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Rodgers Case Team: Julie Matonich, Edward Matonich, David Arndt – Matonich & Persson

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BY NANCY CROTTI



If a doctor had been paying attention to the fetal monitor on June 6, 2007, while Kylie Rodgers' heart rate was plummeting, she might be a healthy child today, according to her attorneys.

But by the time an on-call obstetrician noticed it, Kylie had suffered prolonged oxygen deprivation and was born via emergency Caesarean section with multiple health problems including spastic quadriplegic cerebral palsy, cortical impairment, neurological difficulties and seizures.

A Kandiyohi County jury awarded the Paynesville girl's family more than \$23 million, due to the work of attorneys Edward Matonich, Julie Matonich and David Arndt of Matonich & Persson of Hibbing and Minneapolis, and Michael Kelly of San Francisco. The family sued Dr. Gabrielle Vencel Olson, a family physician who cared for Elise Rodgers during the pregnancy, Vencel Olson's employer, Affiliated Community Medical Centers, and Rice Memorial Hospital. The jury attributed 80 percent of the fault to Affiliated Community and 20 percent to Rice Memorial. Vencel Olson was later dropped as a defendant.

No obstetrician capable of performing a Caesarean section was present at Rice Memorial Hospital during the period of Elise Rodgers' induced labor when the trouble began, according to Julie Matonich. Doctors could monitor fetal heart rates through their home computers, but Vencel Olson's computer did not have that capability, Matonich said. An obstetrician who did notice it rushed to the hospital to deliver the baby,

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but in the 28 minutes it took him to get there, it was too late, Julie Matonich noted.

The Matoniches and Arndt brought in a fetal monitor expert to replicate for the jury exactly what was happening on the fetal monitor as Kylie's heart rate dropped. Induction of labor was a major factor in the heart rate reduction because the strong, medication-induced contractions it causes compressed the umbilical cord against Kylie's head, increasing her trauma, Ed Matonich said.

"We showed that there were many warning signs prior to that (oxygen) crash that weren't heeded," Julie Matonich added.

Kylie was born not breathing, has a tracheostomy tube and must be tube-fed. She has partial vision in one eye and requires round-the-clock care.

"They have a wonderful crew of nurses, but scheduling does become a problem," said Ed Matonich. "The mom is able to perform the duties of a nurse, although she has no training. It's something that she's picked up with this terribly injured child."

Part of the settlement replaces wages lost by Kylie's father, Matt Larson, and the family was able to buy a home in Paynesville with a first-floor bedroom for Kylie, who uses a wheelchair and needs a lot of medical equipment.

Of the remaining award, \$1.7 million went to past medical costs, and \$10 million is dedicated to future medical expenses. The jury awarded damages of \$1 million for past pain, disability, embarrassment, disfigurement and emotional distress; and \$9 million for future pain, disability and emotional distress.

Because of a separate, private settlement, there was no appeal, according to Arndt. It's the largest medical malpractice case the firm has ever won.

"Verdicts are driven by the fault of the defendant but also and more important is the quality of the client," Ed Matonich said. "This baby is as loved as any child in the world could ever be. The other side conceded that."

During the trial in January 2010, Kylie's baby sister was 4 months old. "Kylie's functioning at that time was the same level (as her sister)," Ed Matonich said. "She will never progress pass 2 or 3. The fact that she is surrounded by love and in a new home and can afford her care gives us great satisfaction, because that's what this business is all about."



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