

In the Circuit Court of Mingo County, West Virginia

ANGELA LESTER,
Denny Lester,
Plaintiffs,

vs.)

MOUNTS FUNERAL HOME INC,
NICOLE CLINE,
CHARLESTON AREA MEDICAL
CENTER,
Defendants

Case No. CC-30-2021-C-75

**ORDER DENYING DEFENDANT, CHARLESTON AREA MEDICAL CENTER, INC.'S
MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT**

On March 24, 2022, came the Defendant, Charleston Area Medical Center, Inc.

(hereinafter "CAMC"), by counsel, Mark R. Simonton and Alex S. Blevins, Defendant Mounts Funeral Home, Inc., by counsel, George A. Halkias, Defendant Nicole Cline, by counsel, David F. Nelson, and Plaintiffs Angela and Denny Lester, by counsel, H. Truman Chafin, Letitia Neese Chafin and Stacey Kohari, for hearing on Defendant CAMC's Motion to Dismiss Plaintiffs' Amended Complaint. Upon consideration of the parties' arguments, Defendant CAMC's Motion, Plaintiff's Response, all exhibits attached to said filings, Plaintiffs' Amended Complaint, and the applicable law, the Court finds and concludes as follows:

FINDINGS OF FACT

Plaintiffs filed their Amended Complaint on November 24, 2022, naming Defendant CAMC as an additional defendant in the captioned matter. In their Amended Complaint, Plaintiffs made allegations of general negligence, negligent infliction of emotional distress,

negligent mishandling of a corpse, and violations of privacy against the above-named

Defendants. The Court finds the Plaintiffs have made the following allegations as to Defendant

CAMC:

1. "This is a negligence, negligent infliction of emotional distress, negligent mishandling of a corpse, and negligent supervision of employee case arising out of mental anguish, serious emotional distress, and damages suffered as a result of mishandling of a corpse by Defendant Mounts Funeral Home, Inc., by and through their agent and employee, Nicole Cline and Defendant Women and Children's Hospital." Amended Complaint, Page 2., Paragraph 1.
2. "Defendant CAMC d/b/a Women and Children's Hospital acted negligently by placing the infant corpse in the back seat of a private vehicle filled with groceries." Amended Complaint, Page 6, Paragraph 22.
3. "Given the circumstances surrounding the mishandling and transportation of Plaintiffs' infant son's body, the serious emotional distress inflicted by Defendants' actions was reasonably foreseeable and should have been expected by the Defendants." Amended Complaint, Page 7, Paragraph 28.
4. "COUNT III: NEGLIGENT MISHANDLING OF A CORPSE." Amended Complaint, Page 7.
5. "Defendant, CAMC d/b/a Women and Children's Hospital negligently mishandled the corpse of the Plaintiff's infant by releasing the body to be transported in a private vehicle, and by placing the body in the back seat of the private vehicle without proper equipment, and by allowing unauthorized persons to be involved with the transportation and handling of the Plaintiffs' infant's corpse in violation of West Virginia Code §64-84-10." Amended Complaint Page 7, Paragraph 33.
6. "At all times relevant hereto, Defendant CAMC d/b/a Women and Children's Hospital negligently supervised its employee, agent, and servant who placed the Plaintiffs' infant's body in the back seat of a private vehicle." Amended Complaint, Page 10, Paragraph 45.

In addition to the above specific allegations, the Court further finds Plaintiffs made the following general allegation: "In violation of the laws of the State of West Virginia, Rules, Regulations and Industry Standards, and without Plaintiffs' knowledge, consent, or permission, an employee of Defendant CAMC d/b/a Women and Children's Hospital removed the remains of the Plaintiffs' infant from the basket and placed the package on the back seat of Defendant Nicole Cline's private vehicle alongside the Sam's Club purchases." Amended Complaint, Page 4, Paragraph 11.

The Amended Complaint contained allegations that Defendant CAMC's

employee placed the body of the Plaintiffs' stillborn son in the back seat of an unauthorized third-party private vehicle in the presence of an unauthorized third-party. There are no allegations of medical malpractice in the Amended Complaint.

