

DARNELL MARIE GRASS, a	)	IN THE CIRCUIT COURT OF
minor suing by her next friend,	)	
	)	BALDWIN COUNTY, ALABAMA
Plaintiff,	)	
	)	AT LAW
vs.	)	
	)	
DR. HENRY C. JORDAN,	)	CASE NO. 8410
	)	
Defendant.	)	

SUGGESTION OF DEATH OF DEFENDANT AND  
MOTION TO REVIVE

Plaintiff shows unto this Court that on to-wit, August 4, 1969, the Defendant, HENRY C. JORDAN, died and that on to-wit, August 12, 1969, Letters Testamentary were issued by the Probate Court of Baldwin County to the Merchants National Bank of Mobile, as Executor of the estate of the Defendant.

Therefore the Premises considered, Plaintiff moves this Honorable Court to enter an order reviving this cause against The Merchants National Bank of Mobile, as Executor of the estate of HENRY C. JORDAN.

*William H. Saliba*  
\_\_\_\_\_  
Attorney for Plaintiff  
WILLIAM H. SALIBA

Serve Mr. Kim Harris  
at the Merchants National Bank  
Mobile, Alabama

**FILED**

SEP 24 1969

**ALICE J. DUCK** CLERK  
REGISTER

RECEIVED  
SEP 24 1961

6254

EXECUTED

EXECUTED  
This 2 day of Oct, 1969  
by serving a copy of the within on

RAY, D. BRUCE, Sheriff

By M. Harnsey D.S.

65/88 Wm

8410

Wm. H. Thayer

10-10-75

Mr. Henry C. Jordan

SEP 24 1969

WILLIAM J. DUFFY  
CLERK  
REGISTER

DARNELL MARIE GRASS, a minor    §    IN THE CIRCUIT COURT OF  
suing by her next friend, LAWRENCE   §  
A. GRASS,                               §    BALDWIN COUNTY, ALABAMA

Plaintiff,                               §                       AT               LAW

v.   :

DR. HENRY C. JORDAN,               §  
Defendant.                               §                       CASE NO. 8410

P L E A

Comes now THE MERCHANTS NATIONAL BANK OF MOBILE, as  
Executor of the Estate of DR. HENRY C. JORDAN, Deceased, and for answer  
to the Complaint and to each and every count thereof, says:

1. Not guilty.

ARMBRECHT, JACKSON & DeMOUY  
Attorneys for The Merchants National Bank  
of Mobile, as Executor of the Estate of Dr.  
Henry C. Jordan, Deceased

By: Brook G. Holmes  
BROOK G. HOLMES

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 31<sup>st</sup> day  
of October, 1969, served a copy of the  
foregoing pleading on counsel for all parties to this  
proceeding, by mailing the same by United States mail,  
properly addressed, and first class postage prepaid.

Brook G. Holmes

Filed 11-1-69  
Chief Clerk

DARNELL MARIE GRASS, etc.	*	IN THE CIRCUIT COURT OF
Plaintiff	*	BALDWIN COUNTY, ALABAMA
VS.	*	AT LAW
DR. HENRY C. JORDAN	*	Case No. 8410
Defendant		

MOTION TO SET WITNESS FEE and MOTION TO  
ORDER SUBPEOANA OF WITNESS FOR TRIAL

I.

Comes now your petitioner, William H. Saliba, one of the Attorneys of record for the Plaintiff in the trial of this cause and shows unto this Honorable Court that heretofore and on, to-wit, December 18, 1969, Plaintiff caused the deposition of Dr. Joe B. Ray to be taken in this cause. Prior to taking said Deposition the Plaintiff did not reach an agreement with the said Dr. Ray as to any expert witness fee.

The Said Dr. Ray now claims a witness fee of seventy-five \$75.00 Dollars for the taking of the said deposition, including the cross examination conducted by Counsel for the Defendant. Because of the provisions of Title 7 § 366 the Plaintiff cannot be required to pay the \$75.00, but Plaintiff admits that under the circumstances the said Dr. Ray should be allowed an additional fee beyond that set forth in the code for his testimony in this cause. Petitioner shows that the deposition of Dr. Ray lasted approximately one and one half hours, and that the said Dr. Ray is a necessary witness in this cause and will probably miss a half day from his extensive medical practice in travelling to and from Bay Minette and testifying in this cause.

Therefore Plaintiff moves this Honorable Court to declare the said Dr. Ray a witness for this Court; determine an equitable amount to compensate the said Dr. Ray for his time and expenses in the taking of his deposition, his appearance at the trial, and his mileage in travelling to and from Bay Minette for the trial of this cause; and to assess Dr. Rays compensation as part of the Court Costs in this case.

