

BARBARA ROBINSON
Plaintiff,

V.

WILLIAM A. BOOTHE, M.D., P.A.
d/b/a BOOTHE EYE CARE AND
LASER CENTER AND
DR. WILLIAM BOOTHE
Defendants.

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IN THE DISTRICT COURT

416 JUDICIAL DISTRICT

OF COLLIN COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES BARBARA ROBINSON, hereinafter called Plaintiff, complaining of and about WILLIAM A. BOOTHE, M.D., P.A. d/b/a BOOTHE EYE CARE AND LASER CENTER (hereinafter called BOOTH EYE CARE AND LASER CENTER) and DR. WILLIAM BOOTHE, hereinafter called Defendants, and for cause of action would show unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

Plaintiff intends that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

1. Plaintiff, BARBARA ROBINSON, is an Individual whose address is 101 Colquitt Street, Rio Vista, Texas 76093.
2. Defendant BOOTHE EYE CARE AND LASER CENTER, a Professional Association based in Texas, is organized under the laws of the State of Texas, and since no registered agent is listed with the Secretary of State, service is effectuated by serving a member of the association, specifically Dr. William Boothe, at 3900 West 150th Street, Ste. 102, Plano, Texas 75075, his place of

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 HANNAH KUNKLE
 DISTRICT CLERK
 COLLIN COUNTY, TEXAS
Hutchford

employment. Service of said Defendant as described above can be effected by personal delivery.

3. Defendant DR. WILLIAM BOOTHE, an Individual, is a resident of the State of Texas. Said Defendant may be served with process at his place of employment at the following address: 3900 West 15th Street, Ste. 102, Plano, Texas 75075. Service of said Defendant as described above can be effected by personal delivery.

JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this court.

5. This court has jurisdiction over the parties because Defendants are Texas residents.

6. Venue in Collin County is proper in this cause under Section 15.002(a)(2) of the Texas Civil Practice and Remedies Code because this county was the county of residence of BOOTHE EYE CARE AND LASER CENTER, Defendant herein, at the time the cause of action accrued. Furthermore, because venue is proper with respect to Defendant BOOTHE EYE CARE AND LASER CENTER, venue for this action with respect to all Defendants is proper under 15.005 of the Texas Civil Practice and Remedies Code.

STATUTORY COMPLIANCE

7. Plaintiff has fully complied with Sections 74.051 and 74.052 of the Texas Civil Practice and Remedies Code by notifying Defendants of this claim for relief (see Exhibit "A," statutory notice letters attached hereto) and more than sixty (60) days have elapsed since Defendants' receipt of said letters.

FACTS

8. At all times material hereto, BARBARA ROBINSON was a patient under the care of Defendants, BOOTHE EYE CARE AND LASER CENTER and DR. WILLIAM BOOTHE, having sought Defendants' professional expertise, judgment, skill, competence, advice and treatment to

correct Plaintiff's myopia in both eyes. The care or treatment consisted of Laser Assisted in-Situ Keratomileusis surgery, commonly referred to as LASIK. The course of treatment associated with the aforementioned procedure began on or about September 18, 2002 and continued until October 2, 2002. During the course of said treatment and as a result of the failure of Defendants to take proper steps to identify and treat the infection that resulted from the LASIK surgery on September 20, 2002 BARBARA ROBINSON suffered the following injuries: (1) an infected left eye and Lasik flap amputation, leaving left eye cornea damage and (2) a premature cataract in Plaintiff's left eye causing a vision loss to 20/280, necessitating additional medical treatment, including surgical intervention. Plaintiff states that specific acts and omissions of the Defendants were the proximate cause of said injuries.

**LIABILITY OF
DEFENDANT BOOTHE EYE CARE AND LASER CENTER TO BARBARA ROBINSON**

9. Defendant, BOOTHE EYE CARE AND LASER CENTER, provided medical care, advice and treatment to BARBARA ROBINSON.

10. Plaintiff alleges that the Defendant, BOOTHE EYE CARE AND LASER CENTER, acting through its directors, officers, employees and agents, violated the duty of care it owed to Plaintiff BARBARA ROBINSON to exercise that degree of care, skill, supervision, and diligence ordinarily possessed and used by other hospitals under the same or similar circumstances. Plaintiff alleges BOOTHE EYE CARE AND LASER CENTER was negligent in the following respects and particulars among others:

- A. In failing to properly perform the medical treatment necessary to the Plaintiff's welfare according to the standards set by the ophthalmology profession;
- B. By failing to recognize and/or acknowledge its recognition of the Plaintiff's symptoms that resulted from its treatment of the Plaintiff;

- C. By failing to engage in recognized and acceptable practices in the ophthalmology profession to limit the likelihood and probability of infection following the treatment provided by the Defendant; and
- D. By failing to timely take a culture of the edema in Plaintiff's left eye after surgery and have it tested by a specialist in the field of infectious disease, in order to identify the infectious organism, when the Defendant knew or should have known that its skills, knowledge or facilities were inadequate to properly treat the Plaintiff under the circumstances as they then existed.

11. Plaintiff BARBARA ROBINSON was admitted to BOOTHE EYE CARE AND LASER CENTER on or about September 20, 2002, and was, at that time, under the care and control of Defendant, BOOTHE EYE CARE AND LASER CENTER. While subject to the care and control of BOOTHE EYE CARE AND LASER CENTER, Plaintiff sustained the serious personal injuries describe herein.