The Court finds that the Plaintiffs' stillborn son was not a patient of Defendant CAMC as evidenced by the "No Records Statement" signed by Defendant CAMC's duly authorized release of information specialist, Mary Perry and attached to the Plaintiffs' Response to Defendant CAMC's Motion to Dismiss as Exhibit 2. The Court further finds that at all times relevant to the allegations in the Amended Complaint, the Plaintiffs' infant son was deceased.

STANDARD OF REVIEW

Defendant CAMC seeks dismissal of the Amended Complaint pursuant to Rule 12(b)(1) of the West Virginia Rules of Civil Procedure arguing this Court has no jurisdiction to entertain the subject matter and Rule 12(b)(6) alleging the Plaintiffs have failed to state a claim upon which relief can be granted.

Defendant CAMC asserts the Plaintiffs' failure to provide a pre-suit Notice of Claim and Screening Certificate of Merit pursuant to the West Virginia Medical Professional Liability Act (hereinafter the "MPLA") deprives this Court of subject matter jurisdiction and therefore must be dismissed pursuant to Rule 12(b)(1). "Just because a cause of action involves a healthcare provider does not make the MPLA the exclusive remedy." *R.K. v. St. Mary's Med. Ctr., Inc.*, 735 S.E.2d 715 (2012). Determination of whether the MPLA applies to certain claims is a fact-driven question. *Blankenship v. Ethicon, Inc.*, 656 S.E.2d 451 (2007), quoting, *Gray v. Mena*, 625 S.E.2d 326 (2005).

A motion to dismiss for failure to state a claim "should be viewed with disfavor and rarely granted." *John W. Lodge Distrib. Co. v. Texaco, Inc.*, 161 W. Va. 603, 606, 245 S.E.2d 157, 159 (1978). "The purpose of a motion under Rule 12(b)(6) of the West Virginia Rules of

Civil Procedure is to test the sufficiency of the complaint.” *Cantley v. Lincoln Cty. Comm’n*, 221 W. Va. 468, 470, 655 S.E.2d 490, 492 (2007). To that end, a “trial court considering a motion to dismiss under Rule 12(b)(6) must liberally construe the complaint so as to do substantial justice.” *Id.* See also, W.Va.R.Civ.P. 8(f). The trial court’s consideration begins, therefore, with the proposition that “[f]or purposes of the motion to dismiss, the complaint is construed in the light most favorable to plaintiff, and its allegations are to be taken as true.” *John W Lodge Distributing Co., Inc. v. Texaco, Inc.*, 161 W.Va. 603, 605, 245 S.E.2d 157, 158 (1978). The policy of Rule 8(f) is to decide cases upon their merits, and 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. *Id.*, 161 W.Va. at 605, 245 S.E.2d at 158-159.

CONCLUSIONS OF LAW

Rule 12(b)(1)

The Court finds and concludes that it has subject matter jurisdiction over the captioned civil action. Determination of whether the MPLA applies to certain claims is a fact-driven question. *Blankenship v. Ethicon, Inc.*, 656 S.E.2d 451 (2007), quoting, *Gray v. Mena*, 625 S.E.2d 326 (2005). This Court has jurisdiction to determine whether facts and allegations contained in the Plaintiffs’ Amended Complaint trigger the pre-suit requirements of the MPLA. At the onset, the Court finds the allegations in the Amended Complaint stem from the negligent mishandling of a corpse and state common-law claims for the wrongful disclosure of medical information. The Plaintiffs have made no allegations of medical malpractice.

The MPLA applies to the claims of medical professional liability. West Virginia Code § 55-7B-2(i) defines “Medical Professional Liability” as any liability for damages resulting from the death or injury of a person for any tort or breach of contract based on health care services rendered, or which should have been rendered, by a health care provider or health care facility to a patient. The MPLA defines “health care” as “treatment performed or furnished . . . on behalf

of a patient . . .” W.Va. Code § 55-7B-2(e)(2). A “patient” is defined as a “natural person.” W.Va. Code § 55-7B-2(m). “Because the term “patient” is further defined as a “natural person,” a deceased individual is necessarily precluded from qualifying as a patient under the Act, and therefore cannot be the basis for a cause of action alleging medical professional liability pursuant to the Act.” *Ricottilli v. Summersville Memorial Hosp.*, 425 S.E.2d 629 (1992). Moreover, Defendant CAMC has declared that the Plaintiffs’ stillborn son was not a patient as evidenced by the “No Records Statement” certified by its Release of Information Specialist, Mary Perry.

