

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

MARY JANE MCCOMAS, as Administratrix
of the Estate of DEANNA R. MCDONALD,

Plaintiff,

v.

Civil Action No. 19-C-369
Honorable Alfred E. Ferguson

WEST VIRGINIA DIVISION OF
CORRECTIONS AND REHABILITATION
(formerly West Virginia Regional Jail and
Correctional Facility Authority); and John Doe,
unknown employees or agents of the above entity,
in their individual capacities, and as employees or
agents of the above entity,

Defendants.

ORDER

On this 22 day of September, 2020, this matter came before the court, pursuant to the West Virginia Division of Corrections and Rehabilitation's Motion Requesting Findings of Fact and Conclusions of Law. The Motion is hereby granted.

RESTATEMENT OF FACTS ALLEGED IN THE AMENDED COMPLAINT WHICH
THE COURT ACCEPTS AS TRUE FOR PURPOSES OF THE MOTION TO DISMISS
AMENDED COMPLAINT

Between August 19 and August 21, 2017, Deanna R. McDonald ("decedent") was in the legal and physical custody of the West Virginia Regional Jail and Correctional Facility Authority and was housed at Western Regional Jail, Barboursville, West Virginia, as a pretrial detainee and delivered to the Western Regional Jail on a "bail piece". She was given "special management" status and was purportedly placed on "suicide watch". She was booked into Western Regional Jail as a pretrial detainee on August 19, 2017, at 9:35 p.m. Her housing assignment was made at 9:39 p.m. to WRJ-H-H-06 FLR 9.

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J. E. MCCOMAS
CIRCUIT COURT
CABELL CO., WV

FILED

Ms. McDonald was diagnosed upon her jail intake as having "current medical conditions" of being suicidal, fevers, vomiting, daily abuse of opiates and as having seizures. Ms. McDonald was placed on a detox protocol, however, no referral for psychological medications, psychological evaluations or a medical examination was made for Ms. McDonald by any WRJ staff member. Ms. McDonald also reported having an "infection in her spine (septic)". Ms. McDonald was placed in a holding cell under "full" suicide and detox "precautions until cleared by a psychologist or psychiatrist". No follow-up care or evaluation was afforded her prior to her death.

No physician, physician assistant, registered nurse or other certified or licensed healthcare professional examined Ms. McDonald for her existent fevers, seizure disorder or septic infection. Her intake in WRJ commenced August 20 at 1:42 a.m. and was done by Shannon Estep. The next entry on her WRJ "patient history" was August 21, at 12:05 p.m. after she had been pronounced dead at St. Mary's Medical Center.

From the completion of intake at 2:07 a.m. August 20, no healthcare professional examined her to ascertain Ms. McDonald's medical status until she was discovered lifeless on a "vital check" at approximately 9:50 a.m. August 21. Correctional officer Spaulding and Kristin Turner, LPN, entered holding cell 3 and called a "medical emergency alert" when a "vital check" was being undertaken by them. Ms. Turner found Deanna McDonald's condition as "no pulse, no respiration and cold to the touch". It was noted decedent was found with her face and shoulder facing downward "in a pile of suicide smocks". It is believed Ms. McDonald had aspirated, however, evidence of such was discarded by WRJ staff.

An intake medical screening was conducted by an individual identified in records as Shannon Estep who is believed to have been employed by PrimeCare Medical. Psychiatric issues were disclosed by Deanna as was her recent treatment at St. Mary's Medical Center. She reported experiencing night sweats, fever, chills and that she had been "throwing up". All this was noted August 20 at 2:07 a.m. by Estep.

Unknown staff were assigned to monitor the medical status of Ms. McDonald while in the holding cell, however, no one performed wellness checks on her nor was she examined by any healthcare professional. Interestingly, after her body was discovered, a correctional officer

(identity unknown to plaintiff) also filed a report that “Offender Watch Logs” were not “present” at 2:15 p.m. on August 21.

Inmate Heather Adkins heard Ms. McDonald making “weird bull noises” during the night of August 20-21. Inmate Markayla Stowers reported Ms. McDonald had aspirated during the evening of August 20, however, she told the West Virginia State Police investigator no staff entered the cell to check the status of Ms. McDonald. Ms. Stowers also reported Deanna had been making what she described as “dog-like noises” and had lied face down “in her own vomit”.

Western Regional Jail staff, unknown to plaintiff, were deliberately indifferent to plaintiff’s clearly established right to adequate medical care during the entirety of her incarceration resulting in her foreseeable, preventable and untimely death. No medical care was rendered and no medical evaluation was provided Deanna McDonald from 2:07 a.m. August 20, 2017, for at least 32 hours. Subsequent to Deanna’s death, the West Virginia Regional Jail and Correctional Facility Authority merged into the West Virginia Division of Corrections and Rehabilitation. Records of alleged staff “monitoring” of Ms. McDonald were notably absent at the time of her death. Ms. McDonald is survived by her four children, Mary Jane McComas, Megan McDonald, Danielle McDonald, and Johnathan McDonald.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The court concludes, as a matter of law, that the Amended Complaint sufficiently sets forth a claim for relief per Rule 8, *R.C.P.*, and contains a sufficient demand for judgement for the relief the plaintiff seeks.
2. The court concludes, as a matter of law, that the Amended Complaint is, per Rule 8(c), *R.C.P.*, sufficient to meet the applicable pleading standard.
3. In its Order of August 24, 2020, this court ordered, without objection by the West Virginia Division of Corrections and Rehabilitation, that the operative pleading in this civil action is the Amended Complaint.
4. The court finds the facts stated in the initial three pages of plaintiff’s Amended Complaint are accepted at this stage to be true and the court finds they sufficiently raise a


right to relief beyond a speculative level. The Amended Complaint sets forth grounds for an entitlement to relief beyond mere labels and conclusions and, therefore, the Motion to Dismiss the Amended Complaint lacks merit.