II.

Plaintiff moves this Honorable Court to subpoena Dr. Joe B. Ray of 179 Louiselle Street, Mobile, Alabama 36607, to appear as a witness for the Court in the trial of this cause, or in the alternative, that he be subpoenaed as a witness for the Plaintiff. Please issue a subpoena duces tecum commanding him to bring with him all of his records pertaining to Darnell Marie Grass, and all photographs, slides, or pictures which he may have of Darnell Marie Grass, or any part of her anatomy.

WILLIAM H. SALIBA

*William H. Saliba*

ATTORNEY FOR PLAINTIFF

I certify that I have this date, 13 May 1969, served a copy of these motions on the attorney for the Defendant and on Dr. Joe B. Ray, by mailing the same to their last known addresses postage prepaid.

*William H. Saliba*  
William H. Saliba  
Attorney for Plaintiff

FILED

MAY 13 1969

ALICE J. DUBK CLERK  
REGISTER

DARNELL MARIE GRASS, a minor  
suing by her next friend,  
LAWRENCE A. GRASS,

Plaintiff,

-vs-

DR. H. C. JORDAN, whose cor-  
rect name is otherwise  
unknown to the Plaintiff but  
will be supplied by amend-  
ment when ascertained,

Defendant.

) IN THE CIRCUIT COURT OF  
)  
) BALDWIN COUNTY, ALABAMA.  
)  
) AT LAW. NO. 8410.  
)  
)  
)  
)  
)  
)

NOTICE

To: Broox G. Holmes, Esquire  
Attorney at Law  
P. O. Box 290  
Mobile, Alabama 36601

Please take notice that on the 18th day of December,  
1968, in the offices of Dr. Joe B. Ray, 179 Louiselle Street,  
Mobile, Alabama, the Plaintiff will take the deposition of Dr.  
Joe B. Ray, at 6:00 P. M., upon oral examination pursuant to  
Article 6A, Title 7, Code of Alabama, before Walter M. Wise,  
or other officer authorized to take depositions and swear  
witnesses in Mobile County in said State. The oral examina-  
tion will continue from day to day until completed and you  
are invited to attend and cross-examine.

WILLIAM H. SALIBA and KEENER T. BLACKMARR  
Attorneys for Plaintiff

By: William H. Saliba

COPY SERVED ON COUNSEL FOR ALL PARTIES BY PROPERLY

MAILING SAME IN U. S. MAIL THIS 25 DAY OF

November, 1968.

William H. Saliba  
ATTORNEY FOR Plaintiff

FILED

NOV 27 1968

ALICE J. DUCK CLERK  
REGISTER

DARNELL MARIE GRASS, a minor ) IN THE CIRCUIT COURT OF  
suing by her next friend, )  
LAWRENCE A. GRASS, ) BALDWIN COUNTY, ALABAMA.  
)  
Plaintiff, )  
) AT LAW. NO. 8410  
)  
-vs- )  
)  
DR. H. C. JORDAN, whose cor- )  
rect name is otherwise )  
unknown to the Plaintiff but )  
will be supplied by amendment )  
when ascertained, )  
)  
Defendant. )

To: Broox G. Holmes, Esquire  
Attorney at Law  
P. O. Box 290  
Mobile, Alabama 36601

Please take notice that on the 14th day of January, 1969, in the office of Dr. H. C. Jordan. 25 North Section Street, Fairhope, Alabama, the Plaintiff will take the deposition of Dr. H. C. Jordan, at 4:00 P. M., upon oral examination pursuant to Article 6A, Title 7, Code of Alabama, before Dorothy C. Leamy, or other officer authorized to take depositions and swear witnesses in <sup>BALDWIN</sup> Mobile County in said State. The oral examination will continue from day to day until completed and you are invited to attend and cross-examine.

WILLIAM H. SALIBA and KEENER T. BLACKMARR,  
Attorneys for Plaintiff

By: William H. LaRiba

COPY SERVED ON COUNSEL FOR ALL PARTIES BY PROPERLY  
~~MAILED SAME IN U.S. MAIL~~ *Handy the above to them* THIS 14 DAY OF January

19 65.  
William F. Schell  
ATTORNEY FOR PLAINTIFF

**FILED**

JAN 16 1969

ALICE J. LEON  
CLERK  
REGISTER

DARNELL MARIE GRASS, a minor suing by her next friend, LAWRENCE A. GRASS,

Plaintiff,

vs.

