

**IN THE CIRCUIT COURT OF GRANT COUNTY, WEST VIRGINIA**

**KIMBERLY LINVILLE,**

**Plaintiff,**

**v.**

**Civil Action No. 20-C-8**

**ROBERT W. "BOB" MILVET, THE BOARD OF TRUSTEES OF GRANT MEMORIAL HOSPITAL TRUST FOUNDATION, INCORPORATED (otherwise known as GRANT MEMORIAL HOSPITAL), and THE GRANT COUNTY COMMISSION,**

**Defendants.**

**FILED**

**JUL 29 2020**

Angela B. Van Meter  
Clerk of Circuit Court

**ORDER DENYING MOTION TO DISMISS**

On the 9<sup>th</sup> day of July, 2020, came the Grant County Commission, by counsel, Peter G. Zurbuch, the Plaintiff, Kimberly Linville, by counsel, Isaac Sponaugle, and the Defendants, Robert W. "Bob" Milvet, The Board of Trustees of Grant Memorial Hospital Trust Foundation, Incorporated (otherwise known as Grant Memorial Hospital), by counsel, Wendy G. Adkins pursuant to the Grant County Commission's Motion to Dismiss the Plaintiff's Complaint.

The Grant County Commission seeks a dismissal of all claims against it based upon the immunity afforded political subdivisions under the Governmental Tort Claims and Insurance Reform Act, W.Va. Code § 29-12A-4, and on the grounds that the Grant County Commission is neither the "employer" of the Plaintiff or a "health care entity". Under West Virginia law the Grant County Commission contends the Whistle-blower count brought pursuant to W.Va. Code § 6C-1-2(c), the Patient Safety Act count brought pursuant to W.Va. Code § 16-39-1, the Human Rights Act count brought pursuant to W.Va. Code § 5-11-3, and the Intentional Infliction of Emotional Distress count all arise from allegations by Plaintiff, Kimberly Linville, that Grant

Memorial Hospital and its Chief Executive Officer, Robert Milvet, discharged the Plaintiff for either discriminatory reasons or in retaliation for her complaints of wrongdoing at the hospital. The Grant County Commission argues that the Whistle-blower Act and the Human Rights Act vest cause of actions under those statutes in “employees” against their “employers.” The Patient Safety discrimination or retaliation claim brought pursuant to W.Va. Code § 16-39-1 provides for a “health care worker” to assert a claim against a “health care entity.” The Grant County Commission contends that it is not Linville’s “employer” or a “health care entity.” The Grant County Commission argues under the statute which authorizes County Commissions to create and own public hospitals, the management and control of the hospital is vested in the Board of Trustees of the hospital and the Grant Memorial Hospital is a separate legal entity from the County Commission being incorporated in 1963, and it is in fact the employer of its employees, including the Plaintiff, Kimberly Linville.

The Plaintiff argues in opposition to the Motion to Dismiss that when a court is presented with a Motion to Dismiss, then it must construe the complaint in the light most favorable to the Plaintiff, taking all allegations as true, which warrants a denial of the Grant County Commission’s Motion to Dismiss. Plaintiff further argues that the Grant County Commission is vicariously liable for the conduct of the Chief Executive Officer of the hospital and the Board of Trustees of Grant Memorial Hospital by virtue of the fact that Grant County Commission created and owns the hospital pursuant to W.Va. Code §7-3-14 and has the exclusive appointment power of its Board of Trustees pursuant to W.Va. Code §7-3-15. Grant Memorial Hospital is defined as an employee of the Grant County Commission pursuant to W.Va. Code § 29-12A-3 of the Governmental Tort Claims and Insurance Reform Act. Plaintiff further argues that the Grant County Commission is vicariously liable for the conduct of Grant Memorial Hospital pursuant to

W.Va. Code § 29-12A-4(c) of the Governmental Tort Claims and Insurance Reform Act. Plaintiff further argues that the West Virginia Supreme Court decision in Burke v. Wetzel Cty. Comm'n, 240 W.Va. 709, 815 S.E.2d 520 (2018) supports her contention that the County Commission can be held vicariously liable for the conduct of the Grant Memorial Hospital Board of Trustees and the Hospital Chief Executive Officer, Robert Milvet.

Grant Memorial Hospital and Robert Milvet do not take any position on the Motion to Dismiss.

Upon considering the Motion to Dismiss filed by the Grant County Commission and the arguments of counsel, the Court agrees with the position of the Plaintiff and hereby denies the Grant County Commission's Motion to Dismiss.

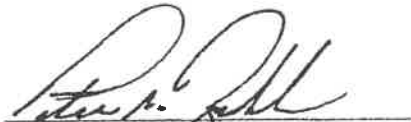
Counsel for the Grant County Commission has moved this Court to stay the proceedings for thirty days in order for it to appeal the denial of the Motion to Dismiss. The court hereby grants the stay of these proceedings for thirty days pending the Grant County Commission's appeal of this Order.

All parties' exceptions to this Order are noted for the record.


Entered this 09 day of July, 2020.

  
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 JUDGE LYNN NELSON

Prepared By:


  
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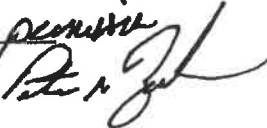
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 ATTEST:

  
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 Angela B. Van Meter  
 Clerk of the Circuit/Family Courts  
 of Grant County, West Virginia *RB*

**Order Denying Motion to Dismiss - Civil Action No. 20-C-8**

Approved By:

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