

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

2014 DEC 29 A 11:43

U.S. DISTRICT COURT
N.D. OF ALABAMA

THE ESTATES OF FLORA MAE DANIELS)
By and through Janice Poole ,)
as the Personal Representative)
of the Estate,)
PLAINTIFF,)

VS.)

CASE NO. _____

GGNSC TRUSSVILLE, LLC, d/b/a)
GOLDEN LIVING CENTER,)
TRUSSVILLE, a corporation,)
business, Or legal entity;)
Defendants 2, 3, 4, those)
Persons, firms and/or corpora-)
tions doing Business as GOLDEN)
LIVING CENTER-TRUSSVILLE, a)
corporation, business, Those)
persons, firms and/or corpora-)
tions who were guilty of neglect)
Defendants 4,5 and 6, those)
persons, firms, and/or corpora-)
tions who guilty of wantonness;)
Defendants 7, 8, and 9, those)
persons, firms and/or corpora-)
tions who were guilty of medical)
malpractice; Defendants 10, 11,)
and 12, those persons, firms or)
corporations who were guilty of)
breach of contract; Defendants)
13, 14, and 15, those persons,)
firms and/or corporations who)
were guilty of wanton super-)
vision and training, all of)
whose true names and legal)
identities are unknown to the)
plaintiff at this time, but will)
be added by amendment when)
ascertained.)

CV-14-K-2473-S

DEFENDANTS.)

COMPLAINT

Plaintiff, the Estate of Flora Mae Daniels, complains of defendants as follows:

Jurisdiction

This Court has subject matter jurisdiction because this action arises under federal law, pursuant to 28 U.S.C. §1343(a)(3), 28 U.S.C. §1332(c)(1) and 28 U.S.C. §1331. This Court has jurisdiction over the supplemental claims pursuant to F.R.Civ.P. 18(a) and 28 U.S.C. §1367(a).

Parties

1. Janice Poole is the personal representative of the Estate of Flora Mae Daniels and is subject to the jurisdiction of this Court.
2. The defendant, GGNCS Trussville, LLC, d/b/a Golden Living Center Trussville, is an Alabama corporation doing business in the State of Alabama and is subject to the jurisdiction of this Court.

Facts

3. Flora Mae Daniels died on or about January 14, 2013, in Jefferson County, Alabama.
4. The plaintiff avers that Janice Poole (hereinafter plaintiff) is the Executor and Personal

Representative of the Estate of Flora Mae Daniels, Probate Court of Jefferson County, Alabama, case #2013219113. Plaintiff avers that for a period of time between approximately October 18, 2012, and January 14, 2013, when Flora Mae Daniels (hereinafter Daniels) passed away, she was a resident of Golden Living -Trussville. At the time of her death, Daniels was a resident of Golden Living - Trussville, a nursing home with its principle place of business in Jefferson County, Alabama. Plaintiff avers that Daniels was admitted to Golden Living - Trussville in order to receive skilled and specialized nursing, dietary and rehabilitative care. Daniels was admitted to Golden Living - Trussville with several diagnosis, including congestive heart failure, anxiety disorder, atrial fibrillation, diabetes mellitus, hypertension, dyslipidemia, chronic kidney disease and dementia. Daniels had in place at the time of her admittance to Golden Living - Trussville, a Future Directive which indicated "Do not resuscitate" (DNR).

5. The plaintiff avers that from October 18, 2012, until approximately January 14, 2013, Daniels needed assistance and/or supervision when walking by herself, bathing, dressing, and with oral hygiene.
6. The plaintiff avers that for a period of time after December 29, 2012, Daniels was a total care patient/resident, non-ambulatory, incapacitated, and bed-ridden because of falling from her bed and breaking her hip.
7. The amount in controversy exceeds the jurisdictional threshold for this Court.

COUNT I

8. Daniels had in place at the time of her admittance to Golden Living - Trussville, a Future Directive which indicated "Do not resuscitate" (DNR).
9. On or about December 29, 2012, at approximately 9:09 p.m., Daniels was found lying at the foot of her bed after having been given Tramadol, a pain killer, approximately two hours prior. Daniels was being given Tramadol every six hours in direct conflict with written orders from her doctor. After having

been helped back into her bed, a "bed alarm" was added to her bed.

10. Daniels, whose condition had worsened from first being admitted, was disoriented, confused and hollering out.

11. On December 30, 2012, Daniels was sent to St. Vincent's emergency room in noticeable pain and swelling due to her fall.

12. As a result of the fall and breaking her hip, Daniels, who was 93 years old at the time, was forced to undergo hip surgery to repair her hip.

13. Upon being discharged from the hospital for the surgery, Daniels was taken back to Golden Living - Trussville. Daniels was never able to walk again and remained bed-ridden until her death.

14. The discharge papers from St. Vincent's stated that Daniels was to have comfort measures only and hospice services once she returned to Golden Living - Trussville. However, Golden Living - Trussville never began hospice service and in fact never contacted the hospice service. Defendants

negligently and wantonly failed to follow the doctor's orders.

15. On or about December 14, 2009, Daniels was transferred back to the Golden Living-Trussville facility. Doctor's notes indicated that Daniels was in "terminal condition". The family was aware of this fact and knew of the DNR in Daniels' file at Golden Living - Trussville.
16. However, Daniels's health continued to deteriorate and on January 13, 2013, even though Golden Living - Trussville had in their file a DNR and Daniels had a bracelet on with DNR in bold letters, she was sent back to the emergency room at St. Vincent's and admitted to the hospital. Daniels was in respiratory failure and despite the fact that her wishes were not to be resuscitated, Golden Living - Trussville negligently and wantonly ignored her wishes and the DNR and sent her back to the hospital.
17. Because Golden Living - Trussville failed to abide by the wishes and written instructions of Daniels, the hospital was not informed of the patient's wishes and the DNR in place with Golden Living - Trussville.

Upon arrival at the emergency room, Daniels was flipped upside down in order that intravenous lines could be inserted in her neck.

Wherefore, plaintiff demands judgment against all defendants for actual, general, special compensatory and punitive damages to be determined by a jury, plus interest, costs of court, attorney fees, as well as any other and further relief this Court deems just and proper.

COUNT TWO
NEGLIGENCE

1. Plaintiff adopts and re-alleges all previous counts and paragraphs and further avers:
2. The named defendants and fictitious defendants 5, 6 and 7 are guilty of negligence as referenced in the factual section of this Complaint. Defendants owed a duty to Daniels to provide the same or similar nursing and medical services as any reasonably prudent, similarly situated medical provider. Golden Living - Trussville breached that duty of care by ignoring the DNR.

3. As a result, Daniels' wishes were ignored and she suffered unwanted and preventable indignities and personal injury and ultimately death.

Wherefore, plaintiff demands judgment against all defendants for actual, general, special compensatory and punitive damages to be determined by a jury, plus interest, costs of court, attorney fees, as well as any other and further relief this Court deems just and proper.

COUNT THREE
WANTONNESS

4. Plaintiff adopts and re-alleges all previous counts and paragraphs and further avers:

5. The named defendants and fictitious defendants 8, 9 and 10 are guilty of wantonness as referenced in the factual section of this Complaint. Defendants owed a duty to Daniels to provide the same or similar nursing and medical services as any reasonably prudent, similarly situated medical provider. Golden Living - Trussville breached that duty of care by ignoring the DNR.

6. As a result, Daniels suffered unwanted and preventable indignities and personal injury and ultimately death.

Wherefore, plaintiff demands judgment against all defendants for actual, general, special compensatory and punitive damages to be determined by a jury, plus interest, costs of court, attorney fees, as well as any other and further relief this Court deems just and proper.