12. Defendant, BOOTHE EYE CARE AND LASER CENTER, owed Plaintiff BARBARA ROBINSON, the duty to provide proper care and protection, and in the exercise of that duty the Defendant was required to provide such reasonable care as Plaintiff's condition which was known, or should have been known, required. This includes the duty to guard against the foreseeable consequences of the patient's injury, condition, or treatment. The Defendant, by and through its agents and employees, violated or breached this duty owing to the Plaintiff and was negligent in the following respects and particulars:

Defendant did not act with the requisite urgency required in order to eliminate potential complications from the left eye infection that started as a consequence of LASIK surgery. Upon discovery of the infection in Plaintiff's eye, as evidenced by the emergence of edema shortly after the surgery, Defendant failed to take the steps necessary to specifically identify the infectious organism. A period of nine days elapsed from the date of the initial indications of infection before cultures were

taken and tested identifying the infectious organism.

**LIABILITY OF
DEFENDANT DR. WILLIAM BOOTHE TO BARBARA ROBINSON**

13. Defendant, DR. WILLIAM BOOTHE, provided medical care, advice and treatment to BARBARA ROBINSON.

14. Plaintiff alleges that the Defendant, DR. WILLIAM BOOTHE, acting through its directors, officers, employees and agents, violated the duty of care he owed to Plaintiff BARBARA ROBINSON to exercise that degree of care, skill, supervision, and diligence ordinarily possessed and used by other hospitals under the same or similar circumstances. Plaintiff alleges DR. WILLIAM BOOTHE was negligent in the following respects and particulars among others:

- A. In failing to properly perform the medical treatment necessary to the Plaintiff's welfare according to the standards set by the ophthalmology profession;
- B. By failing to recognize and/or acknowledge his recognition of the Plaintiff's symptoms that resulted from his treatment of the Plaintiff;
- C. By failing to engage in recognized and acceptable practices in the ophthalmology profession to limit the likelihood and probability of infection following the treatment provided by the Defendant; and
- D. By failing to timely take a culture of the edema in Plaintiff's left eye after surgery and have it tested by a specialist in infectious disease, in order to identify the infectious organism, when the Defendant knew or should have known that his skills, knowledge or facilities were inadequate to properly treat the Plaintiff under the circumstances as they then existed.

15. Plaintiff BARBARA ROBINSON was admitted to BOOTHE EYE CARE AND LASER CENTER on or about September 20, 2002, and was, at that time, under the care and control of Defendant, DR. WILLIAM BOOTHE. While subject to the care and control of DR. WILLIAM BOOTHE, Plaintiff sustained the serious personal injuries describe herein.

16. Defendant, DR. WILLIAM BOOTHE, owed Plaintiff BARBARA ROBINSON, the

duty to provide proper care and protection, and in the exercise of that duty the Defendant was required to provide such reasonable care as Plaintiff's condition which was known, or should have been known, required. This includes the duty to guard against the foreseeable consequences of the patient's injury, condition, or treatment. The Defendant, by and through its agents and employees, violated or breached this duty owing to the Plaintiff and was negligent in the following respects and particulars:

Defendant did not act with the requisite urgency required in order to eliminate potential complications from the left eye infection that started as a consequence of LASIK surgery. Upon discovery of the infection in Plaintiff's eye, as evidenced by the emergence of edema shortly after the surgery, Defendant failed to take the steps necessary to specifically identify the infectious organism. A period of nine days elapsed from the date of the initial indications of infection before cultures were taken and tested identifying the infectious organism.

PROXIMATE CAUSE

17. Each and every, all and singular of the foregoing acts and omissions, on the part of Defendants, taken separately and/or collectively, constitute a direct and proximate cause of the injuries and damages set forth below.

DAMAGES FOR PLAINTIFF, BARBARA ROBINSON

18. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, BARBARA ROBINSON was caused to suffer unnecessary surgical complications and loss of vision to her left eye, a condition that required additional surgical intervention and treatment, and was caused to suffer more specifically the following:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff, BARBARA ROBINSON for the necessary care and treatment of the injuries resulting from the accident complained of herein and

- such charges are reasonable and were usual and customary charges for such services in Collin County, Texas;
- B. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;
 - C. Physical pain and suffering in the past;
 - D. Mental anguish in the past;
 - E. Physical pain and suffering in the future;
 - F. Mental anguish in the future;
 - G. Physical impairment in the past;
 - H. Physical impairment which, in all reasonable probability, will be suffered in the future;
 - I. Loss of earnings in the past;
 - J. Loss of earning capacity which will, in all probability, be incurred in the future;
 - K. Loss of Consortium in the past, including damages to the family relationship, loss of care, comfort, solace, companionship, protection, services, and/or physical relations;
 - L. Loss of Consortium in the future including damages to the family relationship, loss of care, comfort, solace, companionship, protection, services, and/or physical relations;
 - M. Loss of Eyesight;
 - N. Disfigurement in the past; and
 - O. Disfigurement in the future.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, BARBARA ROBINSON respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants, jointly and severally,

for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

Smith DeVoss
Attorneys and Counselors at Law

By: 

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76054

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Attorney for Plaintiff

BARBARA ROBINSON

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY