

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 00- 9061

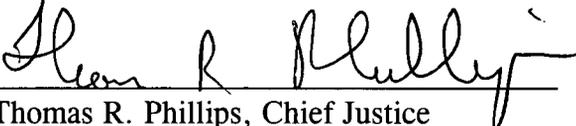
**TRANSFER OF CASE FROM TWELFTH
TO SIXTH COURT OF APPEALS**

ORDERED:

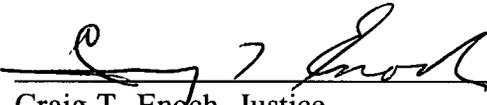
Cause No. 12-00-00024-CV, *Karen Roberts, M.D. v. Williamson, et al* is transferred from the Court of Appeals for the Twelfth Court of Appeals District, Tyler, Texas, to the Court of Appeals for the Sixth Court of Appeals District, Texarkana, Texas.

The Twelfth Court of Appeals will make the necessary orders for the transfer of said case as directed hereby, and will cause the Clerk of that Court to transfer the original transcript and all filed papers in the case, and certify all Orders made, to the Sixth Court of Appeals. Upon completion of the transfer, the Twelfth Court of Appeals shall provide notice of the transfer to the Supreme Court and the State Office of Court Administration.

SIGNED this 3rd day of May, 2000.


Thomas R. Phillips, Chief Justice


Nathan L. Hecht, Justice


Craig T. Enoch, Justice



Priscilla R. Owen, Justice



James A. Baker, Justice



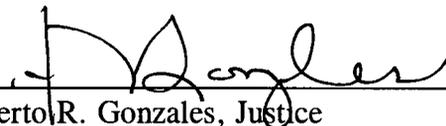
Greg Abbott, Justice



Deborah G. Hankinson, Justice



Harriet O'Neill, Justice



Alberto R. Gonzales, Justice

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Court of Appeals
Sixth Appellate District
State of Texas

CHIEF JUSTICE
WILLIAM J. CORNELIUS

JUSTICES
BEN Z. GRANT
DONALD R. ROSS

CLERK
TIBBY HOPKINS

BI-STATE JUSTICE BUILDING
100 NORTH STATE LINE AVENUE #20
TEXARKANA, TEXAS 75501
903/798-3046

April 4, 2000

Honorable John Adams, Clerk
Supreme Court of Texas
P O Box 12248
Austin, TX 78711-2248

RE: Cause No. 06-00-00014-CV; Williamson, et al v. Roberts, et al
In the Sixth Court of Appeals

Cause No. 12-00-00024-CV; Karen Roberts, M.D. v. Williamson, et al
In the Twelfth Court of Appeals

Dear Sir:

With regard to our letter dated March 28, 2000, please find enclosed the original and three copies of the Williamson Motion to Transfer and Consolidate in the Sixth Court of Appeals at Texarkana, Texas.

Respectfully submitted,

Tibby Hopkins, Clerk

By 
Deputy

cc: Hon. Karen Bishop
Hon. Rex Nichols, Jr.
Hon. Robert L. Galloway

Law Offices
Nichols & Nichols
A Professional Corporation
1703 Judson Road - Nichols Building
Longview, Texas 75601

Rex A. Nichols
Rex A. Nichols, Jr.

Telephone:
(903) 757-2464

Andrew G. Khoury

Telefax Number:
(903) 757-2287

April 3, 2000

Mailing Address:
P.O. Box 2623
Longview, TX 75606

Ms. Tibby Hopkins, Clerk
Court of Appeals, Sixth Dist. of Texas
Bi-State Justice Building
100 North State Line Avenue #20
Texarkana, Texas 75501

Via Federal Express

Ms. Cathy S. Lusk, Clerk
Court of Appeals, Twelfth Dist. of Texas
1517 West Front Street, Suite 354
Tyler, Texas 75702

Via Federal Express

RE: No. 06-00-00014-CV; *Lainie Williamson and Casey Williamson, Individually and as Next Friends of Courtnie Williamson vs. Karen Roberts, M.D. and Mark Miller, M.D.*; In the Sixth Court of Appeals, Texarkana, Texas, Sixth Judicial District;

No. 12-00-00024-CV; *Karen Roberts, M.D. vs. Lainie and Casey Williamson, Individually and as Next Friends of Courtnie Williamson*; In the Twelfth Court of Appeals, Tyler, Texas;

Our File No. 1280.000

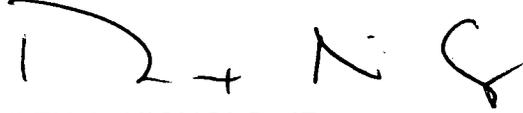
Dear Ms. Hopkins and Ms. Lusk:

I am enclosing the original and four (4) copies of the Williamson Motion to Transfer and Consolidate in the Sixth Court of Appeals at Texarkana, Texas which I would request that you file in each of the above-referenced matters. Please return a file-marked copy to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, I am providing same to opposing counsel and the Texas Supreme Court.

As always, your courtesy and cooperation are appreciated.

Sincerely,

Handwritten signature of Rex A. Nichols, Jr. in black ink, consisting of stylized initials 'RAN' followed by a plus sign and a flourish.

REX A. NICHOLS, JR.

RANjr/rcc
Enclosures

cc: Ms. Mary-Olga Ferguson
Two Allen Center
1200 Smith St., Ste. 3600
Houston, Texas 77002-4595

CM/RRR 7099 3220 0001 5860 7904

Mr. John T. Adams ✓
Clerk, Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

Ms. Karen Bishop
BISHOP & BISHOP, P.C.
P.O. Box 1330
Gilmer, Texas 75644

THOMPSON KNIGHT BROWN PARKER & LEAHY

L.L.P.

ATTORNEYS AND COUNSELORS

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March 13, 2000

Ms. Cathy Lusk, Clerk
12th Court of Appeals
1517 W. Front, Suite 354
Tyler, TX 75702

Ms. Tibby Hopkins, Clerk
6th Court of Appeals
100 N. State Line Avenue, Suite 20
Texarkana, TX 75501

Re: Cause No. 12-00-00024-CV; *Karen Roberts, M.D. v. Lainie Williamson and Casey Williamson, Individually and as Next Friends of Courtnie Williamson*; In the Twelfth Court of Appeals

Cause No. 06-00-00014-CV; *Lainie Williamson and Casey Williamson, Individually and as Next Friends of Courtnie Williamson v. Karen Roberts, M.D. and Mark Miller, M.D.*; In the Sixth Court of Appeals

Dear Ms. Lusk and Ms. Hopkins:

Enclosed is a Motion to Transfer under the procedure outlined by the Texas Supreme Court in *Miles v. Ford Motor Co.*, 914 S.W.2d 135 (Tex. 1995). A copy of this motion is being filed in both the Twelfth Court of Appeals in Tyler and the Sixth Court of Appeals in Texarkana. Please forward the enclosed motion to the clerk of the Texas Supreme Court along with an indication of whether the court of appeals has an objection to the transfer.

The filing fee in the amount of \$10.00 is also enclosed.

Very truly yours,



Robert L. Galloway

RLG/jsm
Enclosures

cc: John Adams
Clerk, Texas Supreme Court

Rex A. Nichols, Jr.
Karen Bishop



Member of INTERLAW, an international association of independent law firms in major world centers

RECEIVED IN
The Court of Appeals
Sixth District

APR 04 2000

No. 06-00-00014-CV

Texarkana, Texas
Tibby Hopkins, Clerk
Lainie and Casey Williamson,
Individually and as Next Friends of
Courtne Williamson

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§
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vs.

In the Sixth Court of Appeals
at Texarkana

Karen Roberts, M.D. and
Mark Miller, M.D.

No. 12-00-00024-CV

Karen Roberts, M.D.

vs.

Lainie and Casey Williamson,
Individually and as Next Friends of
Courtne Williamson

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In the Twelfth Court of Appeals
at Tyler

**WILLIAMSON MOTION TO TRANSFER AND CONSOLIDATE
IN THE SIXTH COURT OF APPEALS AT TEXARKANA, TEXAS**

TO THE SUPREME COURT OF TEXAS:

NOW COME Lainie and Casey Williamson, Individually and as Next Friends of Courtne Williamson, and ask this Court to transfer Cause No. 12-00-00024-CV to the Texarkana Court of Appeals and to consolidate the case with Cause No. 06-00-00014-CV currently pending in the Texarkana Court of Appeals. In support thereof, Lainie and Casey Williamson would respectfully show these Honorable Courts as follows:

1. Within days after her birth, Courtne Williamson suffered severe and permanent brain injuries in September 1996 following multiple hypoxic and acidotic episodes which were permitted to exist over a period of hours at Laird Memorial Hospital in Kilgore. Prior to trial, on November 19, 1999, the trial court conducted a hearing on Defendants' Motion for Summary

Judgment. At this point, there were two (2) non-settling defendants: Dr. Mark Miller and Dr. Karen Roberts. As a result of the trial court's ruling granting Defendants' Motion for Summary Judgment, significant claims against both Dr. Miller and Dr. Roberts were never heard by the jury concerning what each doctor knew or should have known of Dr. Kevin Slusher's narcotic use while rendering improper treatment to the child.¹ With these claims removed by virtue of the trial court's erroneous ruling on summary judgment, the jury found no negligence on the part of Dr. Miller and assessed a fifteen percent (15%) finding of negligence against Dr. Roberts. Subsequently, in rendering judgment against Dr. Roberts based on the jury's verdict, the trial court erroneously assessed fifty percent (50%) of the *ad litem* fee against Courtnie Williamson.²

2. Immediately upon the signing of the judgment by the trial court, Plaintiffs filed their Notice of Appeal with the Gregg County District Clerk. This Notice of Appeal was filed by the court appointed *ad litem*, Karen Bishop. A copy of Ms. Bishop's affidavit is attached hereto and incorporated herein by reference as Exhibit "A". It provides in pertinent part:

Since the date of my appointment, I have been actively involved in this case. I was present on January 14, 2000, at the hearing conducted by the Honorable Judge Boles for entry of judgment. I was present

¹The summary judgment evidence presented to the trial court established that Dr. Roberts' husband (Dr. James Repasky) and Dr. Miller's partner had known for months of Dr. Slusher's narcotic addiction. Summary judgment evidence was also presented to the trial court establishing that Dr. Repasky was present in the nursery while Slusher, Roberts, and Miller were all treating this two-day old child. The attorney representing both Drs. Roberts and Miller (Mary-Olga Ferguson) argued that Roberts and Miller had no duty to act in any way to stop Dr. Slusher from causing harm to this child despite any knowledge they may have had. The trial court agreed. Thus, these claims were never heard or determined by the jury. Not surprisingly, with the summary judgment claims removed, the jury found no negligence on the part of Dr. Miller during trial. The jury did find that the narcotically-addicted doctor caused harm to the baby.

²This erroneous assessment of the *ad litem* fee against the child will further reduce Courtnie's recovery by about \$10,700.00.

during oral arguments before Judge Boles regarding the proper calculations of damages based upon the verdict of the jury. After the Court heard arguments of counsel, I then testified before the Judge Boles as to the reasonableness of my attorney ad litem fees for my representation of Courtnie Williamson. Concluding my testimony, Judge Boles announced from the bench that he agreed with Plaintiffs' arguments regarding the proper calculation of damages. Judge Boles also announced from the bench that he was apportioning the attorney ad litem fees between Plaintiffs and Defendant, Dr. Karen Roberts. Further, I was present in the courtroom when Judge Boles announced from the bench that he would sign the Final Judgment prepared by Plaintiffs' counsel, with only changes to be made with regard to the award of attorney ad litem fees.

After these announcements by the Court, the Final Judgment was presented to Judge Boles by Plaintiffs' counsel, Rex A. Nichols, Jr. for review and signature. At that time, I left the courtroom to go to the District Clerk's office located in the same building to file Plaintiffs' Notice of Appeal. I approached the counter at the clerk's office and waited for a clerk to assist me. When I was in the district clerk's office and just a few minutes after I arrived, an employee of Mary-Olga Ferguson, defense counsel for Karen Roberts, walked into the clerk's office and stood at the counter just a few feet away from me. This individual turned to me and said hello and I returned the greeting. The clerk was still assisting me at this time. After he waited a few minutes, an assistant clerk came forward to accept his documents for filing. It was at this time that I learned he was filing a Notice of Appeal on behalf of Defendant, Karen Roberts.

The fact that Plaintiffs' Notice of Appeal was filed prior to the Notice of Appeal of Defendant, Karen Roberts, is a matter of record which can be verified with the Gregg County District Clerk and one that has been recognized by the Tyler Court of Appeals.

3. It is undisputed that Plaintiffs' Notice of Appeal was filed and perfected first. In fact, the Tyler Court of Appeals has recognized that the Texarkana Court of Appeals has dominant jurisdiction in this case. On March 1, 2000, the Tyler Court of Appeals wrote counsel:

Dear Counsel:

On February 20, 2000, this Court was advised that in the above-referenced cause number, a notice of appeal had been filed in the Sixth

Court of Appeals prior to the time an appeal was perfected in this Court. A copy of the notice of appeal filed in each court is attached.

Because the appeal was first perfected to the Sixth Court of Appeals, it appears that the Sixth Court is the court of dominant jurisdiction. *Miles v. Ford Motor Company*, 914 S.W.2d 135 (Tex. 1995). Accordingly, please be advised that unless good cause is shown for continuing the appeal, this Court anticipates that it will abate further proceedings in cause number 12-00-00024-CV, until final disposition of the appeal pending in the Sixth Court. *Id.*

Any objections to this Court's intention to abate the instant appeal should be filed with this Court on or before March 13, 2000.

(See, Exhibit "B", letter from Twelfth Court of Appeals dated March 1, 2000).

4. Plaintiffs' appeal concerns two legitimate and important issues: (1) whether the trial court erred in granting summary judgment in favor of both Dr. Miller and Dr. Roberts based upon a determination that both Roberts and Miller had no responsibility to prevent a narcotically-addicted doctor from rendering improper treatment to a patient they were responsible for; and (2) whether the trial court erred in effectively reducing Courtnie's recovery by more than \$10,700.00 by assessing fifty percent (50%) of the *ad litem's* fee against the child even though the child was a prevailing party in claims against Dr. Roberts.

5. This case is governed by *Miles v. Ford Motor Company*, 914 S.W.2d 135 (Tex. 1995). The *Miles* case is strikingly similar to the case *sub judice*:

Plaintiffs, however, have timely perfected their appeal, and there is no evidence that they do not intend to prosecute their appeal. Although plaintiffs prevailed on their most significant claims, they nonetheless have the right to appeal those matters on which they did not prevail. As noted in *Wood*, where the parties have an equal right of appeal, "priority in making the election and acting thereon should prevail."

Miles, 914 S.W.2d at 138-139 (emphasis added).

Plaintiffs, on the other hand, respond simply that their venue selection should control because they were the first to perfect an appeal. We agree. The general common law rule in Texas is that “the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other coordinate courts.” *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974); *Bailey v. Cherokee County Appraisal Dist.*, 862 S.W.2d 581, 586 (Tex. 1993); *Mower v. Boyer*, 811 S.W.2d 560, 563 n.2 (Tex. 1991). This rule is grounded on the principles of comity, convenience, and the need for an orderly procedure in resolving jurisdictional disputes. *See, Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex. 1988).

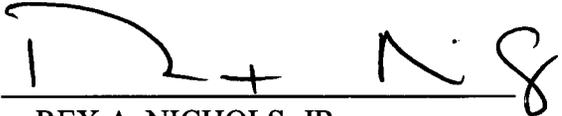
Miles, 914 S.W.2d at 138 (emphasis added.)

6. In summary, Plaintiffs filed and perfected their appeal first as has been recognized previously by the Tyler Court of Appeals. Where, as here, the parties have an equal right of appeal, “priority in making the election and acting thereon should prevail.” *Miles*, 914 S.W.2d at 138-39. Plaintiffs’ “venue selection should control because [Plaintiffs] were the first to perfect their appeal.” *Miles*, 914 S.W.2d at 138.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs/Appellants, Lainie and Casey Williamson, Individually and as Next Friends of Courtnie Williamson, respectfully pray that their Motion to Transfer and Consolidate to the Texarkana Court of Appeals be granted and that all matters and things in controversy on appeal be decided by the Texarkana Court of Appeals as the proper appellate court with dominant jurisdiction in this case.

Respectfully submitted,

Law Offices of
NICHOLS & NICHOLS, P.C.
P.O. Box 2623
Longview, Texas 75606
(903) 757-2464
(903) 757-2287 (FAX)

BY: 

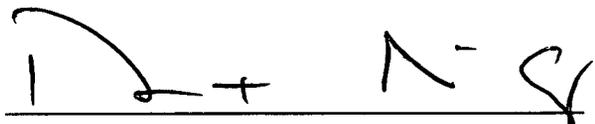
REX A. NICHOLS, JR.
State Bar No. 15006330
REX A. NICHOLS
State Bar No. 15002000

ATTORNEYS FOR PLAINTIFFS/
APPELLANTS, LAINIE WILLIAMSON
AND CASEY WILLIAMSON,
INDIVIDUALLY AND AS NEXT
FRIENDS OF COURTNEIE
WILLIAMSON

CERTIFICATE OF DELIVERY

This is to certify that a true and correct copy of the above and foregoing instrument has been mailed to **Mary-Olga Ferguson**, THOMPSON, KNIGHT, BROWN, PARKER & LEAHY, L.L.P., 3600 Two Allen Center, 1200 Smith Street, Houston, Texas 77002, attorney of record for Karen Roberts, M.D.

SIGNED this 3 day of April, 2000.


REX A. NICHOLS, JR.

No. 12-00-00024-CV

MAR 14 2000

TYLER, TEXAS *elba*
CATHY S. LUSK, CLERK

Karen Roberts, M.D.

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v.

§

In the Twelfth Court of Appeals
at Tyler

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Lainie and Casey Williamson,
Individually and as next friends of
Courtne Williamson

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No. 06-00-00014-CV

Lainie and Casey Williamson,
Individually and as next friends of
Courtne Williamson

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v.

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In the Sixth Court of Appeals
at Texarkana

§

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Karen Roberts, M.D. and
Mark Miller, M.D.

§

MOTION TO TRANSFER AND CONSOLIDATE

TO THE SUPREME COURT OF TEXAS:

Karen Roberts, M.D. ("Dr. Roberts"), asks the Court to transfer Cause No. 06-00-00014-CV to the Tyler Court of Appeals and to consolidate the case with Cause No. 12-00-00024-CV currently pending in the Tyler Court of Appeals.

Introduction

This case deals with two appeals from the 124th District Court of Gregg County. Under the Government Code, judgments rendered by the 124th District Court may be appealed to either the Sixth Court of Appeals in Texarkana or the Twelfth Court of Appeals in Tyler. See TEX. GOV'T CODE § 22.201 (g), (m); *Miles v. Ford Motor Co.*, 914 S.W.2d 135, 136 (Tex. 1995). In this case, the Plaintiffs appealed to the Texarkana Court of Appeals and the Defendant Dr. Karen Roberts¹ appealed to the Tyler Court of Appeals.

Facts

This is a medical malpractice case. Plaintiffs, Lainie and Casey Williamson, sued four treating doctors and the hospital where their daughter was born. After settling with two treating doctors and the hospital, the plaintiffs proceeded to trial against the remaining two defendants, Dr. Karen Roberts and Dr. Mark Miller. On December 20, 1999, the jury returned a verdict. The jury rejected all claims against Dr. Miller. In addition, the jury found the settling defendants 85 percent negligent and Dr. Roberts 15 percent negligent.

¹The jury found Dr. Miller committed no negligence. As a result, he did not appeal to the Tyler Court of Appeals.

On January 14, 2000, the court held a hearing on all pending motions, including a motion for entry of judgment. The court signed a final judgment when the hearing concluded at approximately 2:15 p.m. Contemporaneous with this act, counsel for Dr. Roberts filed a notice of appeal to the Tyler Court of Appeals with the judge and the clerk. *See* Appendix A. At this same time, Dr. Roberts' counsel made an announcement in open court about the appeal to the Tyler Court of Appeals and copies of the notice were provided to plaintiffs' counsel. Immediately thereafter, plaintiffs' counsel stated on the record that the notice was too late because the plaintiffs had previously filed a notice of appeal to the Texarkana Court of Appeals prior to the entry of the judgment.²

Since the filing of the appeals, plaintiffs' counsel has instructed the district clerk and the court reporter not to file the records with the Tyler Court. *See* Appendix B. Additionally, after being "advised that . . . a notice of appeal had been filed in the Sixth Court of Appeals prior to the time an appeal was perfected to [the Tyler] Court", the clerk notified the parties of Tyler Court of Appeals' intent to abate Cause No. 12-00-00024-CV. *See* Appendix C.

²The ad litem, Karen Bishop, left the courtroom during the hearing, filed the notice, and returned to the courtroom before the judgment was signed. A copy of Dr. Roberts' notice of appeal was handed to her in the courtroom at the precise time that the time the judgment was signed and the announcement was made about Dr. Roberts' appeal to the Tyler Court of Appeals.

The Tyler Court of Appeals Acquired Dominant Jurisdiction over the Appeal

Texas Rule of Appellate Procedure 25.1(b) confers appellate jurisdiction over all parties to the trial court's judgment once a party files a notice of appeal. In this case, two notices of appeal were filed: one before the judgment was entered and one contemporaneous with the signing of the judgment.

The contemporaneous notice — Dr. Roberts' — controls. Her notice was perfected first because it was filed at the same time as the judgment was signed. Thus, the Tyler Court of Appeals has dominant jurisdiction over the entire appeal. *See Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974) ("[T]he court in which suit is first filed acquires dominant jurisdiction to the exclusion of other coordinate courts."); *Miles*, 914 S.W.2d at 137 (applying "rule of dominant jurisdiction" to appellate courts).

The plaintiffs' notice of appeal does not control because it was premature. Although filed during the hearing, it was nonetheless presented to the clerk before the court signed the final judgment. *See* Appendix D. Under Texas Rule of Appellate Procedure 27.1(a), "a prematurely filed notice of appeal is effective and deemed filed on the day of, but after, the event that begins the period for perfecting the appeal. *Id.* (emphasis added). Thus, the plaintiffs perfected their appeal only after Dr. Roberts had perfected hers.

To allow the plaintiffs' notice of appeal to control in this situation could encourage Gregg County lawyers to file premature notices of appeal in every case. By taking this approach, they could hedge their bets and fix jurisdiction in a certain appellate court. The race to the court clerk's office would be over well before the court entered any order from which an appeal could be taken. That is not, and should not be, the law. This case should be heard by the Tyler Court of Appeals, not the Texarkana Court of Appeals.

**The Plaintiffs' Notice of Appeal
Was a Sham to Control the Choice of Forum**

Even if a prematurely filed notice of appeals could fix jurisdiction in the Texarkana Court of Appeals, this Court should still transfer the case to the Tyler Court of Appeals and consolidate it with Dr. Roberts' appeal. The plaintiffs' premature notice of appeal was nothing more than an attempt for the plaintiffs to improperly control the choice of forum on appeal. *See Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex. 1988) (recognizing exceptions to dominant jurisdiction doctrine in the interests of fairness).

In its notice of intent to abate, the Tyler Court of Appeals cited to this Court's holding in *Miles v. Ford Motor Co.*, 914 S.W.2d 135 (Tex. 1995). In *Miles*, the family of a victim sued an automobile manufacturer and dealer after a catastrophic

accident. *Id.* The plaintiffs asserted a number of theories and filed the case in Rusk County. *See id.* Prior to trial, the court granted summary judgment for the defendants on the loss of consortium claims asserted by the father and the brother. *See id.* At trial, the jury found the manufacturer liable, but exonerated the dealer. *See id.* The plaintiff immediately filed a notice of appeal to the Texarkana Court of Appeals to challenge "the trial court's summary judgment for Ford on the consortium claims and the take-nothing judgment on the jury's verdict for [the dealer]." *Id.* at 137. Twenty days later, the manufacturer filed an appeal to the Tyler Court of Appeals. *See id.* When faced with the issue of which court of appeals should hear the appeals, this Court found jurisdiction proper in Texarkana because the plaintiffs' facially valid appeal had been clearly perfected first. This Court refused to look beyond the timing of when conflicting appeals from Rusk County were perfected.

This case, however, is significantly different. First, the conflicting notices of appeal in *Miles* were filed twenty days apart. There, the plaintiffs filed a timely notice. Additionally, the defendant knew of the plaintiffs' notice of appeals and chose to ignore it. Here, the conflicting notices were filed on the same day.

Second and more importantly, the plaintiffs in *Miles* had a facially valid appeal because they did not have to forfeit their entire award to prevail on appeal. *See id.* at

137. Here, the plaintiffs' notice appealed one limited issue³ — the granting of a no evidence summary judgment on the claim that Dr. Roberts and Dr. Miller knew or should have known that another defendant, Dr. Kevin Slusher, was impaired at the time of the treatment.⁴ See Appendix G. Unlike the relief sought in *Miles* — an additional measure of damages and additional liability to another defendant — the only "relief" available to plaintiffs should the Texarkana Court of Appeals hold the no-evidence motion for summary judgment was improperly granted is a remand to the trial court for a new trial. This would require plaintiffs to forfeit their approximately three million dollar award. Indeed, plaintiffs' counsel has given numerous media interviews stating that the award is largest of which he has ever been aware in Gregg County. Obviously, the sole motivation with respect to the premature and ineffective filing of this appeal was to select an appellate forum even though they prevailed at trial and the choice of forum under the Government Code belongs to the appealing

³The plaintiffs have since filed a supplemental point because the trial court assessed the ad litem fees against both the plaintiffs and the defendants. See Appendix E.

⁴In response to the no evidence summary judgment, the plaintiffs merely offered evidence from Dr. Slusher about his impairment and about what the peer review committee knew at the time of the incident. See Appendix F (without exhibits); see also TEX. HEALTH & SAF. CODE § 161.032 (Vernon 1992) ("The records and proceedings of a medical committee are confidential and not subject to court subpoena . . . and may be used by the committee and the committee members only in the exercise of proper committee functions.") Ironically, neither Dr. Roberts nor Dr. Miller knew this information because they were not on this peer review committee. Absolutely no evidence suggested that either Dr. Roberts or Dr. Miller had any knowledge whatsoever about Dr. Slusher's impairment at the time the plaintiffs' child was born. It is patently absurd to contend the trial court could have reached any other conclusion on this issue.

party. If plaintiffs are allowed to succeed in their forum shopping scheme and fix venue in the Texarkana Court of Appeals, the plaintiffs will ultimately dismiss their appeal to preserve their so-called "landmark" award.

Appendix

In support of the motion, the following documents are attached and incorporated herein for all purposes:

- Dr. Roberts' Notice of Appeal (Tab A)
- Letters from Rex Nichols, Jr. to Shirley Fore and Ruby Cooper (Tab B)
- Notice from Tyler Court of Appeals (Tab C)
- Plaintiffs' Notice of Appeal (Tab D)
- Plaintiffs' Notice of Supplemental Point on Appeal (Tab E)
- Plaintiffs' Response to No Evidence Summary Judgment (Tab F)
- Plaintiffs' Request for Partial Reporter's Record (Tab G)
- Verification of Mary-Olga Ferguson (Tab H)
- Affidavit of Robert L. Galloway (Tab I)

Additionally, Dr. Roberts' counsel has asked for the hearing on the motion for entry of judgment to be transcribed to further support the statements contained in this

motion. As soon as the transcript of that hearing is completed, a complete copy will be forwarded to the clerk of the Texas Supreme Court.

Conclusion

Dr. Roberts has filed a genuine appeal on the entire case to the Tyler Court of Appeals. She seeks a new trial. She is appealing the jury's finding of negligence as well as the award of damages. Her attorneys requested an extensive clerk's record and the entire reporter's record. Her appeal will involve a number of issues, including the factual and legal sufficiency of the damage awards.

Dr. Roberts' appeal was perfected first and, moreover, the appeal perfected by the plaintiffs is nothing more than a thinly veiled attempt to manipulate the appellate forum. For these reasons, Karen Roberts, M.D. asks the Court to transfer Cause No. 06-00-00014-CV to the Tyler Court of Appeals and to consolidate the case with Cause No. 12-00-00024-CV currently pending in the Tyler Court of Appeals.

Respectfully submitted,

THOMPSON KNIGHT
BROWN PARKER & LEAHY, L.L.P.

By: Rob Galloway

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State Bar No. 07593480
MARY-OLGA FERGUSON
State Bar No.
3600 Two Allen Center
1200 Smith Street
Houston, Texas 77002
(713) 654-8111
(713) 654-1871 (FAX)

ATTORNEYS FOR
KAREN ROBERTS, M.D.

DATE: March 13, 2000

Certificate of Service

A true and correct copy of the foregoing documents was served on

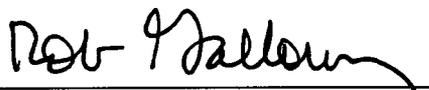
Rex Nichols, Jr.
Nichols & Nichols, P.C.
Post Office Box 2623
Longview, Texas 75606

Counsel for Lainie and Casey Williamson

Karen Bishop
Post Office Box 1330
Gilmer, Texas 75644

Ad Litem Counsel for Courtnie Williamson

by certified mail, return receipt requested.



ROBERT L. GALLOWAY

DATE: March 13, 2000

Respectfully submitted,

**THOMPSON KNIGHT
BROWN PARKER & LEAHY L.L.P.**

By: Mary-Olga Ferguson
Mary-Olga Ferguson
TBN: 00789289
Peter M. Roossien
TBN: 00791567
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(713) 654-8111
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**ATTORNEY FOR DEFENDANT
KAREN ROBERTS, M.D.**

CERTIFICATE OF SERVICE

Pursuant to Rule 21a of the TEXAS RULES OF CIVIL PROCEDURE, I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record.

<input type="checkbox"/>	Certified Mail/Return Receipt Requested
<input checked="" type="checkbox"/>	Telephonic Document Transfer (Fax)
<input type="checkbox"/>	Federal Express/Express Mail
<input type="checkbox"/>	Courier/Receipted Delivery
<input type="checkbox"/>	Registered Mail/Return Receipt Requested
<input checked="" type="checkbox"/>	Hand-Delivery (In Person)
<input type="checkbox"/>	Regular Mail

DATE: 1/14, 2000.

Mary-Olga Ferguson
Mary-Olga Ferguson
Peter M. Roossien

Law Offices
Nichols & Nichols
A Professional Corporation
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Rex A. Nichols
Rex A. Nichols, Jr.

Andrew G. Khoury

Telephone:
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Mailing Address:
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Longview, TX 75606

RECEIVED

MAR 2 2000

February 28, 2000
MARY-OLGA FERGUSON

Ms. Ruby Cooper
Gregg County District Clerk
101 E. Methvin, Ste. 334
Longview, Texas 75606

RE: Cause No. 97-1556-B; *Lainie and Casey Williamson vs. Dr. Roger Fowler*,
Our File No. 1280.000
Twelfth Court of Appeals Number: 12-00-00024-CV
Sixth Court of Appeals Number: 06-00-00014-CV

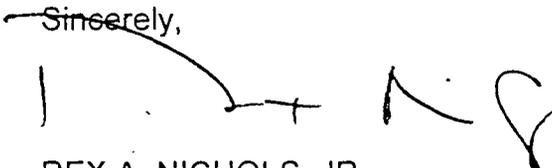
Dear Ms. Cooper:

I am in receipt of a request for preparation of clerk's record filed on behalf of Defendant, Dr. Karen Roberts. The clerk's record should be forwarded to the Texarakana Court of Appeals (6th Court of Appeals) because the appeal was docketed in Texarkana first.

I am also requesting that you file a copy of this letter.

Please do not hesitate to call if you have any questions.

Sincerely,


REX A. NICHOLS, JR.

RANjr:rcc

cc: Ms. Mary-Olga Ferguson ✓
Two Allen Center
1200 Smith St., Ste. 3600
Houston, Texas 77002-4595

CM/RRR Z 247 214 438

Briefing Attorney
Twelfth Court of Appeals
1517 W. Front Street, Suite 354
Tyler, Texas 75702

mf

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February 28, 2000

RECEIVED

MAR 2 2000

Mailing Address:
P.O. Box 2623
Longview, TX 75606

Ms. Shirley Fore
2301 Woodbine
Gladewater, Texas 75647

MANIPULATED

RE: Cause No. 97-1556-B; *Lainie and Casey Williamson, Individually and as Next Friends for Courtnie Williamson v. Dr. Roger Fowler*, Our File No. 1280.000
Twelfth Court of Appeals Number: 12-00-00024-CV
Sixth Court of Appeals Number: 06-00-00014-CV

Dear Shirley:

I am in receipt of Mr. Galloway's letter of February 21. The reporter's record of proceedings in this case should be forwarded to the Texarkana Court of Appeals (6th Court of Appeals) because the appeal to Texarkana was perfected first.

I am also requesting that you file a copy of this letter.

Please do not hesitate to call if you have any questions.

Sincerely,


REX A. NICHOLS, JR.

RANjr/rcc

cc: Ms. Mary-Olga Ferguson ✓
Two Allen Center
1200 Smith St., Ste. 3600
Houston, Texas 77002-4595

CM/RRR Z 247 214 437

Ms. Karen Bishop
BISHOP & BISHOP, P.C.
P.O. Box 1330
Gilmer, Texas 75644

Ms. Ruby Cooper
Gregg County District Clerk
101 E. Methvin, Ste. 334
Longview, Texas 75606

Via hand delivery

Briefing Attorney
Twelfth Court of Appeals
1517 W. Front Street, Suite 354
Tyler, Texas 75702

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1703 Judson Road - Nichols Building
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Rex A. Nichols
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Andrew G. Khoury

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March 2, 2000

Mailing Address:
P.O. Box 2623
Longview, TX 75606

Ms. Tibby Hopkins, Clerk
Court of Appeals, Sixth Appellate District
Bi-State Justice Building
100 North State Line Avenue #20
Texarkana, Texas 75501

RECEIVED

MAR 8 2000

MARY-OLGA FERGUSON

RE: No. 06-00-0014-CV; *Lainie Williamson and Casey Williamson, Individually and as Next Friends of Courtnie Williamson vs. Karen Roberts, M.D. and Mark Miller, M.D.*; In the Sixth Court of Appeals, Texarkana, Texas, Sixth Judicial District; Our File No. 1280.000

Dear Ms. Hopkins:

I am enclosing the original and four (4) copies of Appellants' Notice of Supplemental Point on Appeal which I would request that you file in the above-referenced matter. Please return a file-marked copy to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, I am providing same to opposing counsel.

As always, your courtesy and cooperation are appreciated.

Sincerely,


REX A. NICHOLS, JR.

RANjr/kdm
Enclosures

cc: Ms. Mary-Olga Ferguson
THOMPSON, KNIGHT, BROWN,
PARKER & LEAHY, L.L.P.
Two Allen Center
1200 Smith Street, Suite 3600
Houston, Texas 77002-4595

CM/RRR 7099 3220 0001 5860 7461

NO. 06-00-0014-CV

IN THE
SIXTH COURT OF APPEALS
TEXARKANA, TEXAS
SIXTH JUDICIAL DISTRICT

*LAINIE WILLIAMSON and CASEY WILLIAMSON, INDIVIDUALLY
AND AS NEXT FRIENDS OF COURTNIIE WILLIAMSON VS.
KAREN ROBERTS, M. D. and MARK MILLER, M. D.*

On Appeal from the 124th Judicial District Court of Gregg County, Texas

NOTICE OF SUPPLEMENTAL POINT ON APPEAL

REX A. NICHOLS, JR.
State Bar No. 15006330
REX A. NICHOLS
State Bar No. 15002000
NICHOLS & NICHOLS, P. C.
1703 Judson Road
P.O. Box 2623
Longview, Texas 75606
Telephone: (903) 757-2464
Facsimile: (903) 757-2287

ATTORNEYS FOR APPELLANTS

NO. 06-00-0014-CV

IN THE
SIXTH COURT OF APPEALS
TEXARKANA, TEXAS
SIXTH JUDICIAL DISTRICT

*LAINIE WILLIAMSON and CASEY WILLIAMSON, INDIVIDUALLY
AND AS NEXT FRIENDS OF COURTNIIE WILLIAMSON VS.
KAREN ROBERTS, M. D. and MARK MILLER, M. D.*

On Appeal from the 124th Judicial District Court of Gregg County, Texas

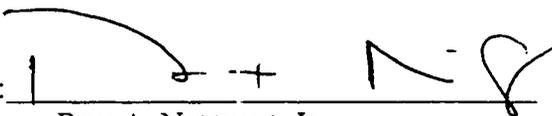
NOTICE OF SUPPLEMENTAL POINT ON APPEAL

TO THE HONORABLE JUSTICES OF SAID COURT:

NOW COME LAINIE WILLIAMSON and CASEY WILLIAMSON, INDIVIDUALLY AND AS NEXT FRIENDS OF COURTNIIE WILLIAMSON, Appellants, notifying the Court and all parties to this action that on March 2, 2000, they filed a Supplemental Notice of Appeal (attached hereto as Exhibit "A") with the clerk of the trial court in Cause No. 97-1556-B in the 124th Judicial District Court of Gregg County and that, in addition to the point raised on appeal in their original Notice of Appeal filed on January 14, 2000, they intend to assert the supplemental point as an issue on appeal.

