

No. 98 - 21239

ASSESSOR
FILED
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SHERYL SULLIVAN

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IN THE DISTRICT COURT OF

vs.

HARRIS COUNTY, TEXAS

STEPHEN G. SLADE, M.D and
RICHARD N. BAKER, O.D..

55th JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now SHERYL SULLIVAN, Plaintiff in the above titled and numbered cause,
and files this ORIGINAL PETITION against STEPHEN G. SLADE, M.D. and RICHARD
N. BAKER, O.D., and would show unto the Court as follows:

I. Parties

SHERYL SULLIVAN is an individual residing in Sugar Land, Harris County, Texas.

Defendant STEPHEN G. SLADE, M.D. is an individual who may be served at his
place of business located at 3900 Essex Lane, Suite 101, in Houston, Harris County, Texas
(77027).

Defendant RICHARD N. BAKER, O.D. is an individual who may be served at his
place of business located at 3900 Essex Lane, Suite 101, in Houston, Harris County, Texas
(77027).

II. Venue

Venue is proper in Harris County, Texas because all of the Plaintiff's cause of action

arose there, and both Plaintiff and Defendant reside there.

III. Notice Requirement

Pursuant to Tex.Rev.Civ.Stat. Art. 4590i, Section 4.01, written notice, return receipt requested, was given to the Defendant Slade more than 60 days prior to the filing of this claim.

IV. Facts

Prior to the incident in question, the Plaintiff was myopic, or nearsighted. She sought the professional services of Defendants in order to undergo refractive surgery designed to improve her vision to 20/20 without correction. On or about September 19, 1996, she underwent evaluation by Defendants in order to determine the coordinates to be used for her specific procedure.

On or about September 20, 1996, she underwent refractive surgery known as "LASIK" by the Defendants at their medical office. However, rather than use the coordinates of Plaintiff, the Defendants used the coordinates and measurements of another patient were used to calculate the manner in which the refractive surgery was performed. As a result, the Plaintiff was over-corrected and become hyperopic, or farsighted.

Because the surgical procedure to correct hyperopia was not approved for use in the United States by the F.D.A., it was necessary for the Plaintiff to be taken to Mexico, where she underwent a second experimental procedure in an effort to re-correct her eyes to 20/20. Despite the second procedure, the Plaintiff remains over corrected.

V. Negligence

Plaintiff would show that Defendants owed her a duty to use the coordinates and measurements which had been taken on her eyes in order to perform the refractive correction of her eyes. Plaintiff would show that the use of a different patient's coordinates and measurements on her eyes by the Defendants is a deviation from the standard of care and constitutes negligence. Plaintiff would show that Defendants failed to act as an ordinary, reasonable, prudent health care providers would under the same or similar circumstances.

More specifically, Plaintiff would show that using another patient's coordinates and measurements on her eyes during the refractive surgery is within the doctrine of *res ipsa loquitur*. Expert testimony is not required to establish Defendants' negligence as it is something which a lay person can understand without the necessity of expert testimony.

Plaintiff would further show that the employees, agents and/or servants of Defendants were negligent for failing to verify her proper identity, and verify that only her coordinates and measurements were used for the refractive surgery. Such failure constitutes negligence. Defendants are responsible for the negligent acts of their employees, agents and/or servants under the doctrines of vicarious liability and *respondeat superior*.

V. Damages

Plaintiff would show that she has been damaged and is entitled to compensation.

Plaintiff would show that she has suffered:

- 1) mental anguish;

- 2) physical pain and suffering;
- 3) medical expenses; and
- 4) lost wages.
- 5) Plaintiff would further show that she can reasonably be expected to suffer such damages in the future.
- 6) Plaintiff seeks compensation in the amount of Fifty Thousand (\$50,000.00) Dollars.

VI. Jury Trial

Plaintiff herein requests that the matters complained of herein be heard and determined by a Jury.

VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be required to answer and appear herein, that judgment be entered against the Defendants, that Plaintiff be awarded pre- and post-judgment interest, costs of court, and for such other and further relief as she may be justly entitled.

Respectfully submitted,

ABRAHAM, WATKINS,
NICHOLS & FRIEND



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