Therefore, the Court finds as a matter of law that Plaintiffs’ stillborn son was not a patient as defined by the MPLA and is precluded from qualifying as a patient and cannot be the basis for a cause of action alleging medical malpractice. Thus, the facts of the case at bar do not trigger the pre-suit requirements of the MPLA.

Additionally, allegations pertaining to the improper disclosure of medical records do not fall within the MPLA’s definition of “health care” and, therefore, the MPLA does not apply. *R.K. v. St. Mary’s Med. Ctr., Inc.*, at 727.

Rule 12(b)(6)

“[I]f 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 Distributing Co., Inc. v. Texaco, Inc.*, 245 S.E.2d 157, 158-159. The Court finds that the Plaintiffs’ made allegations in their Amended Complaint that Defendant CAMC negligently mishandled the corpse of their stillborn son. West Virginia has long recognized that a cause of action exists for negligently or intentionally mishandling or losing a dead body, even when its disinterment and reinterment are authorized. *Whitehair v. Highland Memory Gardens, Inc.*, 327 S.E.2d 438 (1985). The Court further finds that the Plaintiffs’ Amended Complaint contains allegations of improper disclosure of personal health information which are not preempted by the Health Insurance Portability and Accountability Act of 1996. *R.K. v. St. Mary’s Med. Ctr., Inc.*, at 725.

The Court finds that in viewing the allegations in the Amended Complaint in the light most favorable to the Plaintiffs, there are numerous claims and legal theories upon which relief can be granted.

DECISION

Accordingly, the Court does hereby **ORDER, ADJUDGE, and DECREE**, for the aforementioned reasons, the facts of the captioned matter do not trigger the pre-suit requirements of the MPLA. The Court further **ORDERS** that Defendant CAMC's *Motion to Dismiss Plaintiffs' Amended Complaint* be **DENIED**. The Court notes the objections of Defendant CAMC and the Clerk is **DIRECTED** to send this Order to all counsel of record.

Prepared By:

/s/ H. Truman Chafin
H. Truman Chafin (WVSB # 684)
Letitia Neese Chafin (WVSB #7207)
Stacey Kohari (WVSB # 10494)
The Chafin Law Firm, PLLC
P.O. Box 1799
Williamson, West Virginia 25661

Christian Harris
Attorney at Law
P.O. Box 257
Williamson, West Virginia 25661

/s/ Miki J. Thompson
Circuit Court Judge
30th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.

1 IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA
2 ANGELA LESTER and DENNY SETH LESTER,
3 PLAINTIFFS,
4 VERSUS CIVIL ACTION NO. 21-C-75
5 MOUNTS FUNERAL HOME, INC., a
6 Domestic Corporation, and NICOLE CLINE,
7 An agent/employee of Mounts Funeral
8 Home, Inc., CHARLESTON AREA MEDICAL CENTER,
9 D/B/A Women and Children's Hospital,
10 DEFENDANTS.

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12 PROCEEDINGS had before THE HONORABLE MIKI THOMPSON,
13 JUDGE, on Thursday, March 24, 2022.

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15 APPEARANCES:

16 ON BEHALF OF PLAINTIFF:

17 The Chafin Law Firm, PLLC
18 H. Truman Chafin, Letitia N. Chafin, Stacey Kohari
19 Appearing, P. O. Box 1799, Williamson, WV 25661;

20 ON BEHALF OF DEFENDANT: (CAMC)

21 Offutt Nord, PLLC
22 Mark R. Simonton and Alex S. Blevins appearing,
23 949 Third Avenue, Suite 300, Huntington, WV 25701.

24 ORIGINAL

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