COUNT FOUR
NEGLIGENT TRAINING AND SUPERVISION

7. Plaintiff adopts and re-alleges all previous counts and paragraphs and further avers:

8. The named defendants and fictitious defendants 11, 12 and 13, negligently hired staff members incapable of providing adequate care and treatment to Daniels. The defendants failed to supervise their staff members to ensure that they were providing adequate and proper treatment to Daniels. The defendants negligently trained their staff members on how to provide adequate and proper treatment to Daniels. The defendants' conduct constitutes negligent hiring,

training and supervision. Golden Living - Trussville breached that duty of care by ignoring the DNR.

9. As a result, Daniels suffered unwanted and preventable indignities and personal injury and ultimately death.

Wherefore, plaintiff demands judgment against all defendants for actual, general, special compensatory and punitive damages to be determined by a jury, plus interest, costs of court, attorney fees, as well as any other and further relief this Court deems just and proper.

COUNT FIVE
MEDICAL MALPRACTICE

10. Plaintiff adopts and re-alleges all previous counts and paragraphs and further avers:

11. The named defendants and fictitious defendants 14, 15 and 16 breached the standard of care which is medical malpractice as referenced in the factual section of this Complaint. Golden Living - Trussville breached that duty of care by ignoring the DNR.

12. As a result, Daniels suffered unwanted and preventable indignities and personal injury and ultimately death.

Wherefore, plaintiff demands judgment against all defendants for actual, general, special compensatory and punitive damages to be determined by a jury, plus interest, costs of court, attorney fees, as well as any other and further relief this Court deems just and proper.

COUNT SIX
BREACH OF CONTRACT

13. Plaintiff adopts and re-alleges all previous counts and paragraphs and further avers:

14. The named defendants and fictitious defendants 17, 18 and 19, breached their contract as referenced in the factual section of this Complaint.

15. As a result, Daniels suffered unwanted and preventable indignities and personal injury and ultimately death.

Wherefore, plaintiff demands judgment against all defendants for actual, general, special compensatory and punitive damages to be determined by a jury, plus interest,

costs of court, attorney fees, as well as any other and further relief this Court deems just and proper.

COUNT SEVEN
WANTON SUPERVISION AND TRAINING

16. Plaintiff adopts and re-alleges all previous counts and paragraphs and further avers:

17. The named defendants and fictitious defendants 20, 21 and 22, wantonly hired staff members incapable of providing adequate care and treatment to Daniels. The defendants failed to supervise their staff members to ensure that they were providing adequate and proper treatment to Daniels. The defendants wantonly trained their staff members on how to provide adequate and proper treatment to Daniels. The defendant's conduct constitutes wanton hiring, training and supervision as referenced in the factual section of this Complaint.

18. As a result, Daniels suffered unwanted and preventable indignities and personal injury and ultimately death.

Wherefore, plaintiff demands judgment against all defendants for actual, general, special compensatory and

punitive damages to be determined by a jury, plus interest, costs of court, attorney fees, as well as any other and further relief this Court deems just and proper.

COUNT EIGHT
INDEPENDENCE AND DIGNITY AT THE END OF LIFE

19. Plaintiff adopts and re-alleges all previous counts and paragraphs and further avers:

20. Daniels had in place at the time of her admittance to Golden Living - Trussville, a future directive for her health care and wishes pursuant to §22-8A-4, Code of Alabama, 1975. Daniels had knowingly and willingly declared that she wished not to have life sustaining treatment.

21. Golden Living - Trussville had been given, on several occasions, a copy of said future directive and had even placed an arm band on Daniels stating she was DNR.

22. At no time on January 13, 2013, before having Daniels transported to St. Vincent's emergency room, did any employee or health care provider at Golden Living - Trussville, advise the family of Daniels that the future directive was not going to be

complied with or that Golden Living - Trussville was refusing to comply with Daniels' future directive.

