IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

CHRISTOPHER MORRIS, individually and as Administrator of the ESTATE OF AMY CHRISTINE WADE,

Plaintiff,

vs.

CIVIL ACTION NO. 20-C-140
Judge David J. Sims

STEVEN CORDER, M.D.; MELANIE BASSA, MA; MARTHA DONAHUE, NP; NORTHWOOD HEALTH SYSTEMS, INC,; MID-VALLEY HEALTHCARE, INC,; and JOHN DOES 1-5,

Defendants.

ORDER

On a former day came Defendants Steven Corder, M.D., Melanie Bassa, MA, Martha Donahue, N.P., (hereinafter referred to collectively as "the individual Defendants") Northwood Health Systems, Inc., and Mid-Valley Healthcare, Inc. and moved the Court to dismiss the Complaint filed against them pursuant to W.VA. R. CIV. P. 12(b)(6), upon the ground that Plaintiff failed to state a claim upon which relief may be granted in that Decedent's act of suicide constituted an intentional intervening act thus precluding liability against Defendants.

I. STANDARD OF REVIEW

The proper scope and standard of review in assessing a Motion to Dismiss are as follows: "[T]he purpose of a motion under Rule 12(b)(6) is to test the formal sufficiency of the complaint. The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Dismissal for failure to state a claim is

proper where it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Mey v. Pep Boys- Manny, Joe & Jack*, 228 W.Va. 48, 717 S.E.2d 235 (2011) (internal citations and quotations omitted).

Thus, where Plaintiff sets forth allegations that, if proven to and believed by the finder of fact, would entitle him to relief under the law, the Motion to Dismiss should be denied and the case should proceed. Since the preference is to decide cases on their merits, courts presented with a motion to dismiss for failure to state a claim under Rule 12(b)(6) must construe the complaint in the light most favorable to the plaintiff, taking all allegations as true. *Roth v. DeFelice Care, Inc.*, 226 W.Va. 214, 700 S.E.2d 183 (2010). The Court in *Roth* further stated that a trial court considering a motion to dismiss for failure to state claim must liberally construe the complaint so as to do substantial justice and that in appraising the sufficiency of a complaint on a motion to dismiss for failure to state claim, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Thus, a Plaintiff resisting a Motion under Rule 12(b)(6) has a light burden. Indeed, "if the complaint states a claim upon which relief can be granted under any legal theory, a motion under Rule 12(b)(6) must be denied." *John W. Lodge Dist. Co. v. Texaco, Inc.*, 161 W.Va. 603, 245 S.E.2d 157, 159 (1978).

"Only matters contained in the pleading can be considered on a motion to dismiss under Rule 12(b) R. C. P., and if matters outside the pleading are presented to the court and are not excluded by it, the motion should be treated as one for summary judgment ..." Syl. pt. 4, in part, *U.S. Fidelity & Guar. Co. v. Eades*, 150 W. Va. 238, 144 S.E.2d 703 (1965).

II. FINDINGS OF FACT

1) Plaintiff filed this wrongful death action in which it is alleged that the decedent committed suicide on June 30, 2018, in Wetzel County, West Virginia, as a proximate result of Defendants' negligence.

2) Plaintiff's Complaint was brought pursuant to the Medical Professional Liability Act, W. Va. Code, §§55-7B-1 *et seq.* (MPLA) and alleges that the individual Defendants were negligent in their treatment of Amy Christine Wade (hereinafter "Decedent").

3) Plaintiff further alleges that Defendants Northwood Health Systems, Inc. (hereinafter "Defendant Northwood"), and Mid-Valley Healthcare, Inc. (hereinafter "Defendant Mid-Valley Healthcare"), are vicariously liable for the alleged negligence of Defendant Donahue.

4) Decedent was a long-time patient of the individual Defendants and Defendants Northwood and Mid-Valley Healthcare primarily through periodic office visits with various mental health professionals including the individual Defendants.

5) At no time was Decedent in the voluntary or involuntary custody of any of the Defendants during the relevant timeframe. During the relevant timeframe, all services were rendered on an out-patient basis.

III. CONCLUSIONS OF LAW

1) "Although negligence actions seeking damages for the suicide of another have generally been barred because the act of suicide is considered deliberate and intentional, and therefore, an intervening act that precludes a finding that the defendant is responsible, courts have allowed such actions where the defendant is found to have actually caused the suicide or where the defendant is found to have had a duty to prevent the suicide from occurring." *Moats v. Preston County Comm'n*, 206 W.Va. 8, 521 S.E.2d 180 (1999) (internal citations omitted).

2) "The latter exception . . . has generally been applied to someone who has a duty of custodial care, knows that the potential for suicide exists, and fails to take the appropriate measures to prevent the suicide from occurring. Specifically, this exception has been applied to jails, hospitals, reform schools, and others having actual physical custody and control over such persons." *Id.*

3) The Supreme Court of Appeals of West Virginia held in syllabus point 6 of *Moats v. Preston County Comm'n*, 206 W.Va. 8, 521 S.E.2d 180 (W. Va. 1999):

> Recovery for wrongful death by suicide may be possible where the defendant had a duty to prevent the suicide from occurring. In order to recover, the plaintiff must show the existence of some relationship between the defendant(s) and the decedent giving rise to a duty to prevent the decedent from committing suicide. Generally, such relationship exists if one of the parties, knowing the other is suicidal, is placed in the superior position of caretaker of the other who depends upon that caretaker either entirely or with respect to a particular matter.

4) Plaintiff's Complaint does not allege that Defendants were in a relationship that gave rise to a duty to prevent the suicide such as a that of a custodial caretaker. The Complaint merely alleges that Defendants deviated from the standard of care as healthcare professionals increasing the risk of Decedent's suicide. Such allegation is antithetical to the discussion in *Moats, supra,* that "the act of suicide is considered deliberate and intentional, and therefore, an intervening act that precludes a finding that the defendant is responsible [unless] the defendant is found to have actually caused the suicide or where the defendant is found to have had a duty to prevent the suicide from occurring."

5) The Supreme Court has adopted one exception to the general bar on suicide claims. The Court has held that an individual, such as a health care provider, may not be held liable for the suicide of another unless each and every one of the following factors is present at the time of death: (1) the health care provider has a duty of custodial care, (2) the health care provider knows that the potential for suicide exists, and (3) the health care provider fails to take measures to prevent

the suicide from occurring. *Hull v. Nasher-Alneam*, No. 18-1028, 2020 W. Va. Lexis 112 (W.Va. Supreme Court February 24, 2020) (memorandum decision) at [4] (finding that "[t]o fit within this exception, petitioners would have had to allege facts to satisfy each of these elements: custodial care, knowledge of the potential for suicide, and failure to take appropriate measures to prevent the suicide from occurring."); see also *Moats v. Preston County Commission*, 206 W. Va. 8, 16, 521 S.E.2d 180, 188 (1999).

6) Plaintiff claims that this exception does not apply because it arises from *Hull*, a memorandum decision. However, the West Virginia's Supreme Court has recently reaffirmed "the precedential value of [its] memorandum decisions,' . . . reiterat[ing]: "there is no question that memorandum decisions are pronouncements on the merits that fully comply with the constitutional requirements to address every point fairly arising upon the record and to state the reasons for the decision concisely in writing.'" *In re T.O.*, 238 W.Va. 455, 463, 796 S.E.2d 564, 572 (2017) (quoting *State v. McKinley*, 234 W.Va. 143, 151, 764 S.E.2d 303, 311 (2014)).

7) Therefore, while it is a longstanding legal principle that the West Virginia Supreme Court of Appeals sets forth new statements of law in the syllabus points of signed, published opinions, memorandum decisions may be cited as legal authority and are legally-binding precedent to the extent they do not conflict with a published opinion. See Syl Pts. 1 & 5, *State v. McKinley*, 234 W. Va. 143, 764 S.E.2d 303 (2014) (finding in Syllabus Point 5 that "memorandum decisions may be cited as legal authority, and are legal precedent" except "where a conflict exists between a published opinion and a memorandum decision"); see also *L&D Invs., Inc. v. Mike Ross, Inc.*, 241 W. Va. 46, 52 n.14, 818 S.E.2d 872, 878 n.14 (2018).

8) The Supreme Court's findings in *Hull* are entirely consistent with *Moats*. The Court in *Hull* expressly reached its holding by conducting a thorough analysis of *Moats*. *McKinley*, 234

W. Va. at 152, 764 S.E.2d at 312 ("[M]emorandum decisions have substantially enlarged the availability of decisions that apply well-settled principles of law to various factual scenarios."

9) Further, *Hull* correctly acknowledged that *Moats* establishes the only exception recognized by the West Virginia Supreme Court of Appeals. *Hull*, No. 18-1028 at [6–7]. "To fit within this exception, petitioners would have had to allege facts to satisfy each of these elements: custodial care, knowledge of the potential for suicide, and failure to take appropriate measure to prevent the suicide from occurring." *Id.* Here, like in *Hull*, Plaintiff's Complaint fails to assert a claim upon which relief may be granted because the allegations fail to allege that decedent was in the custody of any Defendant at the time of her suicide on June 30, 2018; indeed, Plaintiff's Complaint admits that Decedent had not seen anyone nor contacted anyone at Northwood since her outpatient visit with her counselor on June 20, 2018. Plaintiff's Complaint fails to meet the first essential element of the *Moats/Hull* exception and, therefore, Plaintiff's claim must fail as a matter of law. It is accordingly

ORDERED that Plaintiff's Complaint fails to state a claim upon which relief may be granted under the facts and circumstances of this case and therefore GRANTS the moving Defendants' Motions to Dismiss and this matter is dismissed and stricken from the Court's active docket. It is further

ORDERED that the circuit clerk shall provide an attested copy of this Order to counsel for the parties.

To which rulings the respective objections of the parties are hereby noted and preserved.

Enter this 26th day of August, 2020.

David J. Sims

Judge David J. Sims

A copy, Teste: