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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

BY: _____ NORTHERN DIVISION
DEPUTY CLERK

GWYN STEVENS THIELE and THOMAS
L. THIELE, as individuals and as Personal
Representatives on behalf of the estate of
CHEYENNE MADYSON THIELE,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Case No. 1:01-CV-0046 PGC

This case stems from the tragic death of six-month-old Cheyenne Madyson Thiele on April 7, 1999. Plaintiffs Gwyn Stevens Thiele and Thomas L. Thiele, Cheyenne's parents, claim their daughter died as a result of negligent acts and omissions of health care providers employed by Defendant United States of America. The United States denies the Thieles' negligence claims and asserts Cheyenne's death was not causally related to acts or omissions of its employees.

As the court stated at trial, the circumstances surrounding this case are heart-wrenching. The death of a child undeniably is a staggering loss that leaves parents, extended family, and all associated parties with sorrow and grief unknowable to those that have not endured such a devastating event. The trial evidence demonstrates Mr. and Mrs. Thiele have suffered greatly as a result of Cheyenne's death; if the evidence showed the United States was liable for Cheyenne's

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passing, the Thieles surely would be entitled to a substantial award. However, as will be discussed below, the evidence does not establish by a preponderance that the defendants' acts or omissions proximately caused Cheyenne's death. Accordingly, the Thieles are not entitled to any recovery.

This case was tried at a bench trial on January 20-23 and 26, 2004. Plaintiffs attended the trial and were capably represented by their counsel, Glen M. Richman and Barbara W. Richman, of Richman Richman & Johnsen, LLC. Defendant was capably represented by its counsel, Jeffrey E. Nelson and Jan Allred, Assistant United States Attorneys. The court heard the testimony of witnesses and arguments of the respective parties' counsel and received into evidence deposition testimony, affidavits, and multiple exhibits. Based on the evidence presented, the court enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Cheyenne Madyson Stevens Thiele, deceased, was the daughter of Plaintiffs Thomas L. Thiele and Gwyn Stevens Thiele.
2. Cheyenne Thiele was born on October 8, 1998, and died on April 7, 1999.
3. From Cheyenne Thiele's birth on October 8, 1998, until her death on April 7, 1999, Plaintiff Thomas L. Thiele was an enlisted serviceman with the United States Air Force at Hill Air Force Base ("HAFB"). As such, Mr. Thiele and his dependents, including Cheyenne, were entitled to receive medical care and treatment from Defendant United States through the HAFB Medical Clinic and its agents.
4. Pursuant to that benefit, Cheyenne Thiele received medical treatment from HAFB

Medical Clinic personnel on these dates:

a. November 23, 1998: Dr. Aaron Cohen saw Cheyenne. Mrs. Thiele told Dr. Cohen she was concerned about Cheyenne's nasal congestion. She also said Cheyenne was behaving normally and eating well with occasional minor vomiting after eating. Dr. Cohen observed Cheyenne was active and alert but possibly suffering from a viral illness. Because Mrs. Thiele was focused on Cheyenne's nasal congestion and appeared unfamiliar with techniques for assisting Cheyenne, Dr. Cohen gave Mrs. Thiele tips to reduce the congestion, including clearing Cheyenne's nose with a nasal bulb and keeping Cheyenne upright in a car seat while she was sleeping. Dr. Cohen also instructed Mrs. Thiele to follow up with her physician if Cheyenne was unable to keep meals down or experienced a fever.

b. December 16, 1998: Nurse Practitioner Annette Gomez saw Cheyenne. Mrs. Thiele said Cheyenne had experienced nasal congestion since Thanksgiving but that Cheyenne's breathing improved when Mrs. Thiele suctioned Cheyenne's nose. Mrs. Thiele reported Cheyenne spit up after feeding but did not report any projectile vomiting or apnea episodes. Nurse Practitioner Gomez observed Cheyenne was alert, active, without fever, in no respiratory distress, and had good oxygen saturation. An RSV test came back negative. Nurse Practitioner Gomez recommended that Mrs. Thiele spray saline solution into Cheyenne's nose, suction her nose when necessary, use a humidifier, and put Cheyenne to sleep with her head elevated to promote nasal drainage. Two days later, in a follow-up telephone call, Mrs. Thiele reported that Cheyenne continued to

experience congestion. Nurse Practitioner Gomez suggested that Mrs. Thiele obtain a humidifier, continue to use the saline solution, and use Neosynephrine, if necessary for up to three days.

c. January 25, 1999: Dr. Rimas V. Janusonis saw Cheyenne. Mrs. Thiele said that Cheyenne had experienced an apnea event, or stopped breathing, the previous evening and during the prior week. During one apnea event, the area around Cheyenne's mouth turned a bluish hue. Mrs. Thiele told Dr. Janusonis that Wee Care Pediatrics had x-rayed Cheyenne's chest three days earlier and that the radiologist had concluded the x-rays looked normal. Mrs. Thiele did not report that Cheyenne had experienced constant diarrhea, projectile vomiting, or periods of constant crying. Dr. Janusonis observed that Cheyenne's lungs were clear; that she did not have a fever; and that her ears, nose, eyes, and throat were normal except for some nasal congestion and some inflammation in her right eardrum. Dr. Janusonis ordered another chest x-ray, which revealed no evidence of pneumonia, and scheduled a follow-up visit the following day in the Pediatric Clinic.

d. January 26, 1999: During this follow-up visit, Nurse Practitioner Gomez again saw Cheyenne. Mrs. Thiele recounted Cheyenne's apnea events and also reported Cheyenne experienced diarrhea and vomiting during the past nine days. Nurse Practitioner Gomez examined Cheyenne and observed an alert, active child in no apparent respiratory distress. An RSV test was negative. Nurse Practitioner Gomez diagnosed acute gastroenteritis. She consulted Dr. Zernzach, who recommended prescribing Albuterol to help Cheyenne breathe more easily. Nurse Practitioner gave Mrs. Thiele the

prescription, and suggested that Mrs. Thiele give Cheyenne small, frequent feedings to reduce the likelihood of vomiting. She also scheduled an appointment for Cheyenne with Dr. Zernzach.

e. January 28, 1999: Dr. Randall Zernzach saw Cheyenne as a follow-up to her January 26, 1999, visit with Nurse Practitioner Gomez. Mrs. Thiele told Dr. Zernzach that Cheyenne's illness started the weekend of January 15, 1999, and that Cheyenne had experienced nasal congestion since November, 1998. Mrs. Thiele did not report any recent apnea events but said Cheyenne recently had been irritable and fussy. Mrs. Thiele also said Cheyenne had experienced recent vomiting and diarrhea. Dr. Zernzach observed that Cheyenne was alert, well-nourished, smiling, and in no distress. Dr. Zernzach found Cheyenne had slight nasal congestion but that her lungs were clear; he also noted Mrs. Thiele had a cold. Dr. Zernzach diagnosed Cheyenne's condition as an improving viral upper respiratory infection with gastrointestinal symptoms. He recommended changing Cheyenne's formula to a soy-based product to see if it would alleviate Cheyenne's diarrhea. Dr. Zernzach also recommended medications for thrush and diaper rash symptoms he observed during his examination and scheduled a well-baby check for February 8, 1999.

f. February 8, 1999: Dr. Zernzach performed Cheyenne's first well-baby check. He observed Cheyenne did not have a fever, that her lungs and throat were clear, and that she appeared to have recovered from her prior acute illness and had experienced good weight gain. Mrs. Thiele told Dr. Zernzach that Cheyenne had experienced diarrhea and

vomiting the prior evening, and Dr. Zernzach determined these were symptoms of acute gastroenteritis. Dr. Zernzach instructed Mrs. Thiele to continue using the thrush and diaper rash medications as Cheyenne's symptoms appeared to be clearing up.

g. February 15, 1999: Dr. Susan Quick saw Cheyenne. Mrs. Thiele said Cheyenne had been vomiting approximately three times per day for two days. Mrs. Thiele reported Cheyenne had a fever but did not have diarrhea. Cheyenne's urine output was excellent with more than six wet diapers in twenty four hours. Cheyenne also had a runny nose and a cough, but Mrs. Thiele said Cheyenne did not have respiratory or swallowing difficulty. Dr. Quick found Cheyenne to be well-developed, well-nourished, well-hydrated, and in no apparent distress. Dr. Quick observed Cheyenne was experiencing some coarse breathing sounds without rales or wheezes. She diagnosed a viral illness. Although a chest x-ray did not reveal any evidence of pneumonia, Dr. Quick scheduled a follow-up visit for the following day and told Mrs. Thiele to contact Cheyenne's primary care physician if Cheyenne experienced reduced urine output or if her respiratory rate rose above forty five per minute.

h. February 16, 1999: Dr. Quick performed a follow-up examination. Cheyenne was still experiencing some vomiting and was still congested, but her urine output was excellent, and she was not experiencing any respiratory difficulty. Dr. Quick's observations confirmed her viral illness diagnosis and urged Mrs. Thiele to follow up with Cheyenne's primary care provider as necessary.