Respectfully submitted,

NICHOLS & NICHOLS, P. C.
1703 Judson Road
P. O. Box 2623
Longview, Texas 75606
Telephone: (903) 757-2464
Facsimile: (903) 757-2287

By: 

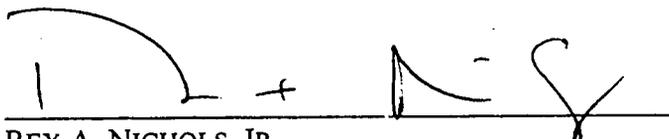
REX A. NICHOLS, JR.
State Bar No. 15006330
REX A. NICHOLS
State Bar No. 15002000

ATTORNEYS FOR APPELLANTS

CERTIFICATE OF SERVICE

I certify that on the 2nd day of March, 2000, a true and correct copy of the above and foregoing Notice of Supplemental Point on Appeal was served upon Defendants, by and through their attorney of record, Ms. Mary-Olga Ferguson, via certified mail, return receipt requested by sending same in a postage pre-paid envelope addressed as follows:

Ms. Mary-Olga Ferguson.
Thompson, Knight, Brown, Parker & Leahy, L. L. P.
Two Allen Center
1200 Smith Street, Suite 3600
Houston, Texas 77002-4595
CM/RRR # 7099 3220 0001 5860 7461


REX A. NICHOLS, JR.

CAUSE NO. 97-1556-B

LAINIE WILLIAMSON AND	§	IN THE DISTRICT COURT
CASEY WILLIAMSON, INDIVIDUALLY	§	
AND AS NEXT FRIENDS FOR COURTNIIE	§	
WILLIAMSON	§	
	§	
VS.	§	GREGG COUNTY, TEXAS
	§	
DR. ROGER FOWLER, DR. MARK	§	
MILLER, and DR. KAREN ROBERTS	§	124TH JUDICIAL DISTRICT

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Plaintiffs Lainie Williamson and Casey Williamson, Individually and as Next Friends for their minor daughter, Courtnie Williamson, and file this their Response to Defendants' Motion for Partial Summary Judgment, and in support thereof, would respectfully show this Honorable Court as follows:

I.

Defendants ask for summary judgment to be granted in their favor regarding two issues, the most important of which is: whether Roberts and Miller had any responsibility to stop Dr. Kevin Slusher (or at least ask him to stop) from treating their patient, two-day old Courtnie Williamson, when they knew or certainly should have known that Slusher had a notorious narcotic drug addiction.

II.

Plaintiffs would respectfully submit that both doctors had such a duty because they either knew or certainly should have known that Dr. Slusher was a grossly-impaired and narcoticly-addicted physician. Significantly, Defendants "do not dispute

1/10/22

that Dr. Kevin Slusher was an impaired physician, suffering from a narcotic addiction, at the time he participated in Courtnie Williamson's care" (see, Defendants' Motion for Partial Summary Judgment at P. 3, ¶ 4, subparagraph a). It is likewise undisputed that Dr. Miller was the "on-call" doctor at 7:00 p.m. on September 16, 1996 and Dr. Roberts assumed control once she arrived later that night. Defendants argue, despite the admission that Slusher was grossly impaired to perform as a doctor, that they did not know that Dr. Slusher was using vast quantities of narcotics. However, this is not the test and it never has been. If it was, every case of this type would be an intentional tort or gross negligence case. This is an ordinary negligence case. If the only proof that mattered was actual knowledge (and if circumstantial proof did not matter), a doctor accused of failing to protect his patient from a grossly-impaired physician could completely avoid a jury's scrutiny by doing nothing more than saying "I did not know." The test is whether Dr. Miller and Roberts knew or should have known. Defendants have presented no summary judgment proof as to what they "should have known." The summary judgment proof in this response contains both circumstantial proof of actual knowledge and proof of what Miller and Roberts should have known.

III.

The available evidence certainly shows that Drs. Miller and Roberts should have known of Slusher's notorious and very severe drug addiction.¹ According to Slusher himself, he was consuming 100+ Vicodin each day because of his addiction. He would

¹ The extent of Dr. Kevin Slusher's addiction is graphically detailed in his January 6, 1998 oral deposition which is attached hereto and incorporated by reference as Exhibit A.

inject a whole box (25 vials) of Demerol on a single day. His physical appearance could not possibly be anything near-normal. Co-Defendant Fowler admitted that he was notified of Slusher's drug use months before the incident involving Courtnie Williamson occurred. Dr. James Repasky,² (Karen Roberts' husband and Dr. Fowler's partner) served on the hospital's executive committee. This committee had detailed knowledge of Slusher's narcotic addiction prior to the time this incident involving Courtnie Williamson occurred.³ Slusher testified that his drug use was reported to the committee in the summer of 1996.⁴ According to the hospital administrator, Mr. Rod LaGrone, the hospital's executive committee met on three (3) separate occasions -- all prior to Courtnie's treatment on September 16, 1996 -- to discuss Slusher's drug problem (August 15, 1996, August 21, 1996 and September 3, 1996)⁵.

What does all of this mean? The hospital administrator, Fowler, all members of the hospital's executive committee, and even Dr. Roberts' own husband necessarily had actual and very detailed knowledge of Dr. Slusher's drug use before Courtnie was born. **According to a nurse present the night of September 16, Repasky was present with his wife (Dr. Roberts) the very night that Courtnie was being treated by Slusher!** See, oral deposition of Linda Sanders, attached hereto and incorporated

² See, Second Deposition of Co-Defendant, Dr. Roger Fowler attached hereto and incorporated herein by reference as Exhibit B.

³See, Slusher deposition, Exhibit A at p. 29.

⁴See, Slusher deposition, Exhibit A at p. 47

⁵See, affidavit of Rod LaGrone, attached hereto and incorporated herein by reference as Exhibit C.

Q. Sure.

A. **But to be able to support 100 tablets a day Vicodin habit, and 25 vile a day Demerol habit, without somebody noticing somewhere, is inconceivable to me.**

Q. I understand that Doctor. I'm not asking you about somebody noticing. I'm asking how you know that Mark Miller had any knowledge, whatsoever, personally, of Dr. Slusher's addiction on the date of this incident?

A. My statement is that it's my opinion, more likely than not, that these doctors had to know he had a problem.

72/14

Q. Do you have any idea, whatsoever, how Dr. Miller would have ever had a chance to observe this going on -- personal knowledge of Dr. Miller?

A. **My knowledge -- My -- the point of what I'm trying to say is, it's my understanding that Dr. Miller and Dr. Slusher shared call of the same patients. It's, I think, it's extremely unlikely that a narcotic addict, with that level of addiction, would not exhibit failures, that would easily recognized, and would be very bothersome to somebody sharing the same patients.**

Q. Did you read Dr. Slusher's deposition?

A. Yes, ma'am.

Q. What, in the records that you reviewed, indicate what failures Dr. Slusher was exhibiting, that should have been visible to all who saw him -- at least to all medical professionals?

A. He admitted to taking 100 Vicodin and 25 vials of Demerol a day.

Q. I know what he admitted to taking. What I'm asking you, is what manifestations there were of that -- that anybody in this record talks about?

A. **Well, there are references in Mr. LaGrone's deposition [the hospital's administrator] -- and I believe Dr. Miller's deposition, to executive committee sessions regarding Dr. Slusher's drug addiction.**

73/23

Q. Please, go ahead.

A. The crucial thing, the crucial part of this is, that to have an addiction that someone -- I mean assuming he's minimizing his addiction, to have an addiction that powerful, I find it very unlikely that he would not have forgotten appointments, or been late, or not returned from calls, or done inappropriate care to patients. I find that extremely unlikely.

*

*

*

74/13

Q. You don't know that Dr. Miller and Dr. Slusher had similar office schedules or saw the same patients in office; do you?

A. It's my understanding that they shared night call together⁸ -- and I do not know the other extent of their coverage arrangements.

Q. Let's talk about Dr. Roberts. Because Dr. Roberts testified -- I believe her deposition goes through pages 28 and 30. That she did not know of Dr. Slusher's drug addiction at the time of this incident.

A. Right.

Q. Nothing about it. And I have to ask you the same question. Surely, you're not saying that Dr. Roberts lied in her deposition?

A. I don't know if she lied or not.

Q. Do you have any independent knowledge that she was lying, other than your supposition that someone should have -- just must have known?

A. **My experience as a physician, and a hospital staff administrator, and doing in-care physician program in Denton, it is extremely unlikely, in my opinion, that someone could have had this level of addiction and all of their colleagues not known it.**

⁸Miller and Slusher were together at the hospital when Courtnie "crashed" around 7:00 p.m. on September 16, 1996.

75/21 Q. Do you know anything about her (*i.e.*, Dr. Roberts) contacts with Dr. Slusher?
A. Well, it's my understanding that her husband is one of his partners -- or was.

* * *

77/6 Q. Are there any criticisms of Dr. Slusher that are any different, that exceed the criticisms that you already leveled against Dr. Miller and Dr. Roberts?
A. Having asked the question that way, it would spark the thought in my mind, the fact that he did not voluntarily submit himself to a treatment center, and quit treating patients when he was impaired -- is a major problem.
Q. Sure it is, Doctor. I think that's implied. But I'm talking about in treating Courtnie on September 16th.
A. **He was treating Courtnie impaired.**
Q(By defense attorney, Mary Olga Ferguson). Doctor, I think that's been established. My question is, do you have any criticisms of his performance that night, that are any different than the criticisms that you've now appended to Dr. Roberts and Dr. Miller?
A. Yes.
Q. What are those?
A. I just gave them to you.
Q. Okay. But in treating Courtnie -- now I'm not talking about him being impaired. Let's assume he's impaired. I'm giving you that. He's impaired -- sorry she's getting carpal tunnel syndrome. He's completely impaired, but in terms of putting his hands on that baby, and giving her a resuscitation, ventilation, volume support, any of those things, treating the patient, did he do anything, that you can be critical of, different than what Dr. Roberts and Dr. Miller did?
A. **And my answer is, yes. He allowed himself to be in an emergent situation with this patient when he was impaired.**
Q. Okay.
A. They [Roberts and Miller] created a problem by not indicating to everyone in the community, including patients, that he was impaired and getting him help.
Q. Okay.

These quotations constitute expert testimony, in addition to the strong circumstantial evidence of actual knowledge, of what a reasonable physician should have known and what should be done to protect the patient.

Dr. Roberts admitted that she would allow a physician who was using narcotics to treat a child she was responsible for (exactly as happened here):

- 15/6 Q. By the way, would you ever allow any doctor to assist you and provide care to one of your patients if you suspected that doctor might be using narcotics?
- A. It would depend on the circumstances.
- Q. **All right. So there could be circumstances that you, Dr. Roberts would allow another doctor to assist you even though you suspected he or she might be using narcotics; is that correct?**
- A. **There might be circumstances.**

See, Dr. Roberts oral deposition, attached hereto and incorporated herein by reference as Exhibit E.

Miller went further:

- 44/15 Q. My question, though, is straightforward. I'm asking, if you believe that he (Slusher) was a recreational drug user, and in fact, he used narcotics **and that he had taken three or four Vicodin on the very day he was treating this child, would you have, number one, allowed him to perform cardiac compressions on this baby?**
- A. Yes.

See, Dr. Miller's oral deposition, attached hereto and incorporated herein by reference as Exhibit F.

IV.

Next is the "it didn't make any difference" defense. In essence, this argument is that it doesn't matter that Miller and Roberts allowed Dr. Slusher to perform critical portions of Courtnie's resuscitation; Slusher probably did everything "okay" even if he

was "high" and admittedly taking 100 Vicodin (hydrocodone) and/or Demerol when he treated Courtnie. Of course, this ignores the undisputed and admitted fact that after Courtnie's heart had stopped, it was Dr. Slusher who performed the chest compressions on this two-day old child. While he was doing so, Courtnie's lung collapsed (*i.e.*, a pneumothorax). Slusher testified that he would have discontinued his participation if he'd only been asked.⁹ When asked about foreseeable consequences of allowing an impaired doctor to perform this delicate procedure on a two-day-old child already in severe respiratory distress, Dr. Miller testified:

- 122/5 Q. **20:15 (8:15 p.m.). All right. Let's convert that to what I call regular folk's time. And that would be 8:02 to 8:15 p.m. Dr. Slusher is performing chest compressions on this child?**
- A. **That's correct.**
- Q. **All right. Now, am I also correct that the confirmed pneumothorax on the left lung occurred at 8:13 p.m.?**
- A. **That the time that the x-ray is dated, yes.**
- A. The x-ray report says there's a complete collapse of the left lung --
- Q. All right.
- A. -- at the bottom, 20:13 hours.
- Q. **Doctor, is it medically accepted that a known complication of improperly performing chest compressions can be a pneumothorax on a one day old child?**
- A. **That's correct.**

The other physician present that night admitted the same thing:

- 21/22 Q. You were there present when Dr. Slusher was pushing down on this child's chest performing those

⁹Dr. Roberts admitted that she was present when the drug impaired doctor, Slusher was permitted to perform in an impaired state on this child. See, Roberts deposition, Exhibit E, at p. 42.

cardiac compressions, were you not?

