in finding that Dr. Aboderin did not meet the qualifications necessary under Virginia Code §8.01 -581.20 (1950) to testify as an expert witness in the assessment and care of a newborn with respiratory distress despite *voir dire* demonstrating that she possessed the required knowledge of the standard of care and that she had an active clinical practice in the performance of the procedures at issue.

   Plaintiff preserved the issue in both the May 25, 2016 Order of Partial Final Judgment and in argument as well as in the proffer of Dr. Aboderin's expected testimony. (Appendix page 362 line 2-13; page 353 line 23-page 354 line 2).

2. The Circuit Court erred in entering summary judgment in favor of Dr. Chalmeta and her practice as the Court improperly excluded plaintiff's expert Dr. Aboderin, who would have testified that Dr. Chalmeta breached the standard of care, and her breaches proximately caused the plaintiff's injury.

Plaintiff preserved the issue in both the May 25, 2016 Order of Partial Final Judgment, in argument as well as in the proffer of Dr. Aboderin's expected testimony. (Appendix page 362 lines 2-13; page 353 line 23 through page 354 line 2; page 366 lines 12-23; page 370 lines 1-3; and page 374 lines 8-18).

ARGUMENT

ASSIGNMENT OF ERROR # 1: The Circuit Court erred in finding that Dr. Aboderin did not meet the qualifications necessary under Virginia Code §8.01 -581.20 (1950) to testify as an expert witness in the assessment and care of a newborn with respiratory distress despite *voir dire* demonstrating that she possessed the knowledge of the standard of care and that she had an active clinical practice in the performance of the procedures at issue.

A trial court's determination regarding the admission of expert testimony is reviewed based upon an abuse of discretion standard. CNH Am. LLC v. Smith, 281 Va. 60,66, 704 S.E.2d 372,375 (2011) *citing* Keesee v. Donigan, 259 Va. 157, 161, 524 S.E.2d 645, 647 (2000). Plaintiff objected to the Court's Order of Summary Judgment (May 25, 2016 Order of Partial Summary Judgment). Plaintiff argued in trial that the expert witness, Dr. Aboderin, was qualified to testify to the standard of care in the areas at issue, namely, in the assessment and care of a newborn with respiratory distress, in securing an airway for an infant in respiratory

distress and causation. (Appendix page 353 line 23 through page 354 line 2)

Virginia Code addresses the qualifications of experts in medical malpractice actions. (Specifically, Virginia Code §8.01-581.20(A) (1950) states "In…any action against a physician…to recover damages alleged to have been caused by medical malpractice…the standard of care by which the acts or omissions are to be judged shall be that degree of skill and diligence practiced by a reasonably prudent practitioner in the field of practice or specialty in this Commonwealth…" The Code goes on to state: "Any physician or nurse who is licensed to practice in Virginia shall be presumed to know the statewide standard of care in the specialty or field of medicine in which he is qualified and certified…A witness shall be qualified to testify as an expert on the standard of care if he demonstrates expert knowledge of the standards of the defendant's specialty and of what conduct conforms or fails to conform to those standards and if he has an active clinical practice in either the defendant's specialty or a related field of medicine within one year of the date of the alleged act or omission forming the basis of the action." *Id*.)

The Supreme Court has, on numerous occasions, defined active clinical practice, and in this case the trial court interpreted the requirements

of active clinical practice too narrowly. The Supreme Court has held that an expert need not have the exact same specialty as the defendant doctor at issue. Rather the Supreme Court has held through a series of cases that it is sufficient that an expert physician have either the same or a related specialty as the defendant. The trial court specifically relied on Hinkley v. Kohler, *infra*, to exclude Dr. Aboderin as an expert witness on the basis that she did not have the required active clinical practice. The trial court further excluded Dr. Aboderin as an expert witness, and in doing so specifically relied on defense counsel's argument that in order to qualify as an expert, Dr. Aboderin had to have worked in a hospital without a NICU while assessing and caring for a newborn with respiratory distress. (Appendix page 358, lines 3-14) The law is otherwise. In excluding Dr. Aboderin as an expert based upon the fact that her hospital had a NICU, the Trial Court relied solely upon this negligent act regarding transfer of a patient, while it ignored completely that Dr. Aboderin also had an active clinical practice with regard to the other negligent acts, namely securing an infant's airway through intubation or oral airway and assessing an infant in respiratory distress.