5. In addition to her visits at HAFB Medical Clinic, Cheyenne Thiele received medical

care at Wee Care Pediatrics, a private health care facility, on the following dates:

a. January 17, 1999: Cheyenne visited Wee Care twice on January 17, 1999 and was treated by Physician's Assistant Elmer Sisneros and Dr. Beverly Hurwitz. The first visit occurred during the early morning hours and was prompted by Cheyenne's vomiting and diarrhea episodes. Mrs. Thiele also said Cheyenne had run a fever since the prior day and had been nasally congested for two months. In addition, in a "Health History" that Mrs. Thiele filled out prior to her early-morning visit, she checked "No" in response to questions about whether Cheyenne had experienced diarrhea, irritability, sleep problems, feeding or eating problems, wheezing, or frequent colds or sore throats. Mrs. Thiele also did not report any apnea events. A chest x-ray did not reveal any evidence of pneumonia.

The second visit occurred later that morning. At that time, Dr. Hurwitz observed that Cheyenne was breathing normally and that her lungs were clear. Dr. Hurwitz diagnosed an acute upper respiratory infection and acute gastroenteritis. She recommended feeding Cheyenne small amounts of food in an attempt to minimize further vomiting and told Mrs. Thiele to follow up with Cheyenne's primary care physician as needed.

b. January 19, 1999: Mrs. Thiele reported Cheyenne's diapers were red. That day, she had given Cheyenne red Jell-O water. Physician's Assistant Sisneros noted Cheyenne was alert and happy. He instructed Mrs. Thiele to stop giving Cheyenne Jell-O water.

6. Cheyenne died while at the home of Mrs. Pakenham, her daycare provider. Mrs. Pakenham testified that Cheyenne was generally a happy baby, except when she vomited. She

also testified that Cheyenne's development was consistent with other infants in her daycare.

The morning Cheyenne passed away, Mrs. Packenham did not notice anything different in Cheyenne's behavior. Cheyenne took her usual morning nap sometime around 9:30 or 10:00 a.m. Around noon, Mrs. Packenham moved Cheyenne's crib into her bedroom so the other children could nap without disturbing Cheyenne. While moving the crib, Mrs. Packenham saw Cheyenne breathing normally. Additionally, Cheyenne stirred while Mrs. Packenham moved the crib. After arriving in her bedroom, Mrs. Packenham stood and observed Cheyenne and saw her go back to sleep.

A few minutes later, after she put her other daycare children down for a nap, Mrs. Packenham walked toward Cheyenne's crib when the phone rang. It was a wrong number. When she hung up, Mrs. Packenham heard a cough. She checked the other children, then again went to Cheyenne's crib, where she found Cheyenne had rolled onto her stomach, had stopped breathing, and had vomit coming out of her mouth.

Mrs. Packenham immediately lifted Cheyenne from the crib and placed her on her back on the living room floor. She called 911 by pressing the speed dial number one button on her phone. After pushing the button, Mrs. Packenham cleaned out Cheyenne's mouth and began cardiopulmonary resuscitation by giving Cheyenne a breath. There was no response. The emergency operator answered, and Mrs. Packenham related the situation. Moments later, paramedics arrived and told Mrs. Packenham that Cheyenne had passed away.

7. During the trial, the court heard evidence from various distinguished medical experts who testified as to the applicable standard of care and causation. However, because the court is

ultimately persuaded that the alleged negligence did not cause Cheyenne's death, it is not necessary to review the testimony of all the experts who testified. In short, the court finds that the testimony of three doctors—Dr. Maureen Frikke, Dr. Harry Bonnell, and Dr. Bruce Beckwith—as to causation is dispositive. Indeed, at trial, the Thieles' attorney conceded that accepting Dr. Beckwith's explanation of Cheyenne's death instead of Dr. Bonnell's would effectively end their case.¹ Accordingly, the court recites its findings only as to these three doctors:

a. Dr. Maureen Frikke. Dr. Frikke is a pathologist in the Utah State Medical Examiner's Office. She examined Cheyenne the day after she died and presented her autopsy findings at trial. The court found her to be a credible, disinterested witness. Dr. Frikke observed that Cheyenne was apparently well nourished and was at the appropriate weight for her age. She testified that she had not seen evidence of chronic diarrhea but that she had seen evidence of stomach acid in Cheyenne's lungs, as well as food products that had been aspirated around the time of her death.

Although Dr. Frikke concluded that Cheyenne had died of natural causes, she did not identify a precise cause of death. She noted that she had seen evidence in Cheyenne's lung tissues of interstitial pneumonitis (inflammation of lung tissue) but rejected that condition as a cause of death. She also testified that she had seen microscopic evidence of reflux esophagitis (inflammation of the esophagus) where the esophagus meets the stomach but did observe that condition higher in the esophagus. As with interstitial

¹See Tr. at 1057:11-12, 22-25.

pneumonitis, Dr. Frikke concluded that reflux esophagitis was a “minor health problem” that would not by itself have caused Cheyenne’s death.