A. Yes, sir.

Q. Would you agree with me that one of the foreseeable consequences of a drug impaired physician in performing chest compressions on a one-day-old infant this small is potentially causing pneumothorax?

A. Yes, sir.

Q. And you knew that on September the 16th, 1996, didn't you?

A. Yes, sir.

Roberts agrees: improper chest compressions on a one-day-old infant can cause pneumothorax.¹⁰ Even Fowler's retained expert (who Ms. Ferguson has attempted to adopt as one of her experts even though she did not timely or properly designate as such), Dr. Maynard Dyson (a pediatric pulmonologist), acknowledged:

111/10

Q. Who performed the chest compressions on Courtnie Williamson?

A. Dr. Slusher.

*

*

*

Q. **Can an impaired physician performing chest compressions cause pneumothorax?**

Ms. Ferguson: **Objection, form.**

A. Yes.

V.

Whether conduct is reasonable, *i.e.*, not negligent, is ordinarily a question of fact and should prelude summary judgment. *Adam Dante Corporation vs. Sharpe*, 488 S.W.2d 452, 456 (Tex 1972). The function of summary judgment is not intended to deprive the litigant of his right to a trial by jury, but to eliminate patently unmeritorious claims. *City of Houston vs. Clear Creek Basin Authority*, 589 S.W.2d 671, 678 n.5 (Tex 1979). In the words of our Texas Supreme Court, summary judgment "was never

¹⁰See, Roberts deposition, Exhibit E, at p. 27.

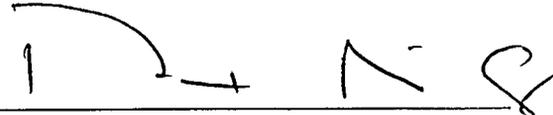
intended to deprive litigants of their right to a full hearing on the merits of any real issue of fact. The summary judgment is to be applied with caution and will not be granted where there is no doubt as to the facts. Although the prompt disposal of judicial business is greatly to be desired, that is not the main objective." *In Re Prices Estate*, 375 S.W.2d 900, 904 (Tex 1964). Contrary to the assertions of Ms. Mary-Olga Ferguson, the admissions of her own clients, other doctors, the nurse, and the expert hired by Co-Defendant Fowler do constitute **evidence**. Here, there is certainly evidence that both Dr. Miller and Dr. Roberts should have known of Dr. Slusher's notorious drug use. Everybody else knew. Every member of this hospital's executive committee knew. The hospital administrator knew. Dr. Fowler (Karen Roberts' husband's partner) knew for months. Dr. Roberts husband, who was present in the same room with Dr. Roberts on the night of September 16, possessed graphic and detailed knowledge of Slusher's narcotic addiction. Miller shared call duty with Slusher and would have actual knowledge of Slusher's drug use unless he consciously chose not to notice. The only testimony (expert or otherwise) offered by way of summary judgment proof is that both Roberts and Miller should have known. The movant for summary judgment has the burden of showing that there is no genuine issue of material fact. In deciding whether there is a dispute in material issue precluding summary judgment, evidence favorable to Courtnie Williamson, as non-movant, must be taken as true. **Every reasonable inference (such as who knew or should have known what) must be indulged in favor of the Plaintiffs as non-movants and all doubts resolved in this child's favor.** *Nixon vs. Mr. Property Management*, 690 S.W.2d 546 (Tex 1985); *Montgomery*

vs. Kennedy, 669 S.W.2d 309, 310-11 (Tex 1984); *City of Houston vs. Clear Creek Basin Authority*, 589 S.W.2d 671 (Tex 1979). When these standards are applied, the undersigned respectfully submits that there are genuine and material issues of fact which only a jury should properly decide in this case.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that Defendants Motion for Partial Summary Judgment be overruled and denied and that the court award Plaintiffs such other and further relief, at law or in equity, to which they may show themselves justly entitled to received.

Respectfully submitted,

Law Offices of
NICHOLS & NICHOLS, P.C.
P.O. Box 2623
Longview, Texas 75606
(903) 757-2464
(903) 757-2287 (FAX)

BY: 

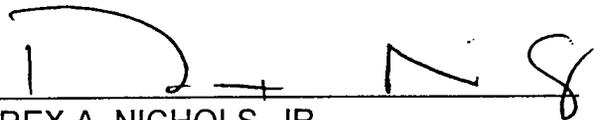
REX A. NICHOLS, JR.
State Bar No. 15006330

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF DELIVERY

This is to certify that a true and correct copy of the above and foregoing instrument has been mailed in compliance with the Texas Rules of Civil Procedure to **Ms. Mary-Olga Ferguson**, Two Allen Center, 1200 Smith Street, Suite 3600, Houston, Texas 77002-4595, attorney for Defendant, Dr. Mark Miller and Dr. Karen Roberts.

SIGNED this 10 day of November, 1999.



REX A. NICHOLS, JR.

JAN 14 2000
145
RUBY COOPER, DISTRICT CLERK
By, Deputy

CAUSE NO. 97-1556-B

LAINIE WILLIAMSON and CASEY	§	IN THE DISTRICT COURT OF
WILLIAMSON, INDIVIDUALLY AND	§	
AS NEXT FRIENDS OF COURTNIIE	§	
WILLIAMSON	§	
	§	
VS.	§	GREGG COUNTY, TEXAS
	§	
KAREN ROBERTS, M. D. and MARK	§	
MILLER, M. D.	§	124 TH JUDICIAL DISTRICT

REQUEST FOR PREPARATION OF PARTIAL REPORTER'S RECORD

TO: Shirley Fore
2301 Woodbine
Gladewater, Texas 75647
(903) 844-0319
CM/RRR # Z 247 284 542

RE: Request for Preparation of Partial Reporter's Record
in the above-entitled and numbered cause

As counsel for LAINIE WILLIAMSON and CASEY WILLIAMSON, INDIVIDUALLY AND AS NEXT FRIENDS OF COURTNIIE WILLIAMSON, Plaintiffs in the above-referenced cause, I request that you prepare a partial reporter's record. The Notice of Appeal was filed on January 14, 2000.

In accordance with Texas Rule of Appellate Procedure 34.6(c)(1), the following point or issue will be presented on appeal of this case:

1. the trial court erred in granting summary judgment against Plaintiffs on their cause of action for Defendants' negligent failure to prevent drug-impaired doctor from treating infant.

Please include the following parts of the proceedings in the reporter's record:

1. Statement of Facts of hearing on Dr. Karen Roberts and Dr. Mark Miller's No-Evidence Motion for Partial Summary Judgment, held on November 19, 1999.

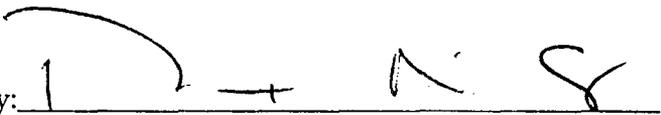
Along with this request, LAINIE WILLIAMSON and CASEY WILLIAMSON, INDIVIDUALLY AND AS NEXT FRIENDS OF COURTNE WILLIAMSON, is tendering, in accordance with Texas Rule of Appellate Procedure 35.3(b), \$100.00 as an advance payment for preparation of the reporter's record in this case.

The partial reporter's record should be filed with the clerk of the Sixth Court of Appeals in Texarkana, Texas on or before March 14, 2000.

If I can be of any assistance to you, please contact me.

Respectfully submitted,

NICHOLS & NICHOLS, P. C.
1703 Judson Road
P. O. Box 2623
Longview, Texas 75606
Telephone: (903) 757-2464
Facsimile: (903) 757-2287

By: 

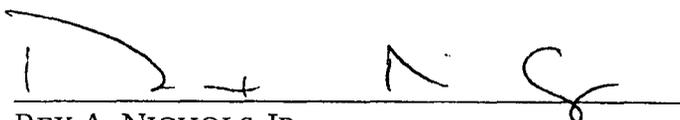
REX A. NICHOLS, JR.
State Bar No. 15006330
REX A. NICHOLS
State Bar No. 15002000

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 14th day of January, 2000, a true and correct copy of the above and foregoing Request for Preparation of Partial Reporter's Record was served upon Defendants, by and through their attorney of record, Ms. Mary-Olga Ferguson, via certified mail, return receipt requested by sending same in a postage pre-paid envelope addressed as follows:

Ms. Mary-Olga Ferguson.
Thompson, Knight, Brown, Parker & Leahy, L. L. P.
Two Allen Center
1200 Smith Street, Suite 3600
Houston, Texas 77002-4595
CM/RRR # Z 247 284 541



REX A. NICHOLS, JR.

4761

NICHOLS & NICHOLS, P.C.

P.O. BOX 2623 PH. 903-757-2464
LONGVIEW, TX 75606

DATE Jan. 11, 2000

88-2323
1119

PAY
TO THE
ORDER OF

Shirley Fore

\$ 100.00

One hundred & 00/100

DOLLARS 



LONGVIEW BANK & TRUST

300 E. WHALEY, P.O. BOX 3188
LONGVIEW, TEXAS 75606
903-237-5500

FOR 1280 Williamson reporter's record (526)

advance-

D-N-S

⑈004761⑈ ⑆111923238⑆ 04 0385 7⑈

VERIFICATION

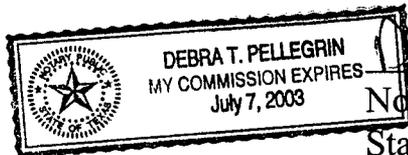
STATE OF TEXAS §
 §
COUNTY OF HARRIS §

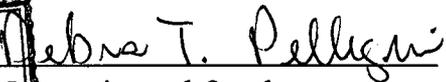
Before me, the undersigned notary, on this day, personally appeared MARY-OLGA FERGUSON, a person whose identity is known to me. After I administered an oath to her, upon her oath, she said she read the Motion to Transfer and Consolidate and the facts stated in it are within her personal knowledge and are true and correct.



MARY-OLGA FERGUSON

SUBSCRIBED TO AND SWORN TO BEFORE ME, an officer duly authorized in the State aforesaid and in the County aforesaid to administer oaths and take acknowledgements, on this the 11th day of March, 2000, to certify which witness my hand and seal of office.





Notary in and for the
State of Texas

AFFIDAVIT OF ROBERT L. GALLOWAY

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

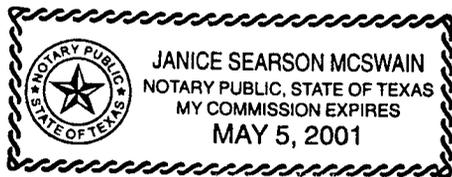
On this day personally appeared before me, the undersigned authority, ROBERT L. GALLOWAY, who, after being duly sworn, deposed and stated as follows:

1. "I am over the age of eighteen, am of sound mind, and am in all other ways fully competent to make this affidavit based on my personal knowledge.
2. I am an attorney representing Dr. Karen Roberts.
3. I have read the Motion to Transfer and Consolidate and the facts stated in it are within my personal knowledge and are true and correct.
4. The documents attached as Exhibits A- G to the motion are true and correct copies of documents relating to Cause No. 97-1556-B; *Lainie Williamson and Casey Williamson, Individually and as Next Friends of Courtnie Williamson v. Dr. Karen Roberts and Dr. Mark Miller*; pending in the 124th District Court of Gregg County. The documents were received by me or someone in my office as part of our representation of Dr. Roberts in the above mentioned lawsuit and the appeals therefrom."

FURTHER AFFIANT SAYETH NOT.


ROBERT L. GALLOWAY

SUBSCRIBED TO AND SWORN TO BEFORE ME, an officer duly authorized in the State aforesaid and in the County aforesaid to administer oaths and take acknowledgments, on March 13, 2000, to certify which witness my hand and seal of office.



Janice Seanson McSwain
Notary in and for the
State of Texas



TOM B. RAMEY, JR.
Chief Justice

ROBY HADDEN
Justice

JIM WORTHEN
Justice

Court of Appeals

TWELFTH DISTRICT OF TEXAS

1517 West Front Street, Suite 354
Tyler, Texas 75702
www.12thcoa.courts.state.tx.us

March 22, 2000

CATHY S. LUSK
Clerk

SARA S. PATTESON
Chief Staff Attorney

TELEPHONE
(903) 593-8471

Mr. John T. Adams
Clerk, Supreme Court of Texas
P. O. Box 12248
Austin, TX 78711

RE: Court of Appeals Number: 12-00-00024-CV
Trial Court Case Number: 97-1556-B

Style: Roberts, Karen, M.D.

v.