In Hinkley v. Kohler, *infra*, the Supreme Court held that the expert physician was not qualified to testify. The Supreme Court held that unlike

the defendant doctors, the proffered expert did not have an active clinical practice because, unlike the defendant doctors, he did not evaluate, manage or treat problems in pregnancies in the context of direct patient care. Since the proffered expert did not actively practice the very actions claimed negligent, the Supreme Court held he did not meet the requirements for an active clinical practice.

The purpose of the requirement of an active clinical practice in the defendant's specialty or a related field of medicine contained in Virginia Code §8.01-581.20 is to prevent testimony by a physician who has not recently engaged in the actual performance of the procedures at issue in the case. Wright v. Kaye, 267 Va. 510, 593 S.E.2d 307 (2004). Therefore, the requirement that the expert practices in a related field of medicine is met if the expert witness, in their clinical practice performs the procedures at issue and the standard of care for the procedures is the same. The phrase "actual performance of the procedures at issue in a case" is not to be give a narrow construction inconsistent with the plain meaning of the statute.

In Wright v. Kaye, *infra*, the Supreme Court held that the trial court incorrectly construed active clinical practice too narrowly and excluded plaintiff's experts. In that case, the defendant injured plaintiff's bladder

while performing a laproscopic surgery to remove an urachal cyst. The plaintiff's experts had all performed various laproscopic surgeries around the bladder, but they had not performed a urachal cyst removal. Because the specific negligence alleged was the failure to protect the bladder during laproscopic surgery and had nothing to do with the type of cyst removed, the Supreme Court held that plaintiff's proffered experts, all of whom had an active clinical practice protecting the bladder during other types of laproscopic surgery were qualified to testify under Code §8.01-581.20.

The Court has defined active clinical practice numerous times to hold that it is not necessary that the expert witness and the defendant have the exact same medical specialty. It is sufficient if the proffered experts perform the same procedure at issue. In Sami v. Varn, 260 Va. 280, 535 S.E.2d 172 (2000) the Supreme Court held that the trial court erred in excluding plaintiff's proffered expert gynecologist who testified that an emergency room physician negligently performed a pelvic exam. The Supreme Court held that even though the two experts' had different specialties, "…it is sufficient if in the expert witness' clinical practice the expert performs the procedure at issue and the standard of care for performing the procedure is the same." *Id* at 285. In this case, the procedure at issue was securing Kayla's airway, either through intubation

or use of an oral airway. Dr. Aboderin testified that she had secured infant's airway through intubation and oral airway in 2006. (Appendix page 315, lines 5-25)

The case of Jackson v. Qureshi, 277 Va. 114, 671 S.E.2d 163 (2009), is remarkably similar to the present case. In that case, the plaintiff's decedent infant presented to an emergency room with signs of respiratory distress and/or pertussis from which he subsequently died. Plaintiff's proffered expert witness was board certified in pediatrics and pediatric infectious disease, and the defendant was a pediatric emergency medicine physician. The proffered expert testified that he did not work as a pediatric emergency medicine physician, but that he had in fact treated infants in an urgent care setting. The proffered witness also testified that all physicians treating infants, regardless of specialty, should be able to appreciate how pertussis can present in an infant. He further testified that the negligent act by the defendant, and thus the sole standard of care issue, was the determination of whether to admit the infant to the hospital. The trial court erroneously struck the expert citing a lack of active clinical practice. The Supreme Court reversed and remanded, and in doing so held once again that it is sufficient if in the expert witness' clinical practice, the expert

performs the procedure at issue and the standard of care for performing the procedure is the same for both the expert and the defendant. *Id*. at 124.

It should be noted that in the present case, Dr. Aboderin is and was a board certified pediatrician, the exact same specialty as defendant Dr. Chalmeta. Dr. Aboderin has the added qualification of being a board certified neonatologist. Defendant argued that while Dr. Aboderin worked at hospitals with a NICU, Dr. Chalmeta worked at Fauquier Hospital without a NICU. Thus, the real question at issue is whether the standard of care differs in the two settings for the negligently performed procedures at issue.

In excluding Dr. Aboderin as an expert witness, the trial court relied solely on one allegation of negligence (failure to transfer to another hospital) to the exclusion of the other allegations of negligence (assessing an infant in respiratory distress and securing an airway). The trial court agreed with the defendant that the standard of care for transferring an infant to a higher level of care is different in a hospital with a NICU and a hospital without a NICU. In doing so, the trial court ignored the uncontradicted evidence that the standard of care for intubating a baby is the same in any hospital and that Dr. Aboderin had an active clinical practice intubating babies in 2006. Dr. Aboderin testified that in 2006 she secured airways through intubation and oral guards (Appendix, page 315,