DR. H. C. JORDAN, whose correct name is otherwise unknown to the Plaintiff but will be supplied by amendment when ascertained,

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

:

CASE NO. 8410

### DEMURRER

Comes now the Defendant in the above styled cause, and demurs to Plaintiff's Complaint, and to each and every count thereof, separately and severally, on the following separate and several grounds:

1. Said count wholly fails to state a cause of action.
2. The allegations contained in said count are vague, uncertain and indefinite.
3. For aught that appears from the allegations of said count, there was no legal duty owing from the Defendant to the Plaintiff.
4. For aught that appears from the allegations of said count, there was no breach of any legal duty owing from the Defendant to the Plaintiff.
5. Said count does not aver sufficient facts to state a cause of action.
6. There is no characterization of any alleged act of the Defendant as a negligent act.
7. For that negligence, as averred, is a mere conclusion of the pleader.



8. For that wantonness, as averred, is a mere conclusion of the pleader.

9. For that said count is vague, indefinite and uncertain in that the place where it is claimed by the Plaintiff that the Defendant entered upon said employment and treatment is not alleged with sufficient certainty.

10. It does not appear except by conclusion of the pleader that the relationship of physician and patient existed between the Plaintiff and the Defendant at the times and places complained of.

11. For aught that appears, there was no proximate cause between the alleged negligent conduct of the Defendant and the injuries and damages complained of by the Plaintiff.

12. For that it is not alleged how or in what manner the Defendant treated the Plaintiff.

13. For that the allegation "the Defendant conducted himself in such an unskilled and wantonly negligent manner in and about the treatment of said cut arm that as a proximate consequence of such unskillfulness and wanton negligence in and about the treatment of Plaintiff's said arm, Plaintiff was wantonly injured" is a mere conclusion of the pleader without facts alleged in support thereof.

14. For that the allegation "it then and there became and was the duty of the Defendant to exercise due care and diligence in said treatment of the Plaintiff" is a mere conclusion of the pleader without sufficient facts alleged in support thereof.

15. For that it is not the law of Alabama that physicians have a duty to patients to exercise due care and diligence in the treatment of patients.

16. There is a misjoinder of causes of actions for tort and contract in the same count.

17. For that said count is duplicitous in that it attempts to join wantonness and negligence in one and the same count.

18. For that the facts averred do not constitute negligence as a matter of law.

19. For that the facts averred do not constitute wantonness as a matter of law.

20. For aught that appears, the Defendant in performing the said treatment exercised such care and skill as physicians and surgeons in the Baldwin County, Alabama, area pursuing the same general line of practice ordinarily exercise in like cases.

21. For that there is no allegation that the Defendant negligently committed or omitted some act that he was under a duty to do or not to do.

22. For that it does not sufficiently appear how or in what manner this Defendant was guilty of negligence.

23. For that it does not sufficiently appear how or in what manner this Defendant was guilty of wantonness.

24. For that it is not averred or shown in said count that the Defendant did not exercise such care and skill as physicians and surgeons in the same general neighborhood and pursuing the same general line of practice ordinarily exercise in like cases.

25. For that the Plaintiff attempts to allege a physician-patient relationship between Plaintiff and Defendant, but wholly fails to do so.

ARMBRECHT, JACKSON & DeMOUY  
Post Office Box 290, Mobile, Alabama 36601

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 15th day of Nov, 1968, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

By: Broox G. Holmes  
BROOX G. HOLMES  
Attorney for the Defendant

**FILED**

NOV 16 1968

- VOL -63 PAGE 857

ALICE J. DUCK CLERK  
REGISTER

LAW OFFICES  
**BLACKMARR, MEADOWS AND SALIBA**  
AIRPORT BOULEVARD IN THE BEL AIR MALL BUILDING  
MOBILE, ALABAMA 36608

KEENER T. BLACKMARR  
ALICE M. MEADOWS  
WILLIAM H. SALIBA

February 12, 1970

P. O. BOX 16375  
PHONE 471-2494  
AREA CODE 205

Honorable Alice J. Duck  
Circuit Court, Court House  
Baldwin County.  
Bay Minette, Ala. 36507

Re: Case No. 8410  
Case No. 8411

Dear Mrs. Duck:

We have received notice from you that the suits filed by Darnell Grass and Lawrence A. Grass are set for trial in the Circuit Court on Wednesday, March 18, 1970.

Both Mr. Blackmarr and I were allowed to withdraw as counsel in each of these cases on January 22, 1970, and do not represent either party to this action. I am, by copy of this letter, forwarding the notice directly to Mr. Grass at Route 3, Box 663-B, Theodore, Alabama.

I presume that Mr. Grass will have his new attorney file an appearance in this cause.

