

CC-21-01367-B

CAUSE NO. _____

INDEERA MUSA,

Plaintiff,

v.

KIRK E. SCOTT, M.D., D.D.S.;
KIRK E. SCOTT, MD, PLLC;
STONEBRIAR FACIAL AND ORAL
SURGERY, P.A.,

Defendants.

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IN THE COUNTY COURT

AT LAW NO. _____

DALLAS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff Indeera Musa complaining of Kirk E. Scott, MD, DDS, Kirk Scott, MD, PLLC, Stonebriar Facial and Oral Surgery, P.A. for the causes of action identified below. Plaintiff Indeera Musa would respectfully show the Court as follows:

I. FACTS

1. This case arises because Dr. Kirk E. Scott, M.D., D.D.S., a dentist and medical doctor, left part of a metal drill bit in Indeera Musa’s jaw during oral surgery. Indeera went to see Dr. Scott at Stonebriar Facial and Oral Surgery, P.A. to fix two dental implants, one of which had failed. Dr. Scott determined that Indeera needed oral surgery to remove and replace the two implants.

2. On January 27, 2020, Dr. Scott performed the operation on Indeera under general anesthesia. Dr. Scott removed the two failed implants from Indeera’s lower right jaw at teeth numbers 18 and 19 using a drill with a trephine bur and then performed a bone replacement graft for ridge preservation.

3. Trepine burs are made of stainless steel and can be used to remove failed dental implants. The trephine drill is sunk over the over the implant and into the bone to drill a hole in the bone around the implant until the trephine has been sunk to the correct depth. Then the implant screw is removed from the bone and bone graft material is layered into the hole where the implant once existed. The graft limits bone loss and preserve the ridge for future restoration procedures.

4. Indeera began having problems within days of the surgery Dr. Scott performed on her jaw. She called Stonebriar with questions about the procedure and explained that she was still having pain. Rather than taking her concerns seriously or providing Indeera with the complete story, Dr. Scott and the staff of Stonebriar told her to keep taking prescription and over-the-counter medication for the pain and that they would see her at her post-op appointment.

5. The pain did not get better. It got worse. Again, Indeera called Dr. Scott's office days after the first call, to report continued severe pain and swelling at the surgical site. The pain was so severe that Indeera went in on Monday, February 3, 2020, several days before her scheduled follow-up appointment. Instead of taking Indeera's pain and swelling seriously, Stonebriar assured Indeera that all was well.

6. Indeera's pain continued over the following week and into her previously scheduled follow-up appointment of February 11, 2020. She told Dr. Scott that she felt deep pain in her lower left jaw. He decided to schedule her for a follow-up three months later.

7. On June 8th, Dr. Scott evaluated Indeera's jaw to determine if the bone was ready to place new implants. X-rays revealed a metallic density object in within the region of tooth number 19. Indeera was alarmed and asked Dr. Scott what had been left inside her jaw during the removal surgery. He told her everything was okay but that he had left a piece of his drill bit in her mouth and that leaving pieces of metal drill bits in a patient's jaw is of no alarm, analogizing this conduct

to leaving metal bullet fragments in a patient's body. Indeera needed a CT scan to gather more information about the fragment and verify the position of the fragment. Stonebriar could not perform the CT scan that Indeera required because its CT scanner was broken.

8. A CT scan taken several days later revealed an obvious radiopaque metal object in



**Indeera's
Jaw**



**Trephine Bur
Example**

Indeera's left mandible (lower jaw). It was easy to tell that the object was a broken trephine bur.

9. It took an invasive and complex jaw surgery to remove the trephine drill bur from Indeera's jaw. Its structural integrity will be forever compromised, and Indeera will suffer the consequences of Defendants' recklessness and disregard for the rest of her life.

II. PARTIES

10. Defendant Kirk E. Scott, M.D., D.D.S. is an individual who resides in Dallas County, Texas. He can be served at his residence 6321 Norway Road, Dallas, Texas 75230 or wherever he may be found.

11. Defendant Kirk Scott, MD, PLLC is a domestic for-profit corporation with a principal place of business in Collin County, Texas. It may be served by serving its registered agent, Kirk Scott,

5757 Warren Parkway, Suite 320, Frisco, Texas 75034.

12. Defendant Stonebriar Facial and Oral Surgery, P.A. is a domestic for-profit professional association with a principal place of business in Collin County, Texas. It may be served by serving its registered agent, Kirk E. Scott, 5757 Warren Parkway, Ste. 320, Frisco, Texas 75034.

13. Plaintiff Indeera Musa resides in Denton County, Texas. The last three digits of her driver's license are 512.

III. JURISDICTION AND VENUE

14. Venue is also proper in Dallas County pursuant to TEXAS CIVIL PRACTICES & REMEDIES CODE § 15.002(a) because one or more Defendants were residing in Dallas County at the time these events occurred.

15. Indeera Musa is complying with TEXAS CIVIL PRACTICES & REMEDIES CODE § 74.053 and not specifying an amount of money claimed as damages other than to assert that this Court has jurisdiction because the amount in controversy exceeds the minimum jurisdictional amounts of the Court.