5. The factual allegations contained in the Amended Complaint serve to adequately support the claims asserted in the Amended Complaint.
6. The powers and duties of the West Virginia Regional Jail and Correctional Facility Authority are set forth in *West Virginia Code* §31-20-5. Its duly promulgated legislative rules are adequately cited in plaintiff's Amended Complaint so as to support the claims asserted. Other clearly established law is, likewise, adequately set forth in plaintiff's Amended Complaint to support her claims.
7. The court finds that the plaintiff's decedent, Deanna McDonald, received some level of medical care while she was housed at Western Regional Jail prior to her death August 21, 2017. The court concludes, as a matter of law, that WVRJCFA/WVDOCR officials "must ensure that inmates receive adequate...medical care." *Farmer v. Brennan*, 511 U.S. 825 (1994) at 832.
8. The court has examined the provisions of the Medical Professional Liability Act (MPLA). As a matter of law, the court concludes the following:
 - a. The West Virginia Division of Corrections and Rehabilitation *Nee* West Virginia Regional Jail and Correctional Facility Authority is not a "healthcare facility" as that term is defined in *West Virginia Code* §55-7B-2(f).
 - b. The West Virginia Division of Corrections and Rehabilitation *Nee* West Virginia Regional Jail and Correctional Facility Authority is not a "healthcare provider" as that term is defined in *West Virginia Code* §55-7B-2(g).
9. The court is mindful of the November 12, 2019, decision of the West Virginia Supreme Court of Appeals in *State ex rel PrimeCare Medical of West Virginia, Inc. v. Faircloth*. The court concludes, as a matter of law, that the multiple claims of Ms. McComas, in this civil action, asserted on behalf of her decedent, Deanna McDonald, are clearly distinguishable from claims asserted against PrimeCare Medical by the Estate of Cody Grove. This court notes PrimeCare Medical is a healthcare provider per the MPLA.
10. The court concludes it possesses subject matter jurisdiction in this civil action.

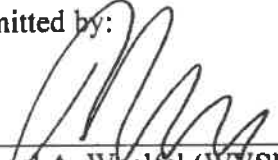
11. To the extent that the West Virginia Division of Corrections and Rehabilitation contends it is a “healthcare provider” for purposes of the MPLA, the court rejects that assertion.
12. To the extent that the West Virginia Division of Corrections and Rehabilitation contends the Western Regional Jail is a “healthcare facility” for purposes of the MPLA, the court rejects that assertion.
13. The court finds the plaintiff’s claims contained in the Amended Complaint against the West Virginia Division of Corrections and Rehabilitation are not subject to the mandatory pre-suit provisions of the MPLA.
14. The court finds, contrary to the circumstances in *PrimeCare v. Faircloth*, that the Estate of Ms. McDonald asserts viable claims against the West Virginia Division of Corrections and Rehabilitation for her pre-death suffering and death, given a fair reading of the Amended Complaint. *State ex rel. PrimeCare Med. Of W.Va., Inc. v. Faircloth*, 835 S.E.2d 579 (2019) (opinion attached).
15. The court concludes the claims and causes of action asserted by the plaintiff in her Amended Complaint against the West Virginia Division of Corrections and Rehabilitation are grounded in other clearly established law which vested clearly established rights possessed by Deanna McDonald while she was in the legal and physical custody of the West Virginia Regional Jail and Correctional Facility Authority, now the West Virginia Division of Corrections and Rehabilitation.
16. The court further distinguishes the *PrimeCare* case from the facts and circumstances existent in this civil action in a material and substantive way in that the McDonald Estate’s Amended Complaint contains sufficient factual support for plaintiff’s constitutional claims, sufficient factual support for her claims arising from the agency’s alleged violation of its own duly promulgated State rules as well as contains factual support for additional tort claims asserted against the West Virginia Division of Corrections and Rehabilitation. To illustrate this court’s position, the court refers to Page 13 of the *PrimeCare v. Faircloth* opinion, third to last and penultimate sentences.
17. Based on the foregoing, on mature consideration, the court hereby **DENIES** the West Virginia Division of Corrections and Rehabilitation’s Motion to Dismiss the Amended Complaint and it is so **ORDERED**. The court further finds its Order of August 26, 2020,

entered without objection of the WVDOCR serves to moot any procedural question which might be raised as to the sufficiency of the plaintiff's initial Complaint.

Order
Enter:


Honorable Alfred E. Ferguson

Submitted by:


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