

*Appellate Decisions of Interest*

*Brown v. Bauman, M.D.*

Appellate Division, First Department (July 26, 2007)

Guiding Principle: A physician who is unable to care for his or her patient does not depart from the standard of care so long as he or she arranges to transfer the care of the patient to another well-qualified physician.

Summary of the facts: The patient commenced a medical malpractice action against the defendant solo practitioner and board-certified obstetrician. The obstetrician was unexpectedly late in proceeding from his home to the hospital to attend his patient's labor and delivery. He confirmed by telephone that an on-call attending obstetrician and the chief obstetrical resident physician were caring for the patient pending his arrival. The defendant physician arrived at the hospital shortly after the birth, at which time the attending and resident physicians were repairing a perineal laceration sustained by the patient during the delivery. Following the delivery, the patient experienced severe urinary and fecal incontinence. The patient argued that had the defendant obstetrician been present, his experience might have led him to perform an episiotomy, which would have prevented the perineal tear. She argued that the defendant obstetrician was negligent in leaving the delivery to an inexperienced resident, who performed a faulty repair of the laceration.

Ruling of the court: The court granted summary judgment in favor of the defendant obstetrician.

Reasoning: Although the defendant obstetrician was not available for the delivery, he properly arranged for coverage by competent medical personnel in his absence. Thus, there was no connection between the defendant obstetrician's arrangement of medical coverage and the alleged injuries.

What is more, the plaintiff's claims against the defendant obstetrician rested on speculative and specious assumptions that the plaintiff had sustained a third- or fourth-degree tear, that a proper examination would have revealed it, that such a laceration would have been amenable to surgical repair, and that the repair would have been successful. The court noted that such "hindsight reasoning" was insufficient to prove the plaintiff's case. The plaintiff's claims were not supported by the notations in the hospital record or the testimony of the attending and resident obstetricians. It was speculative of the plaintiff's expert to infer that the laceration would have been successfully repaired had the defendant obstetrician made a proper examination and diagnosis.

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