However, because these conditions were present, Dr. Frikke also ruled out Sudden Infant Death Syndrome (SIDS) as the cause of death. She testified that to classify a death as SIDS, she would have to conclude that the cause of death could not be explained, a conclusion she was reluctant to make in light of the other two conditions. Still, Dr. Frikke agreed that another pathologist could legitimately classify Cheyenne’s death as a SIDS death.

b. Dr. Harry Bonnell. Dr. Bonnell, a pathologist with significant experience performing autopsies on infants, testified at length. He agreed with Dr. Frikke that neither reflux esophagitis nor interstitial pneumonitis had caused Cheyenne’s death. However, after reviewing microscopic photographs of Cheyenne’s lung tissues, he concluded that Cheyenne had suffered from chronic aspiration of stomach contents, which damaged and weakened her lungs. He concluded that Cheyenne had died as a result of a final, fatal aspiration incident that caused her lungs to fail.

c. Dr. Bruce Beckwith. Dr. Beckwith, a specialist in pediatric pathology for forty years, also testified at length. He has performed approximately 4,000 autopsies of infants and has participated in studies of sudden infant death, including SIDS, since the mid-1960s. Dr. Beckwith continues to participate in those studies and has written extensively on sudden infant death and SIDS. The crux of Dr. Beckwith’s testimony was that Cheyenne’s death is best classified as a SIDS death. He explained that over the years the

definition of SIDS has become refined and that Cheyenne's death met all of the criteria of the most recent, narrowest definition of a SIDS death.

Dr. Beckwith's analysis directly contradicted Dr. Bonnell's testimony. Dr. Beckwith convincingly explained why Dr. Bonnell's theory could not be right. First, Dr. Beckwith responded specifically to Dr. Bonnell's analysis of the microscopic photographs of Cheyenne's organ tissues and explained in detail his reasoning for disagreeing with Dr. Bonnell's conclusions. He persuasively explained how the slides ought to be interpreted, justifying his own analysis, and credibly pointed out where Dr. Bonnell's mistaken assumptions could have led to an erroneous analysis of the slides.

Second, he credibly demonstrated why Cheyenne could not have been suffering from chronic aspiration of stomach contents. He explained that if Cheyenne had been experiencing chronic aspiration of stomach contents into her lungs, her body would have exhibited signs of significant physical stress. This stress would be manifest in her weight and in the size of her thymus gland. However, it is undisputed that Cheyenne's weight and body-fat content was normal when she died, and Dr. Beckwith persuasively testified that the size and condition of her thymus gland also showed she had been a healthy child, under no significant physical stress, at the time of her death. Thus, she could not have been suffering from chronic aspiration prior to her death.

Finally, Dr. Beckwith credibly refuted Dr. Bonnell's conclusion that Cheyenne had suffered a final, fatal aspiration event. Dr. Beckwith did not dispute Dr. Frikke's conclusion that Cheyenne had aspirated stomach acid. Rather, he challenged Dr.

Bonnell's conclusion as to the cause of the aspiration. Dr. Beckwith concluded that the caregiver blew the food particles into Cheyenne's lungs after she had died.

It is significant to note that Dr. Beckwith's testimony was consistent with Dr. Frikke's autopsy in all relevant respects. He also saw evidence of reflux esophagitis in the lower portion of Cheyenne's esophagus and agreed that this condition did not cause Cheyenne's death. Although he disagreed with Dr. Frikke's finding that Cheyenne's lung tissues showed evidence of interstitial pneumonitis, this disagreement is irrelevant since all three experts, including Dr. Beckwith, agreed that interstitial pneumonitis could not have caused Cheyenne's death.

8. Although each expert's theory was plausible, their conclusions are irreconcilable. As a result, the court must essentially pick one expert or the other. The court finds that Dr. Beckwith, who has more direct experience in child pathology generally and SIDS specifically, has the more credible version of events and that Dr. Beckwith's explanation of Cheyenne's death is more persuasive than Dr. Bonnell's. Accordingly, the court adopts Dr. Beckwith's conclusion that Cheyenne Thiele died of SIDS, not reflux esophagitis.

9. In light of this conclusion, the court need not address the standard of care issues. As plaintiffs' counsel commendably and candidly conceded, without proof that reflux esophagitis caused Cheyenne's death, plaintiffs cannot establish a cause of action for negligence for failing to diagnose that condition.²

²See Tr. at 1057:11-12, 22-25.

CONCLUSIONS OF LAW

1. Cheyenne Thiele's death was not proximately caused by any act or omission of any employee, associate, or affiliate of the Hill Air Force Base Medical Clinic.

2. Plaintiffs have failed to prove by a preponderance of the evidence that they are entitled to recover any damages.

Accordingly, the Thieles' Complaint is dismissed with prejudice and on the merits. The clerk's office is instructed to close the case.

SO ORDERED.

DATED this 4th day of May, 2004.

BY THE COURT:



Paul G. Cassell
United States District Judge

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United States District Court
for the
District of Utah
May 5, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:01-cv-00046

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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