

# \$1.3 million malpractice award will be appealed

By Tim Richard  
staff writer

Attorney David Christensen is gearing up for a second appearance before the state Court of Appeals — and ultimately the Supreme Court — in the Robert Kolosowski medical malpractice case.

"There's no precedent for the Court of Appeals doing what it did," said the attorney from Bloomfield Hills. He said he was "convinced" at how the court last week decided his retarded client was awarded no more than \$1.3 million in a suit against William Beaumont Hospital and a doctor.

"The Supreme Court should pass on it because it's an unprecedented decision by the Court of Appeals," he said.

ROBERT WILL celebrate his 10th birthday Nov. 13 in Taylor with his parents, Stanley and Jadwiga Kolosowski — though "celebrate" may be the wrong word.

At his birth, his mother was unattended in the hospital. Robert fell on his head, fracturing his skull. Clumsy, ridiculed by other kids, and with an IQ of 60 to 80, he will be educable only to the fourth grade level, will have limited earnings and probably

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— David Christensen  
attorney for mentally disabled youth

will live seven years less than normal, expert witnesses said. Here is the legal history:

- An Oakland Circuit Court jury awarded Robert \$5 million; his immigrant mother \$1.5 million; and his father, \$500,000 — a total of \$7 million. It placed 30 percent of the blame on the hospital, 70 percent on Dr. Christopher Marlowe, an obstetrician and gynecologist.
- Judge Alice Gilbert, saying the verdict "shocked the conscience," cut it to \$107,000 for the boy alone plus interest.
- The appellate panel upheld Gilbert on 15 questions regarding conduct of the trial but raised the limit on damages. Judge Walter Cynar favored \$1.8 million for Robert; Judges Barbara MacKenzie and Michael E. Kobza favored \$1.3 million. They

ordered the case re-tried before Gilbert with regard to damages.

WITH INTEREST, Christensen said, the MacKenzie-Kobza award would be worth \$3.14 million. So far, Robert has received "a penny." Judge Gilbert's and the appeals court judges' calculations are intricate. That's why Christensen said he'll go back to the appeals court and ask reinstatement of the jury award.

The case was a celebrated one — occurring in the midst of a major statewide controversy over soaring liability insurance costs and generous jury awards. The Michigan Trial Lawyers Association said "let the jury decide." Medical and insurance people criticized the "instant millionaire" mentality of juries.

The Judicial Tenure Commission investigated Gilbert, but she was ultimately cleared of misconduct.

The case had political impact, too. Gilbert's award of \$106,696.01, with interest, would have amounted to \$250,000 — precisely the amount many legislators then were proposing as a statutory limit.

JUDGE CYNAR'S opinion, released last week, said:

• Gilbert's calculations in determining the verdict was excessive had no basis in Michigan law.

• The judge "should have determined the present value of the jury award rather than what the award could have yielded at the investment rate of 10 percent."

• The judge erred in using the

minimum wage of \$3.35 an hour to calculate lost wages rather than "what the plaintiff could have earned but for the injury."

• The judge "compounded (the error) by reducing the future lost wages by the amount of income taxes that would have to be paid."

• The judge "erred by finding

that plaintiffs offered almost no evidence to support non-economic damages for pain and suffering, mental anguish, denial of social pleasures, embarrassment and humiliation."

On a long list of other questions — such as the relevancy of attorneys' questions to expert witnesses — the appeals court upheld Gilbert.

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