Williamson, Lainie and Casey Williamson, Individually and as next friends of Courtnie
Williamson

The Appellee's response to the Appellant's motion to transfer and consolidate has this day
been received and filed in the above case.

The above response has been forwarded to the Supreme Court of Texas for review with the
Appellant's motion to transfer and consolidate which was forwarded on March 15, 2000.

Very truly yours,

Cathy S. Lusk,
Clerk of the Court

By: Katrina McClenny
Katrina McClenny, Chief Deputy

cc: Mr. Robert Lee Galloway
Mr. Rex A. Nichols
Ms. Ruby Cooper

MAR 22 2000

Texarkana, Texas
Tibby Hopkins, Clerk

No. 12-00-00024-CV

Karen Roberts, M.D.	§	
	§	
v.	§	In the Twelfth Court of Appeals
	§	at Tyler
Lainie and Casey Williamson,	§	
Individually and as Next Friends of	§	
Courtnie Williamson	§	

No. 06-00-00014-CV

Lainie and Casey Williamson,	§	
Individually and as Next Friends of	§	
Courtnie Williamson	§	
	§	
v.	§	In the Sixth Court of Appeals
	§	at Texarkana
Karen Roberts, M.D. and	§	
Mark Miller	§	

RESPONSE TO MOTION TO TRANSFER AND CONSOLIDATE

TO THE HONORABLE JUSTICES OF SAID COURT:

NOW COME Lainie and Casey Williamson, Individually and as Next Friends of Courtnie Williamson, and file their Response to the Motion to Transfer and Consolidate filed on behalf of Dr. Karen Roberts, and in opposition thereto, would respectfully show this Honorable Court as follows:

1. This is a medical negligence case. Courtnie Williamson suffered severe and permanent brain injuries in September 1996 following multiple hypoxic and acidotic

episodes which were permitted to exist over a period of hours at Laird Hospital in Kilgore. Prior to trial, on November 19, 1999, the trial court conducted a hearing on Defendants' Motion for Summary Judgment. At this point, there were two non-settling Defendants: Dr. Mark Miller and Dr. Karen Roberts. As a result of the trial court's ruling granting Defendants' Motion for Summary Judgment, significant claims against both Dr. Miller and Dr. Roberts were never heard by the jury concerning what each doctor knew or should have known of Dr. Kevin Slusher's narcotic use while rendering improper treatment to Courtnie.¹ With these claims removed by virtue of the trial court's ruling on summary judgment, the jury found no negligence on the part of Dr. Miller and assessed a fifteen percent (15%) finding against Dr. Roberts. Then, in rendering judgment against Roberts, the trial court erroneously assessed fifty percent (50%) of the *ad litem* fee against the child.²

2. Contrary to statements made by the attorney representing Dr. Roberts in this appeal, Plaintiffs filed their Notice of Appeal immediately upon the signing of the judgment by the trial court -- which we had every right to do. This Notice of Appeal was filed by

¹The summary judgment evidence presented to the trial court established that Dr. Roberts' husband (Dr. James Repasky) and Dr. Miller's partner had known for months of Dr. Slusher's narcotic addiction. Summary judgment evidence was also presented to the trial court establishing that Dr. Repasky was present in the nursery while Slusher, Roberts, and Miller were all treating this two-day old child. The attorney representing both Drs. Roberts and Miller (Mary-Olga Ferguson) argued that Roberts and Miller had no duty to act in any way to stop Dr. Slusher from causing harm to this child despite any knowledge they may have had. The trial court agreed. Thus, these claims were never heard or determined by the jury. Not surprisingly, with the summary judgment claims removed, the jury found no negligence on the part of Dr. Miller during trial. The jury did find that the narcotically-addicted doctor caused harm to the baby.

²This erroneous assessment of the *ad litem* fee against the child will further reduce Courtnie's recovery by about \$10,700.00.

the court-appointed *ad litem*, Karen Bishop. A copy of Ms. Bishop's Affidavit is attached hereto and incorporated herein by reference as Exhibit "A."

3. It is undisputed that Plaintiffs' Notice of Appeal was filed and perfected first. Plaintiffs then filed their Docketing Statement with the Sixth Court of Appeals in Texarkana on the same afternoon following perfection of their appeal with the Gregg County District Clerk.

4. The Texarkana Court of Appeals has dominant jurisdiction in this case. Plaintiffs' Notice of Appeal was filed and perfected first.³

5. Dr. Roberts' counsel cites no cases which contravene the established principle that the Texarkana Court of Appeals has dominant jurisdiction in this case. Instead, Roberts seems to argue that the later-filed Tyler appeal should control because Plaintiffs' Notice of Appeal filed with the Texarkana Court was not "facially valid." See, Roberts' Motion to Transfer and Consolidate at p. 6-7. That is absurd. Plaintiffs' appeal concerns two legitimate and important issues: (1) whether the trial court erred in granting summary judgment in favor of Dr. Miller and Dr. Roberts based upon a determination that both Roberts and Miller had no responsibility to prevent a narcotically-addicted doctor from rendering improper treatment to this child; and (2) whether the trial court erred in effectively reducing Courtnie's recovery by more than \$10,700 by assessing fifty percent

³The Notice of Appeal was filed after the judgment was signed. However, whether it was filed before or after the judgment was signed (but undoubtedly after judgment was pronounced) does not matter. Tex. R. App. P. 27.1(a) provides that even a prematurely filed Notice of Appeal is effective immediately after the judgment is signed. The person filing the Notice of Appeal on behalf of Dr. Roberts did exactly the same thing; in fact, this person was standing in line behind Ms. Bishop at the District Clerk's office when she filed Plaintiff's Notice of Appeal! Roberts simply filed her appeal second; it is immaterial as to whether it was "second" by minutes or days.

(50%) of the *ad litem's* fee against the child even though the child was a prevailing party in claims against Dr. Roberts.⁴

6. This case is strikingly similar to *Miles v. Ford Motor Company*, 914 S.W.2d 135 (Tex. 1995). There, like here, Defendants argued that their subsequently-filed notice of appeal should control. The Texas Supreme Court disagreed:

[Ford] contends that plaintiffs filed their appeal as a pretext merely to establish venue in the Sixth Court of Appeals. Plaintiffs, however, have timely perfected their appeal, and there is no evidence that they do not intend to prosecute their appeal. Although plaintiffs prevailed on their most significant claims, they nonetheless have the right to appeal those matters on which they did not prevail. As noted in *Wood*, where the parties have an equal right of appeal, "priority in making the election and acting thereon should prevail."

Miles, 914 S.W.2d at 138-39 (emphasis added).

Plaintiffs, on the other hand, respond simply that their venue selection should control because they were the first to perfect an appeal. We agree. The general common law rule in Texas is that "the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other coordinate courts." *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974); *Bailey v. Cherokee County Appraisal Dist.*, 862 S.W.2d 581, 586 (Tex. 1993); *Mower v. Boyer*, 811 S.W.2d 560, 563 n. 2 (Tex. 1991). This rule is grounded on the principles of comity, convenience, and the need for an orderly procedure in resolving jurisdictional disputes. *See, Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex. 1988).

Miles, 914 S.W.2d at 138 (emphasis added).⁵

⁴Counsel for Roberts argues that Plaintiffs received a \$3,000,000 award. That is simply not true. The jury found damages in excess of \$3,000,000 but the Court's judgment only allows the child to recover slightly more than \$450,000.

⁵Roberts' citation to the case of *White v. Shaw Plumbing Co.*, 760 S.W.2d 245 (Tex. 1998) is misplaced. The *White* case does not involve issues which are remotely similar to those in the case *sub judice*.

7. In summary, Plaintiffs filed and perfected their appeal first. The issues appealed by Plaintiffs are legitimate ones. As the Tyler Court of Appeals recognized in its letter of March 1, 2000 (Exhibit "B"), the Sixth Court of Appeals in Texarkana is the court with dominant jurisdiction in this case. Where, as here, the parties have an equal right of appeal, "priority in making the election and acting thereon should prevail." *Miles*, 914 S.W.2d at 138-39. Plaintiffs' "venue selection should control because [we] were the first to perfect our appeal." *Miles*, 914 S.W.2d at 138.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs/Appellants, Lainie and Casey Williamson, Individually and as Next Friends of Courtnie Williamson, respectfully pray that Roberts' Motion to Transfer and Consolidate be denied, that the subsequently-filed appeal by Roberts to the Twelfth Court of Appeals in Tyler be abated, and that all matters and things and in controversy on appeal be decided by the Texarkana Court of Appeals as the appellate court with dominant jurisdiction in this case.

Respectfully submitted,

Law Offices of
NICHOLS & NICHOLS, P.C.
P.O. Box 2623
Longview, Texas 75606
(903) 757-2464
(903) 757-2287 (FAX)

BY: 

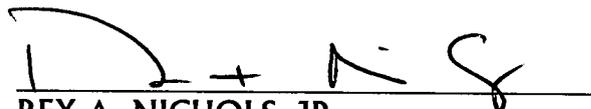
REX A. NICHOLS, JR.
State Bar No. 15006330
REX A. NICHOLS
State Bar No. 15002000

ATTORNEYS FOR PLAINTIFFS/
APPELLANTS, LAINIE WILLIAMSON
AND CASEY WILLIAMSON,
INDIVIDUALLY AND AS NEXT
FRIENDS OF COURTNIIE
WILLIAMSON

CERTIFICATE OF DELIVERY

This is to certify that a true and correct copy of the above and foregoing instrument has been mailed to **Robert L. Galloway and Mary-Olga Ferguson**, THOMPSON, KNIGHT, BROWN, PARKER & LEAHY, L.L.P., 3600 Two Allen Center, 1200 Smith Street, Houston, Texas 77002, attorneys of record for Karen Roberts, M.D.

SIGNED this 21 day of March, 2000.



REX A. NICHOLS, JR.

AFFIDAVIT OF KAREN DEBIASSE BISHOP**STATE OF TEXAS** §**COUNTY OF GREGG** §

BEFORE ME, the undersigned authority, on this day personally appeared Karen DeBiasse Bishop, known to me to be a credible person, and who, after being by me duly sworn, upon her oath stated as follows:

"My name is Karen DeBiasse Bishop, and I am duly licensed to practice law with the law firm of Bishop & Bishop, P.C., located in Gilmer, Upshur County, Texas. I am the Attorney Ad Litem for Courtnie Williamson, a minor child in Cause No. 97-1556-B styled *Lannie Williamson and Casey Williamson, Individually and as Next Friend of Courtnie Williamson, A Minor*; In the 124th Judicial District Court of Gregg County, Texas.

I have been licensed to practice law in the State of Texas since November of 1983. A considerable portion of my practice of law is litigation such as the above-entitled and numbered cause.

As Attorney Ad Litem in this case, I have personal knowledge of all matters stated herein and they are true and correct to the best of my knowledge and belief. I was appointed by the 124th Judicial District Court of Gregg County, Texas, to represent the interests of Courtnie Williamson on January 13, 1999. Courtnie Williamson was one of the Plaintiffs in the referenced medical negligence case and Dr. Karen Roberts was one of the Defendants.

Since the date of my appointment, I have been actively involved in this case. I was present on January 14, 2000, at the hearing conducted by the Honorable Judge Boles for entry of judgment. I was present during oral arguments before Judge Boles regarding the proper calculations of damages based upon the verdict of the jury. After the Court heard arguments of counsel, I then testified before the Judge Boles as to the reasonableness of my attorney ad litem fees for my representation of Courtnie Williamson. Concluding my testimony, Judge Boles announced from the bench that he agreed with Plaintiffs' arguments regarding the proper calculation of damages. Judge Boles also announced from the bench that he was apportioning the attorney ad litem fees between Plaintiffs and Defendant, Karen Roberts. Further, I was present in the courtroom when Judge Boles announced from the bench that he would sign the Final Judgment prepared by Plaintiffs' counsel, with only changes to be made with regard to the award of attorney ad litem fees.



After these announcements by the Court, the Final Judgment was presented to Judge Boles by Plaintiffs' counsel, Rex A. Nichols, Jr. for review and signature. At that time, I left the courtroom to go to the District Clerk's office located in the same building to file Plaintiffs' Notice of Appeal. I approached the counter at the clerk's office and waited for a clerk to assist me. When I was in the district clerk's office and just a few minutes after I arrived, an employee of Mary Olga-Ferguson, defense counsel for Karen Roberts, walked into the clerk's office and stood at the counter just a few feet away from me. This individual was waiting at the counter to file a document with the district clerk. This individual turned to me and said hello and I returned the greeting. The clerk was still assisting me at this time. After he waited a few minutes, an assistant clerk came forward to accept his documents for filing. It was at this time that I learned he was filing a Notice of Appeal on behalf of Defendant, Karen Roberts.