lines 5-25). Thus, she had performed those procedures at issue. Further, plaintiff presented uncontradicted evidence that the standard of care for intubating a baby was the same whether the hospital had a NICU or not. (Appendix page 316, lines1-10). Likewise, plaintiff presented uncontradicted evidence that the standard of care was the same for placing an oral airway and for assessing an infant in respiratory distress. (Appendix page 316, lines 1-25). Further, Dr. Aboderin testified the standard of care and is the same in any hospital for timely stabilizing a newborn and transferring a baby to a higher level of care. (Appendix page 333; lines 14-20). She testified that the standard of care in making a decision regarding securing an infant's airway is the same whether made by a neonatologist or pediatrician. (Appendix page 336, lines 14-18). She further testified that in 2006 she had an active clinical practice in assessing babies with respiratory distress and in making the decision whether or not to secure an airway for a baby, whether by intubation or oral airway mouth guard. (Appendix page 338, lines 5-16).

The evidence at trial centered on three negligent procedures at issue: failure to assess an infant in respiratory distress; failure to timely secure an airway through intubation or oral guard, and failure to timely transfer to a higher level of care. Dr. Aboderin testified she had an active clinical

practice in all three procedures at issue. Dr. Aboderin further testified that the standard of care for all three procedures was the same in a hospital with a NICU and a hospital without a NICU. This evidence was uncontradicted. There was no evidence that the standard of care to intubate a baby was different in a hospital with a NICU than without. Likewise, there was no evidence that the standard of care differed in the two settings for securing an airway with an oral guard. There was no evidence that the standard of care differed in the two settings for assessing an infant in respiratory distress. There was no evidence that the standard of care differed in the two settings for transferring a baby to a higher level of care.

Because the evidence was uncontradicted that Dr. Aboderin had an active clinical practice in all three procedures at issue, the trial court was not free to dismiss the same. Additionally, the evidence was uncontradicted that the standard of care for all three procedures was the same in both settings (hospitals with NICUs and hospitals without NICUs), the trial court was not free to dismiss the same. Even had the trial court dismissed the uncontradicted evidence that the standard of care for transferring an infant to a higher level of care was different between the two settings, there was still evidence that Dr. Aboderin had an active clinical

practice in the other two procedures at issue (assessing an infant with respiratory distress and securing the airway through intubation or oral guard). Without evidence that the standard of care for intubating a baby was somehow different in the two hospital settings, the trial court erred holding that Dr. Aboderin's experience intubating babies in 2006 did not satisfy an active clinical practice. Thus the trial court erred in excluding her as an expert witness.

ASSIGNMENT OF ERROR # 2: THE CIRCUIT COURT ERRED IN ENTERING SUMMARY JUDGMENT IN FAVOR OF DR. CHALMETA AS THE COURT IMPROPERLY EXCLUDED PLAINTIFF'S EXPERT DR. ABODERIN, WHO WOULD HAVE TESTIFIED THAT DR. CHALMETA BREACHED THE STANDARD OF CARE, AND HER BREACHES PROXIMATELY CAUSED THE PLAINTIFF'S INJURY.

When a witness testifies without contradiction, it is error for the trial court to ignore such uncontradicted testimony. Cheatham v. Gregory, 227 Va. 1,4, 313 S.E.2d 368, 370 (1984). Because the trial court ignored plaintiff's uncontradicted expert witness testimony and granted a partial summary judgment, plaintiff objected to the Partial Final Judgment and argued at trial that Dr. Aboderin was qualified to testify as an expert witness. (May 25, 2016 Partial Final Judgment; Appendix page 354, line 2; page 362 lines 2-12).

In the present case, plaintiff presented evidence that in 2006 Dr. Aboderin had an active clinical practice in assessing respiratory distress (Appendix page 338, lines 5-8). Plaintiff presented evidence that Dr. Aboderin had an active clinical practice in making the decision to secure an airway either through intubation or use of an oral airway mouth guard (Appendix page 331, lines 13-18; page 338 lines 9-16). Plaintiff presented evidence that Dr. Aboderin had an active clinical practice in making the decision to transfer a child to another hospital. (Appendix page 338 line 17 through page 339 line 11). The defendant failed to produce any evidence to rebut plaintiff's evidence that Dr. Aboderin had an active clinical practice in 2006 in the areas at issue: assessing a newborn with respiratory distress, making the decision to secure an infant's airway through either intubation or oral airway, and making the decision to transfer a newborn. The defendant likewise failed to produce any evidence that the standard of care was different in a hospital with a NICU and a hospital without a NICU after Dr. Aboderins' uncontradicted testimony demonstrated that there was no difference in the standard of care. Thus it was error for the trial court to ignore the uncontradicted evidence of Dr. Aboderin's active clinical practice and error to fail to qualify her as an expert witness on the procedures at

issue, and error to enter summary judgment for the defendant based on the lack of an expert witness.