Yours very truly,



William H. Saliba

WHS:ls  
cc: Mr. Grass

SUMMONS

STATE OF ALABAMA   )  
                              )  
BALDWIN COUNTY     )

IN THE CIRCUIT COURT

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

You are hereby commanded to summons Dr. H. C. Jordan, whose correct name is otherwise unknown to the Plaintiff and whose correct name will be supplied by amendment when ascertained, to appear within thirty days from the date of service of this writ in the Circuit Court of said County, at the time of holding the same, and plead, answer, or demur to the complaint of Darnell Marie Grass, a minor, suing by her next friend, Lawrence A. Grass.

Witness my hand this 30<sup>th</sup> day of October,  
1968.

Oliver J. Luck  
CLERK.

DARNELL MARIE GRASS, a minor  
suing by her next friend,  
LAWRENCE A. GRASS,

Plaintiff,

-vs-

DR. H. C. JORDAN, whose correct name is otherwise unknown to the Plaintiff but will be supplied by amendment when ascertained,

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW. NO. 8410

COMPLAINT

COUNT ONE:

Plaintiff claims of the defendant the sum of One Hundred Thousand and no/100 (\$100,000.00) Dollars as damages, for that, heretofore and during, to-wit, the month of July, 1967, the Plaintiff cut her right arm, and the Defendant held himself out as a practicing physician in the County of Baldwin, State of Alabama, and as such physician was employed and retained

to attend upon and treat the cut arm of the Plaintiff, and the Defendant entered upon said employment for a reward; and the Plaintiff avers that the Defendant conducted himself in such an unskilled and wantonly negligent manner in and about the treatment of said cut arm that as a proximate consequence of such unskillfulness and wanton negligence in and about the treatment of Plaintiff's said arm, Plaintiff was wantonly injured in this, to-wit: pieces of broken glass were left in her arm; she was made sick and sore; she was unable to use her arm for a long period of time; she is and will be permanently disabled in the use of her arm; her ability to earn a living and hold a job has been reduced; she suffered physical pain and mental anguish; an infection occurred in her arm; her blood vessels and nerves were left in a lacerated, cut or severed condition; she had to undergo a dangerous operation and received additional scars from the said operation; she will have to undergo another operation; and she suffered other injuries, all to her damage; and Plaintiff asks punitive as well as special and general damages.

COUNT TWO:

Plaintiff, DARNELL MARIE GRASS, a minor, by her next friend, LAWRENCE A. GRASS, claims of the Defendant the sum of Fifteen Thousand and no/100 (\$15,000.00) Dollars as damages, for that, heretofore and during the month of, to-wit, July, 1967, the Defendant was a physician practicing in the County of Baldwin, State of Alabama; that the Plaintiff had a cut arm, and Defendant undertook to treat the Plaintiff's cut arm for hire or reward; that it then and there became and was the duty of the Defendant to exercise due care and diligence in said treatment of the Plaintiff, but notwithstanding said duty, the Defendant so negligently conducted himself that, as a proximate consequence thereof,

Plaintiff was greatly injured in this, to-wit: Pieces of broken glass were left in her arm; she was made sick and sore; she was unable to use her arm for a long period of time; she is and will be permanently disabled in the use of her arm; her ability to hold a job and earn a living has been and will be greatly impaired; she suffered great physical pain and mental anguish; her arm became infected; her blood vessels and nerves were left in a lacerated, cut or severed condition; she had to undergo a dangerous operation and received additional scars from the said operation; she will have to undergo another operation; and she suffered other injuries, all to her great damage in the sum aforesaid, hence this suit.

Keener T. Blackmarr  
KEENER T. BLACKMARR

William H. Saliba  
WILLIAM H. SALIBA

ATTORNEYS FOR PLAINTIFF

Plaintiff respectfully demands a trial by jury.

KEENER T. BLACKMARR and WILLIAM  
H. SALIBA, ATTORNEYS FOR PLAINTIFF

BY: William H. Saliba

Defendant's address:  
25 No. Section Street  
Fairhope, Alabama

FILED

OCT 30 1958

ALICE J. BECK CLERK  
REGISTER

Received 30 day of Oct 1968  
and on 1 day of Nov 1968  
I served a copy of the within etc  
on Dr. H. C. Jordan

Sheriff claims 70 miles at  
Ten Cents per mile Total \$ 7.00  
TAYLOR WILKINS, Sheriff  
BY Roy Randall  
DEPUTY SHERIFF

By service on above  
to him  
TAYLOR WILKINS, Sheriff  
By Roy Randall D.S.

8410

Lawrence M. Morris, Sheriff  
a minor owing by her  
self friend, Lawrence  
M. Morris, Sheriff.

Dr. H. C. Jordan  
left

FILED

OCT 30 1968

ALICE J. BERRY

OUTSTANDING

Heard J. Blackman