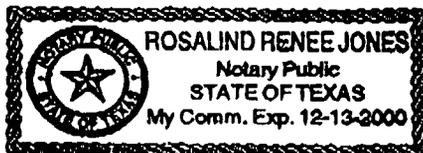
The fact that Plaintiffs' Notice of Appeal was filed prior to the Notice of Appeal of Defendant, Karen Roberts, is a matter of record which can be verified with the Gregg County District Clerk and one that has been recognized by the Tyler Court of Appeals.

Further Affiant sayeth not.



Karen DeBiasse Bishop

SWORN TO AND SUBSCRIBED BEFORE ME on this the 21st day of March, 2000,
by the said Karen DeBiasse Bishop.





Notary Public in for the State of Texas



TOM B. RAMEY, JR.
Chief Justice

ROBY HADDEN
Justice

JIM WORTHEN
Justice

Court of Appeals TWELFTH DISTRICT OF TEXAS

1517 West Front Street, Suite 354
Tyler, Texas 75702
www.12thcoa.courts.state.tx.us

CATHY S. LUSK
Clerk

SARA S. PATTESON
Chief Staff Attorney

TELEPHONE
(903) 593-8471

March 1, 2000

FILED
GREGG COUNTY, TEXAS

MAR 7 - 2000

O'CLOCK
By RUBY COOPER, DISTRICT CLERK
Deputy

Mr. Robert Lee Galloway
1200 Smith St Ste 3600
Houston, Tx 77002-4502

Mr. Rex A. Nichols
Nichols & Nichols
P. O. Box 2623
Longview, TX 75606

RE: Court of Appeals Number: 12-00-00024-CV
Trial Court Case Number: 97-1556-B

Style: Roberts, Karen, M.D.

v.

Williamson, Lainie and Casey Williamson, Individually and as next friends of Courtnie Williamson

Dear Counsel:

On February 29, 2000, this Court was advised that in the above-referenced cause number, a notice of appeal had been filed in the Sixth Court of Appeals prior to the time an appeal was perfected to this Court. A copy of the notice of appeal filed in each court is attached.

Because the appeal was first perfected to the Sixth Court of Appeals, it appears that the Sixth Court is the court of dominant jurisdiction. *Miles v. Ford Motor Company*, 914 S.W.2d 135 (Tex. 1995). Accordingly, please be advised that unless good cause is shown for continuing the appeal, this Court anticipates that it will abate further proceedings in cause number 12-00-00024-CV, until final disposition of the appeal pending in the Sixth Court. *Id.*

Any objections to this Court's intention to abate the instant appeal should be filed with this Court on or before March 13, 2000.

Very truly yours,

Cathy S. Lusk,
Clerk of the Court

By: Katrina McClenny
Katrina McClenny, Chief Deputy

xc: Ms. Tibby Hopkins
Clerk, 6th Court of Appeals



JAN 14 2000

CAUSE NO. 97-1556-B

O'Clock M
RUBY COOPER, DISTRICT CLERK
By Deputy

LAINIE WILLIAMSON and CASEY	§	IN THE DISTRICT COURT OF
WILLIAMSON, INDIVIDUALLY AND	§	
AS NEXT FRIENDS OF COURTNIÉ	§	
WILLIAMSON	§	
	§	
VS.	§	GREGG COUNTY, TEXAS
	§	
KAREN ROBERTS, M. D. and MARK	§	
MILLER, M. D.	§	124 TH JUDICIAL DISTRICT

NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

LAINIE WILLIAMSON and CASEY WILLIAMSON, INDIVIDUALLY AND AS NEXT FRIENDS OF COURTNIÉ WILLIAMSON, Plaintiffs in the above-entitled and numbered cause, give notice of their intent to appeal the trial court's order granting summary judgment following the hearing held on November 19, 1999. This appeal is taken to the Sixth Court of Appeals in Texarkana, Texas.



Respectfully submitted,

NICHOLS & NICHOLS, P. C.
1703 Judson Road
P. O. Box 2623
Longview, Texas 75606
Telephone: (903) 757-2464
Facsimile: (903) 757-2287

By: 

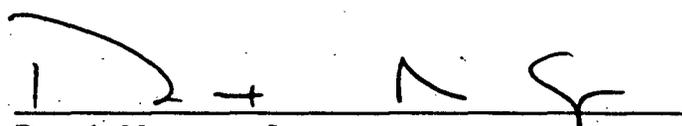
REX A. NICHOLS, JR.
State Bar No. 15006330
REX A. NICHOLS
State Bar No. 15002000

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 14th day of January, 2000, a true and correct copy of the above and foregoing Notice of Appeal was served upon Defendants, by and through their attorney of record, Ms. Mary-Olga Ferguson, via certified mail, return receipt requested by sending same in a postage pre-paid envelope addressed as follows:

Ms. Mary-Olga Ferguson.
Thompson, Knight, Brown, Parker & Leahy, L. L. P.
Two Allen Center
1200 Smith Street, Suite 3600
Houston, Texas 77002-4595
CM/RRR # Z 247 284 541


REX A. NICHOLS, JR.

Appellate Docket Number: _____

Appellate Case Style:

Lainie and Casey Williamson,
Individually and as Next Friends
of Courtnie Williamson

Dr. Karen Roberts and
Dr. Mark Miller

RECEIVED IN
The Court of Appeals
Sixth District

DOCKETING STATEMENT (CIVIL)

Sixth Court of Appeals

[to be filed in the court of appeals upon perfection of appeal
under TRAP 32]

JAN 14 2000

Texarkana, Texas
Tibby Hopkins, Clerk

I. Parties (TRAP 32.1(a), (e)):	
Appellant(s): Lainie and Casey Williamson, Individually and as Next Friends of Courtnie Williamson (See note at bottom of page)	Appellee(s): Karen Roberts, M.D. and Mark Miller, M.D. (See note at bottom of page)
Attorney (lead appellate counsel): Rex Nichols, Jr.	Attorney (lead appellate counsel, if known; if not, then trial counsel): Mary-Olga Ferguson
Address (lead counsel): P.O. Box 2623 Longview, Texas 75606	Address (lead appellate counsel, if known; if not, then trial counsel): 1200 Smith Street, Suite 3600 Houston, Texas 77002
Telephone: (include area code) (903) 757-2464	Telephone: (include area code) (713) 951-5834
Telecopy: (include area code) (903) 757-2287	Telecopy: (include area code) (713) 654-1971
SBN (lead counsel): 15006330	SBN (lead counsel): 00789289

If not represented by counsel, provide appellant's/appellee's address, telephone number, and telecopy number.
On Attachment 1, or a separate attachment if needed, list the same information stated above for any additional parties
to the trial court's judgment.



II. Perfection Of Appeal And Jurisdiction (TRAP 32.1(b), (c), (g), (j)):	
<p>Date order or judgment signed: November 19, 1999 (oral)</p> <p>(Attach a signed copy, if possible)</p>	<p>Date notice of appeal filed in trial court: January 14, 2000</p> <p>(Attach file-stamped copy; if mailed to the trial court clerk, also give the date of mailing)</p>
<p>What type of judgment? (e.g., jury trial, bench trial, summary judgment, directed verdict, other (specify))</p> <p>Jury trial</p> <p>If money judgment, what was the amount? \$3,010,001.00</p> <p>Actual damages: \$0.00</p> <p>Punitive (or similar) damages: \$0.00</p> <p>Attorneys' fees (trial): \$0.00</p> <p>Attorneys' fees (appellate): \$0.00</p> <p>Other (specify):</p>	<p>Interlocutory appeal of appealable order: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>(Please specify statutory or other basis on which interlocutory order is appealable) (See TRAP 28)</p> <p>Accelerated appeal (See TRAP 28): Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>(Please specify statutory or other basis on which appeal is accelerated)</p> <p>Appeal that receives precedence, preference, or priority under statute or rule? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>(Please specify statutory or other basis for such status)</p>

Appeal from final judgment? Yes No

Will you challenge this Court's jurisdiction? If yes, explain.

Does judgment dispose of all parties and issues:

No.

Yes No

Does judgment have a Mother Hubbard clause? (E.g.: "All relief not expressly granted is denied"):

Yes No

Does judgment have language that one or more parties "take nothing"?

Yes No

Other basis for finality? None.

III. Actions Extending Time To Perfect Appeal (TRAP 32.1(d)):

Action	Filed Check as appropriate		Date Filed
Motion for New Trial	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>	
Motion to Modify Judgment	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>	
Request for Findings of Fact and Conclusions of Law	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>	
Motion to Reinstate	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>	
Motion under TRCP 306a	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>	
Other (specify):	No <input type="checkbox"/>	Yes <input type="checkbox"/>	

IV. Indigency Of Party (TRAP 32.1(k)): (Attach file-stamped copy of affidavit) Not Applicable

Event	Filed Check as appropriate		Date	N/A
Affidavit filed	No <input type="checkbox"/>	Yes <input type="checkbox"/>		
Contest filed	No <input type="checkbox"/>	Yes <input type="checkbox"/>		
Date ruling on contest due:				
Ruling on contest: Sustained <input type="checkbox"/> Overruled <input type="checkbox"/>				

V. Bankruptcy (TRAP 8): Not Applicable

Will the appeal be stayed by bankruptcy?

Date bankruptcy filed?

Name of bankruptcy court:

Bankruptcy Case No.:

Style of bankruptcy case:

VI. Trial Court And Record (TRAP 32.1(c), (h), (i)):			
Court: 124th Judicial District	County: Gregg	Trial Court Docket Number (Cause No.): 97-1556-B	
Trial Judge (who tried or disposed of case): Honorable Bennie Boles P.O. Box 448 Center, Texas 75935		Court Clerk (district clerk): Ruby Cooper Gregg County District Clerk 101 E. Methvin, Suite 334 Longview, Texas 75606	
Clerk's Record Yes <input checked="" type="checkbox"/>	Sworn copy for accelerated appeal Yes <input type="checkbox"/> (See TRAP 28.3)	Will request <input type="checkbox"/> (Note: No request required under TRAP 34.5(a), (b))	Was requested on: January 14, 2000
Court Reporter or Court Recorder: Elaine Campbell		Court Reporter or Court Recorder: Shirley Fore	
Telephone Number: (include area code) (903) 236-0265		Telephone Number: (include area code) (903) 844-0319	
Telecopy Number: (include area code) (903) 236-0747		Telecopy Number: (include area code) None	
Address: 101 E. Methvin, Suite 447 Longview, Texas 75601		Address: 2301 Woodbine Gladewater, Texas 75647	
(Attach additional sheet if necessary for additional court reporters/recorders)			
Length of trial (approximate): 5 days		State arrangements made for payment of court reporter/recorder: \$100.00 advance payment made on 1/14/00 with request for record	
Reporter's or Recorder's Record (check if electronic recording <input type="checkbox"/>)	None <input type="checkbox"/>	Will request <input type="checkbox"/>	Was requested on: January 14, 2000

VII. Nature Of The Case (TRAP 32.1(f)) (Subject matter or type of case: E.g., personal injury, breach of contract, workers' compensation, or temporary injunction):

Medical malpractice

VIII. Supersedeas Bond (TRAP 32.1(1)):

None

Will file

Was filed on:

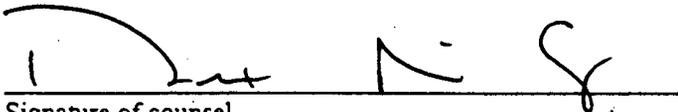
IX. Extraordinary Relief: Will you request extraordinary relief (e.g., temporary or ancillary relief) from this Court? Yes No If yes, briefly state the basis for your request.

X. Related Matters: List any pending or past related appeals or original proceedings (e.g., mandamus, injunction, habeas corpus) before this or any other Texas appellate court by court, docket number, and style.

None

XI. Any other information requested by the court (see attachments, if any). None

XII. Signature:



Signature of counsel
(or pro se party)

Date: 1-12-00

State Bar No.: 15006330

Printed Name: Dex Nichols, Jr.

XIII. Certificate of Service: The undersigned counsel certifies that this docketing statement has been served on the following lead counsel for all parties to the trial court's order or judgment as follows on January 14, _____, 192000

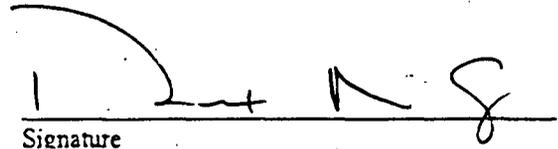
Mary-Olga Ferguson
Two Allen Center
1200 Smith St., Ste. 3600
Houston, Texas 77002

CM/RRR Z 247 284 541

ATTORNEY FOR KAREN ROBERTS
& MARK MILLER

Karen Bishop
BISHOP & BISHOP, P.C.
P.O. Box 1330
Gilmer, Texas 75644

GUARDIAN AD LITEM FOR
COURTNIE WILLIAMSON,
A MINOR



A handwritten signature in black ink, appearing to read 'D. N. S.', is written over a horizontal line.