23. Golden Living - Trussville ignored the wishes and written instructions of Daniels.

24. As a result, Daniels suffered unwanted and preventable indignities and personal injury and ultimately death.

Wherefore, plaintiff demands judgment against all defendants for actual, general, special compensatory and punitive damages to be determined by a jury, plus interest, costs of court, attorney fees, as well as any other and further relief this Court deems just and proper.

COUNT NINE
42 U.S.C. §1983 - DEPRIVATION OF RIGHTS

25. Plaintiff adopts and re-alleges all previous counts and paragraphs and further avers:

26. At the time of her admittance and during her stay at Golden Living - Trussville, Daniels had in place and effect, a future directive, pursuant to §22-8A-4, Code of Alabama, 1975.

27. It was the right of Daniels to make this future directive and to rely upon the fact that her wishes as set out in the future directive would be followed.
28. Golden Living - Trussville, ignored the written instructions in said future directive, disregarded the wishes of Daniels and transported Daniels to the emergency room where she was subjected to numerous medical treatments and procedures, none of which Daniels wanted and which was outlined in her future directive.
29. Golden Living - Trussville and the as yet unidentified and unnamed defendants, deprived Daniels of her rights under the Fourth and Fourteenth Amendments to the Constitution of the United States, in violation of 42 U.S.C. §1983, specifically Daniels' right to die with dignity as set out in writing in her future directive.
30. Despite the knowledge of Golden Living - Trussville that there was a future directive in force, Golden Living - Trussville failed to honor the wishes of Daniels, thereby depriving her of her civil rights and privileges.

31. As a result of the conduct of Golden Living - Trussville, Daniels was cause to suffer pain, indignities and further unwanted and unnecessary medical treatment and procedures.

Wherefore, plaintiff demands judgment against all defendants for actual, general, special compensatory and punitive damages to be determined by a jury, plus interest, costs of court, attorney fees, as well as any other and further relief this Court deems just and proper.

COUNT TEN
DENIAL OF DUE PROCESS

32. Plaintiff adopts and re-alleges all previous counts and paragraphs and further avers:

33. At the time of her admittance and during her stay at Golden Living - Trussville, Daniels had in place and effect, a future directive, pursuant to §22-8A-4, Code of Alabama, 1975. Golden Living - Trussville was provided with a copy of said future directive.

34. Golden Living - Trussville and the as yet unidentified and unnamed defendants, deprived Daniels of due process under the Fifth and Fourteenth Amendments to the Constitution of the United States,

in violation of 42 U.S.C. §1983, specifically Daniels' right to die with dignity as set out in writing in her future directive.

35. It was the right of Daniels to make this future directive and to rely upon the fact that her wishes as set out in the future directive would be followed.

36. As a result of the conduct of Golden Living - Trussville, Daniels was cause to suffer pain, indignities and further unwanted and unnecessary medical treatment and procedures.

Wherefore, plaintiff demands judgment against all defendants for actual, general, special compensatory and punitive damages to be determined by a jury, plus interest, costs of court, attorney fees, as well as any other and further relief this Court deems just and proper.

COUNT ELEVEN
Outrage

37. Plaintiff adopts and re-alleges all previous counts and paragraphs and further avers:

38. The actions by the defendants as outlined hereinabove, constitute conduct so outrageous in character and so extreme in degree that it goes beyond all possible bounds of decency.

39. Said actions were the result of negligent, carelessness and/or unskillfulness of the defendants.

40. As a direct and proximate result of defendants' conduct, plaintiff Daniels was cause to suffer pain, indignities and further unwanted and unnecessary medical treatment and procedures.

Wherefore, plaintiff demands judgment against all defendants for actual, general, special compensatory and punitive damages to be determined by a jury, plus interest, costs of court, attorney fees, as well as any other and further relief this Court deems just and proper.



HORACE V. O'NEAL, JR.
(ONE005)



PLAINTIFF DEMANDS A TRIAL
BY JURY

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