In Sami v. Varn, *infra*, the plaintiff's expert testified without contradiction that the same standard of care for performing pelvic exams applied to both emergency physicians and obstetrician-gynecologists. The trial court excluded plaintiff's only proffered expert, and entered summary judgment for the defendant. The Supreme Court reversed and remanded, holding that "the trial court was not entitled to ignore the uncontradicted testimony that the standard of care for the performance of pelvic examinations was common to both specialties." Sami v. Varn at 284, quoting Cheatham v. Gregory, infra at 4.

Similarly in Wright v. Kaye, infra, the plaintiff's expert witness demonstrated knowledge of the standard of care and testified that he had an active clinical practice in the performance of the procedure at issue, namely laproscopic surgery without injury to the bladder. The Supreme Court ruled that it was error to exclude the expert under such circumstances and enter summary judgment based on plaintiff's lack of expert witnesses to support her allegations of the breach of the standard of care. *Id.* at 524.

In yet another case regarding similar fields of medicine, the plaintiff presented a neurology expert witness who testified that the standard of care for neurologists, neurosurgeons and orthopedists were the same with regard to post-operative diagnosis of spinal cord injury and care. The plaintiff's neurologist presented evidence he had an active clinical practice in post-operative care within one year of plaintiff's injury. The Supreme Court held that since the defendant orthopedist presented no evidence that contradicted plaintiff's expert on this issue, the trial court abused its discretion by failing to qualify the expert on post-operative care and entering summary judgment based on the lack of an expert witness. Lloyd v. Kime, 275 Va. 98, 112, 654, S.E.2d 563 (2008).

Likewise in this case, Plaintiff's uncontradicted evidence was that Dr. Aboderin possessed an active clinical practice in the three procedures at issue, and that the standard of care for all three were the same in either setting. Thus, the trial court excluded the expert in error. Plaintiff proffered Dr. Aboderin's expected testimony if she had been correctly qualified as an expert witness. (Appendix page 362, lines 2-12). Dr. Aboderin would have testified that Dr. Chalmeta breached the standard of care in failing to assess the infant's respiratory distress, failing to make the decision to secure the infant's airway and to secure the airway through the

use of an oral guard or intubation, and failing to timely transfer the infant to another facility better equipped to care for her nasal stenosis. (Appendix page 366, lines 12-25; page 367 lines 2-7; page 376 lines 18-25) Had she been qualified as an expert witness, Dr. Aboderin would have testified that these breaches of the standard of care proximately caused Kayla Holt's hypoxic brain injury and all of the sequelae of injuries. (Appendix page 373, lines 19-25).

CONCLUSION

For the foregoing reasons, appellant Kayla Holt respectfully requests that this Court reverse the Trial Court and remand this case for a new trial.

Respectfully submitted,

KAYLA HOLT,
by and through Michele Holt, her parent and next friend,
By counsel

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RULE 5:17(e) CERTIFICATE

The name of the appellant is Kayla Holt, an infant by and through her next friend and parent, Michele Holt. Counsel for appellant are Frederick J. Getty, Esq. (VSB # 37338), Laura J. Johnston, Esq., Brian A. Choisser, Esq. (VSB # 40866), Joanna C. Abe, Esq. (VSB # 72826) GETTY AND ASSOCIATES, P.C., P.O. Box 1040, 4258 Germanna Highway, Suite E, Locust Grove, Virginia 22508, Phone (540) 972-7600, Fax (540) 972-0880, email ljohnston@gettyandassociates.com.

The name of appellees are Diana Chalmeta, M.D. and Piedmont Pediatrics P.L.C.. Counsel for appellees is Susan L. Mitchell, Esq. (VSB # 37789), ALTMAN, SPENCE, MITCHELL AND BROWN P.C., 10306 Eaton Place, Suite 200, Fairfax, Virginia 22030, (703) 591-9700, Fax (703) 591-0023, email susan.mitchell@altmanspence.com.

Appellant Kayla Holt desires to state orally, in person, to a panel of the Supreme Court the reason why relief should be granted. Rule 5:26(e) has been complied with and a true and correct copy of Appellant's Brief was emailed and mailed, first-class, postage prepaid, on January 30, 2017 to opposing counsel.

*Laura J. Johnston, Esq. /s/*_____
Laura J. Johnston, Esq.