Signature

(TRAP 9.5(e) requirements stated below; use additional sheets, if necessary)

Note: Certificate of Service Requirements (TRAP 9.5(e)): A certificate of service must be signed by the person who made the service and must state:

- (1) the date and manner of service;
- (2) the name and address of each person served; and
- (3) if the person served is a party's attorney, the name of the party represented by that attorney.

4763

NICHOLS & NICHOLS, P.C.
P.O. BOX 2623 PH. 903-757-2484
LONGVIEW, TX 75606

88-2323
1119

DATE 1/11/00

PAY TO THE ORDER OF Clerk, Sixth Court of Appeals \$ 125.00

One hundred twenty-five ⁰⁰/₁₀₀ DOLLARS

 **LONGVIEW BANK & TRUST**
300 E. WHALEY, P.O. BOX 3188
LONGVIEW, TEXAS 75606
903-237-5500

FOR Richard Williamson / filing fee (526)

Richard Williamson

⑈004763⑈ ⑆111923238⑆ 04 0385 7⑈

FILED
GREGG COUNTY, TEXAS

MAR 02 2000

By: RUBY COOPER, DISTRICT CLERK

CAUSE NO. 97-1556-B

LAINIE WILLIAMSON and CASEY WILLIAMSON, INDIVIDUALLY AND AS NEXT FRIENDS OF COURTNIIE WILLIAMSON	§	IN THE DISTRICT COURT OF
	§	
	§	
	§	
	§	
VS.	§	GREGG COUNTY, TEXAS
	§	
KAREN ROBERTS, M. D. and MARK MILLER, M. D.	§	124 TH JUDICIAL DISTRICT
	§	

SUPPLEMENTAL NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

LAINIE WILLIAMSON and CASEY WILLIAMSON, INDIVIDUALLY AND AS NEXT FRIENDS OF COURTNIIE WILLIAMSON, Plaintiffs in the above-entitled and numbered cause, give notice of their intent to appeal the trial court's Final Judgment signed on January 14, 2000. (Attached hereto as Exhibit "A") Plaintiffs have previously filed a Notice of Appeal in this cause (on January 14, 2000) This appeal is taken to the Sixth Court of Appeals in Texarkana, Texas.

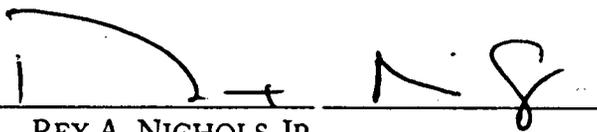
In addition to the point raised in Plaintiffs' original Notice of Appeal, Plaintiffs' appeal of the final judgment includes the following point: the trial court erred in assessing the *ad litem* fee against both Defendant Karen Roberts and Plaintiffs.



Respectfully submitted,

NICHOLS & NICHOLS, P. C.
1703 Judson Road
P. O. Box 2623
Longview, Texas 75606
Telephone: (903) 757-2464
Facsimile: (903) 757-2287

By:



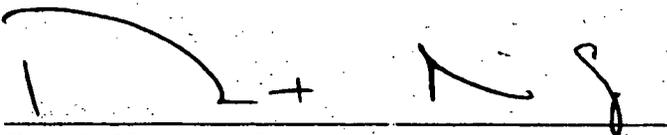
REX A. NICHOLS, JR.
State Bar No. 15006330
REX A. NICHOLS
State Bar No. 15002000

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 2nd day of March, 2000, a true and correct copy of the above and foregoing Supplemental Notice of Appeal was served upon Defendants, by and through their attorney of record, Ms. Mary-Olga Ferguson, via certified mail, return receipt requested by sending same in a postage pre-paid envelope addressed as follows:

Ms. Mary-Olga Ferguson,
Thompson, Knight, Brown, Parker & Leahy, L. L. P.
Two Allen Center
1200 Smith Street, Suite 3600
Houston, Texas 77002-4595
CM/RRR # 7099 3220 0001 5860 7461



REX A. NICHOLS, JR.

NO. 06-00-0014-CV

IN THE
SIXTH COURT OF APPEALS
TEXARKANA, TEXAS
SIXTH JUDICIAL DISTRICT

*LAINIE WILLIAMSON and CASEY WILLIAMSON, INDIVIDUALLY
AND AS NEXT FRIENDS OF COURTNIIE WILLIAMSON VS.
KAREN ROBERTS, M. D. and MARK MILLER, M. D.*

On Appeal from the 124th Judicial District Court of Gregg County, Texas

NOTICE OF SUPPLEMENTAL POINT ON APPEAL

REX A. NICHOLS, JR.
State Bar No. 15006330
REX A. NICHOLS
State Bar No. 15002000
NICHOLS & NICHOLS, P. C.
1703 Judson Road
P.O. Box 2623
Longview, Texas 75606
Telephone: (903) 757-2464
Facsimile: (903) 757-2287

ATTORNEYS FOR APPELLANTS



IN THE
SIXTH COURT OF APPEALS
TEXARKANA, TEXAS
SIXTH JUDICIAL DISTRICT

*LAINIE WILLIAMSON and CASEY WILLIAMSON, INDIVIDUALLY
AND AS NEXT FRIENDS OF COURTNIIE WILLIAMSON VS.
KAREN ROBERTS, M. D. and MARK MILLER, M. D.*

On Appeal from the 124th Judicial District Court of Gregg County, Texas

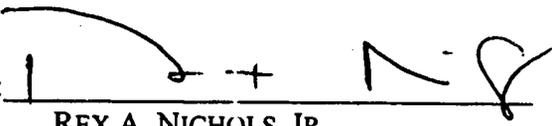
NOTICE OF SUPPLEMENTAL POINT ON APPEAL

TO THE HONORABLE JUSTICES OF SAID COURT:

NOW COME LAINIE WILLIAMSON and CASEY WILLIAMSON, INDIVIDUALLY AND AS NEXT FRIENDS OF COURTNIIE WILLIAMSON, Appellants, notifying the Court and all parties to this action that on March 2, 2000, they filed a Supplemental Notice of Appeal (attached hereto as Exhibit "A") with the clerk of the trial court in Cause No. 97-1556-B in the 124th Judicial District Court of Gregg County and that, in addition to the point raised on appeal in their original Notice of Appeal filed on January 14, 2000, they intend to assert the supplemental point as an issue on appeal.

Respectfully submitted,

NICHOLS & NICHOLS, P. C.
1703 Judson Road
P. O. Box 2623
Longview, Texas 75606
Telephone: (903) 757-2464
Facsimile: (903) 757-2287

By: 

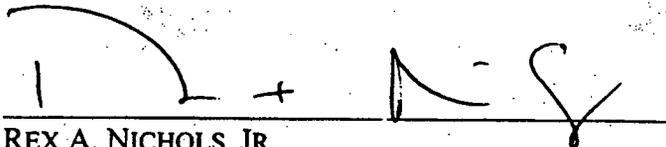
REX A. NICHOLS, JR.
State Bar No. 15006330
REX A. NICHOLS
State Bar No. 15002000

ATTORNEYS FOR APPELLANTS

CERTIFICATE OF SERVICE

I certify that on the 2nd day of March, 2000, a true and correct copy of the above and foregoing Notice of Supplemental Point on Appeal was served upon Defendants, by and through their attorney of record, Ms. Mary-Olga Ferguson, via certified mail, return receipt requested by sending same in a postage pre-paid envelope addressed as follows:

Ms. Mary-Olga Ferguson.
Thompson, Knight, Brown, Parker & Leahy, L. L. P.
Two Allen Center
1200 Smith Street, Suite 3600
Houston, Texas 77002-4595
CM/RRR # 7099 3220 0001 5860 7461


REX A. NICHOLS, JR.

FILED
GREGG COUNTY, TEXAS

MAR 02 2000

By: RUBY COOPER, DISTRICT CLERK

CAUSE NO. 97-1556-B

LAINIE WILLIAMSON and CASEY
WILLIAMSON, INDIVIDUALLY AND
AS NEXT FRIENDS OF COURTNIIE
WILLIAMSON

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

VS.

GREGG COUNTY, TEXAS

KAREN ROBERTS, M. D. and MARK
MILLER, M. D.

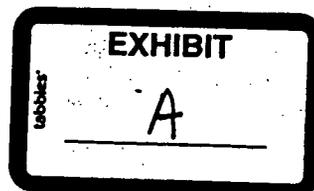
124TH JUDICIAL DISTRICT

SUPPLEMENTAL NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

LAINIE WILLIAMSON and CASEY WILLIAMSON, INDIVIDUALLY AND AS NEXT FRIENDS OF COURTNIIE WILLIAMSON, Plaintiffs in the above-entitled and numbered cause, give notice of their intent to appeal the trial court's Final Judgment signed on January 14, 2000. (Attached hereto as Exhibit "A") Plaintiffs have previously filed a Notice of Appeal in this cause (on January 14, 2000) This appeal is taken to the Sixth Court of Appeals in Texarkana, Texas.

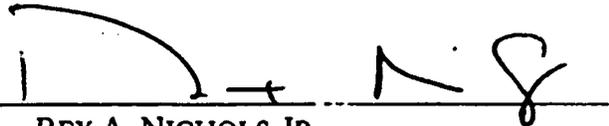
In addition to the point raised in Plaintiffs' original Notice of Appeal, Plaintiffs' appeal of the final judgment includes the following point: the trial court erred in assessing the *ad litem* fee against both Defendant Karen Roberts and Plaintiffs.



Respectfully submitted,

NICHOLS & NICHOLS, P. C.
1703 Judson Road
P. O. Box 2623
Longview, Texas 75606
Telephone: (903) 757-2464
Facsimile: (903) 757-2287

By:



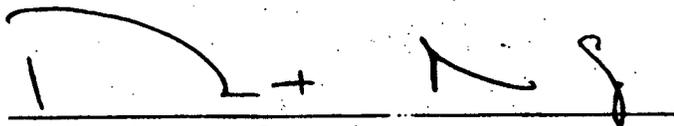
REX A. NICHOLS, JR.
State Bar No. 15006330
REX A. NICHOLS
State Bar No. 15002000

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 2nd day of March, 2000, a true and correct copy of the above and foregoing Supplemental Notice of Appeal was served upon Defendants, by and through their attorney of record, Ms. Mary-Olga Ferguson, via certified mail, return receipt requested by sending same in a postage pre-paid envelope addressed as follows:

Ms. Mary-Olga Ferguson.
Thompson, Knight, Brown, Parker & Leahy, L. L. P.
Two Allen Center
1200 Smith Street, Suite 3600
Houston, Texas 77002-4595
CM/RRR # 7099 3220 0001 5860 7461



REX A. NICHOLS, JR.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs recover of and from Defendant, Dr. Karen Roberts, the sum of TWENTY-SEVEN THOUSAND TWO HUNDRED FIFTY DOLLARS AND NO CENTS (\$27,250.00) which represents this Defendant's proportionate share of pre-judgment interest on elements of past damages from the date of injury through the date of judgment (40 months). Tex. Rev. Civ. Stat. Ann. Art. 4590i §16.02.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs take nothing from Dr. Mark Miller.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the judgment herein rendered shall bear interest at the rate of ten percent (10%) from January 14, 1999 until paid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the attorney *ad litem*, Ms. Karen Bishop, recover a fee for her reasonable and necessary services in this matter of \$ 21,405.69 from Defendant, Dr. Karen Roberts ^{Land Plaintiffs.} All costs of court expended or incurred in this cause are adjudged against Defendant, Dr. Karen Roberts. All writs and other processes for the enforcement and collection of this judgment or costs of court may issue as necessary. All other relief not expressly granted is denied.

SIGNED this 14th day of January, 2000.

Dennis C. Bole
JUDGE PRESIDING



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK
JOHN T. ADAMS

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

May 3, 2000

Ms. Cathy Lusk, Clerk
Twelfth Court of Appeals
1517 West Front, Suite 354
Tyler, Texas 75702

Dear Ms. Lusk,

Enclosed is a copy of an order of The Supreme Court of Texas of this date concerning a case to be transferred from your court to the Sixth Court of Appeals.

Sincerely,

SIGNED

John T. Adams
Clerk

Encl.

cc: Ms. Tibby Hopkins, Clerk
Sixth Court of Appeals

Office of Court Administration