

The Sun

**Doctor cleared in birth defect
No malpractice found in Howard Co. case of Down syndrome
Mother would have aborted
Parents alleged they weren't told of high risk, sought \$2 million**

by Caitlin Francke

October 23, 1997 Page(s): 1A
Edition: FINAL
Section: NEWS
Length: 738 words
Record Number: BSUN10230022

Ending a lawsuit that posed moral and malpractice issues, a Howard County jury decided last night that a Columbia doctor and medical practice should not be held responsible for the birth of a boy with Down syndrome.

The jury's decision clears Dr. Swati M. Saraiya and Woman to Woman Health Care of any wrongdoing in a case where the boy's parents alleged that they had not been told of the high risk of having a retarded child and wanted at least \$2 million to help raise him.

When the jury announced its verdict -- after an hour and 15 minutes of deliberation -- the boy's mother, Joyce Shull, looked as if she might collapse. Her husband, Dan, and a friend wrapped their arms around her and escorted her out of the Ellicott City courtroom.

Judge Diane O. Leasure called to Mrs. Shull: "I, too, hope for the very best for you and [your son] Elliott, so good luck."

In the cold parking lot outside the courthouse, the Hagerstown couple embraced.

Mary Alane Downs, attorney for Saraiya and the medical practice, said she was pleased with the jury's decision after seven days of trial.

"All parents want their baby to be perfect, and it's very difficult to accept that your baby might not be," Downs said.

The case centered on a dispute over whether the defendants correctly informed Mrs. Shull in 1993 about the results of a blood test performed to screen for potential birth defects.

She said on the stand that she loves her son, but would have aborted the fetus had she known of the risk of having a child with Down syndrome. She said she wanted to spare him the hardships of life as a mentally impaired person.

The defense acknowledged that Saraiya and a nurse practitioner, Johanna Martino -- who was cleared by the judge on Monday -- had initially miscommunicated the results of the blood tests. But the defense argued that the pair immediately rectified their mistake and discussed further testing with Shull.

Jurors interviewed said they believed Shull knew the risks of having the baby. Four women and two men decided the case.

"The doctor made a mistake and corrected it. She [the mother] had a fair warning and as a woman, should have had more tests done," said juror Lori Cox, 20.

The jurors said reaching a verdict was difficult because the real victim was Elliott, the 3-year-old boy.

"You hate to see anybody suffer. You'd like to give him anything that would help him," said Kelly Isaacson, 30. "The underlying reason we were here was whether the doctor breached the standard of care or caused the Down syndrome. She didn't cause the Down syndrome."

Though the case was rooted in a malpractice complaint, it spurred debate on how to raise a mentally impaired child.

The Shulls argued that Elliott should attend a private school, receive specialized treatment and spend his later life in a group

home. Down syndrome children are teased and ostracized, they said.

They presented the jurors with a "life plan" that they estimated would cost at least \$2 million.

"Is the typical kid in Hagerstown going to want to play ball with Elliott? What will they get out of that?" the Shulls' attorney, Kenneth West, asked the jurors during closing arguments. "We all live in the real world. This is reality."

The defense countered that current medical theory says children with Down syndrome should not be educated apart from society, but within it.

"The way that you protect Elliott is you make Elliott love Elliott," Downs told the jury. "You do that by making him realize that, in many ways, he is just like any other kid."

The defense enlisted Dr. Allen Crocker, a Massachusetts pediatrician who has worked with Down syndrome children for many years, to testify about the best course for Elliott's future. Crocker showed the jury a book written by two Down syndrome children and told them that many parents have found raising a disabled child a blessing, not a burden.

Juror Ralph Helwig said Crocker's testimony convinced him that the Shulls' request for private care for Elliott was unnecessary.

Copyright 1997 The Baltimore Sun Company