IV. DISCOVERY CONTROL PLAN

16. Indeera Musa will conduct discovery under Level III of TEXAS RULE OF CIVIL PROCEDURE 190.3.

V. CAUSES OF ACTION

A. Count One: Negligence

17. Plaintiff refers to the preceding paragraphs to support of her negligence claim.

18. At all times material hereto, Defendant Kirk E. Scott, M.D., D.D.S. was an oral surgeon and employee of Defendant Kirk Scott, MD, PLLC and Defendant Stonebriar Facial and Oral Surgery, P.A. and acting in the course and scope of his employment.

19. At all times material hereto, Dr. Scott was Indeera Musa's oral surgeon and owed Indeera a duty to act as an ordinary prudent oral surgeon would act in the same or similar circumstances. Dr. Scott negligently failed to provide appropriate care to Indeera by failing to adhere to the standard of care, including but not limited to the following particulars:

- a. Failure to provide appropriate medical care;
- b. Leaving all or part of a trephine bur in Indeera's jaw;
- c. Failure to appropriately follow up post operatively;
- d. Failure to recognize or respond to signs of a retained trephine bur;
- e. Failure to remain vigilant and responsive to reports of continued pain and symptoms by Indeera at subsequent visits;
- f. Failure to appropriately communicate with Indeera;
- g. Failure to properly monitor and respond to Indeera's initial and subsequent complaints of pain and symptoms; and
- h. Failure to provide treatment to Indeera for the retained trephine bur in a timely manner.

20. Dr. Scott's acts or omissions as set forth above foreseeably and proximately caused Indeera to suffer from the retained trephine burr, which caused severe injuries to Indeera that will have lifelong consequences. Defendants proximately caused Plaintiff's damages for which she brings this suit.

B. Count Two: Gross Negligence

21. Plaintiff refers to the preceding paragraphs to support of her gross negligence claim.

22. Defendants' conduct described above was substantially more than ordinary carelessness or inadvertence. Rather, the conduct rises to the level of gross negligence and malice, as those terms

are defined by law under section 41.001(11) of the TEXAS CIVIL PRACTICES & REMEDIES CODE. Leaving the trephine drill bur in Indeera's jaw and the failure to respond to the clear and evident retained object constitutes such an entire want of care as to indicate that the acts or omissions in question were the result of conscious indifference to Indeera's rights, welfare, and safety. Moreover, Defendants' acts and omissions of involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Indeera when Defendants had actual, subjective awareness of the risks involved, such that their conduct amounts to conscious indifference to Indeera's rights, welfare, and safety.

23. For this gross negligence, Plaintiff specifically pleads for exemplary damages.

VI. AGENCY

24. Plaintiff refers to the preceding paragraphs to support of her claims.

25. At material times, Dr. Scott and his staff were employees and/or agents of Defendant Kirk Scott, MD, PLLC and/or Defendant Stonebriar Facial and Oral Surgery, P.A. and acting in the course and scope of their employment or agency in furtherance of their employer's or principal's business. Therefore, Defendant Kirk Scott, MD, PLLC and Defendant Stonebriar Facial and Oral Surgery, P.A. are liable for the conduct of Dr. Scott and his staff.

VII. PRE-SUIT NOTICE

26. Pursuant to TEXAS CIVIL PRACTICES & REMEDIES CODE § 74.051(a), timely pre-suit Notice along with an "Authorization Form for Release of Protected Health Information" in compliance with § 74.052(c) was sent to one or more Defendants via certified mail, return receipt requested, which is sufficient as to all.

VIII. U.S. LIFE TABLES

27. Notice is hereby given that Indeera Musa intends to use the U.S. Life Tables as prepared

by the Department of Health and Human Services.

IX. REQUEST FOR JURY TRIAL

28. Indeera Musa requests a jury trial on all issues so triable and submits the applicable fee contemporaneously with the filing of this Petition.

X. DAMAGES

29. As the result of Defendants' actions, individually and jointly, Indeera Musa suffered and incurred damages, including but not limited to:

- a. Physical pain and suffering incurred in the past and future;
- b. Physical impairment in the past and future;
- c. Disfigurement incurred in the past and future;
- d. Mental anguish incurred in the past and future;
- e. Lost wages in the past and future;
- f. Loss of earning capacity in the past and future; and
- g. Reasonable and necessary medical expenses incurred in the past and future.

30. Indeera Musa seeks all damages allowable under law, including but not limited to, court costs, pre-judgment interest, and post-judgment interest.

32. Moreover, Defendants' conduct described above constituted gross negligence. As such, Indeera Musa will show that she is entitled to exemplary damages.

31. The above damages exceed the minimal jurisdiction of this Court, and Indeera Musa asks for full recovery of such damages following a trial by jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Indeera Musa prays that Defendant Kirk E. Scott, M.D., D.D.S., Defendant Kirk Scott, MD, PLLC, and Defendant Stonebriar Facial and Oral Surgery, P.A. be served with citations directing them to appear and answer this Petition and, when a final determination of these causes of action is made, that she receive a judgment

against these Defendants awarding her damages, costs of court, pre-judgment and post-judgment interest, and all further relief to which she may be justly entitled.

Respectfully submitted,

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Russell Button on behalf of Russell Button
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Associated Case Party: INDEERA MUSA

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