



NO. 22-0439

STATE OF WEST VIRGINIA *ex rel.* CHARLESTON AREA MEDICAL
CENTER, INC. d/b/a WOMEN AND CHILDREN'S HOSPITAL

Petitioner,

DO NOT REMOVE
FROM FILE

v.

The HONORABLE MIKI J. THOMPSON, Judge of the Circuit Court of
Mingo County, West Virginia; ANGELA LESTER; DENNY SETH LESTER;
MOUNTS FUNERAL HOME, INC.; and NICOLE CLINE

Respondent.

FILE COPY

RESPONDENT MOUNTS FUNERAL HOME, INC.'S RESPONSE TO AMENDED
PETITION FOR WRIT OF PROHIBITION FILED BY PETITIONER CHARLESTON
AREA MEDICAL CENTER D/B/A WOMEN AND CHILDREN'S HOSPITAL

ANGELA LESTER, *et al.* v. MOUNTS FUNERAL HOME, INC.,
a Domestic Corporation, *et al.*
Circuit Court of Mingo County, West Virginia
Civil Action No. 21-C-75

MOUNTS FUNERAL HOME, INC.,

By Counsel,

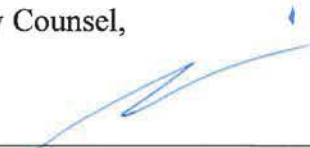

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**RESPONDENT MOUNTS FUNERAL HOME, INC.’S RESPONSE TO AMENDED
PETITION FOR WRIT OF PROHIBITION FILED BY PETITIONER CHARLESTON
AREA MEDICAL CENTER D/B/A WOMEN AND CHILDREN’S HOSPITAL**

Comes now the Respondent, Mounts Funeral Home, Inc. (“Respondent”), pursuant to Rule 16(h) of the Rules of Appellate Procedure for the West Virginia Supreme Court of Appeals, and in response to the Amended Petition for Writ of Prohibition filed by Petitioner, Charleston Area Medical Center d/b/a Women and Children’s Hospital (“Petitioner”), states as follows:

STATEMENT OF FACTS

In the Amended Complaint, Plaintiffs Angela Lester and Denny Seth Lester (“Plaintiffs”) allege that they are the biological parents of infant A.C.L., who was stillborn on May 17, 2018, at Women and Children's Hospital. (See Amended Complaint, General Allegations at ¶ 2, *Petitioner’s Appendix* at p. 58.) Plaintiffs claim that Respondent Nicole Cline arrived at the hospital with her husband, and Nicole Cline picked up the stillborn remains from Petitioner. (See Amended Complaint, General Allegations at ¶ 6, *Petitioner’s Appendix* at p. 59.)¹ Plaintiffs allege that an employee of Petitioner placed the package containing the remains in a basket, walked with Nicole Cline to her private vehicle and placed the package containing the remains in the back seat along with items purchased from Sam's Club. (See Amended Complaint, General Allegations at ¶¶ 7 and 8, *Petitioner’s Appendix* at p. 59.)

On January 22, 2022, Petitioner CAMC moved to dismiss Plaintiffs’ Amended Complaint. By Order entered March 29, 2022, the Circuit Court of Mingo County denied CAMC’s motion.

¹ Plaintiffs allege that Nicole Cline was acting as the servant, agent and employee of Respondent Mounts Funeral Home, Inc., which Respondent Mounts Funeral Home, Inc. expressly denies.

ARGUMENT

Plaintiffs have asserted claims of negligence, negligent infliction of emotional distress, negligent mishandling of a corpse and negligent supervision of an employee. Petitioner argues that Plaintiffs' claims essentially amount to claims for medical professional liability; therefore, the West Virginia Medical Professional Liability Act (W. Va. Code §55-7B-1 *et seq.*) ("MPLA") applies. Petitioner asserts that Plaintiffs' case against it fails because Plaintiffs failed to comply with the statute's pre-suit notice requirements. Petitioner argues that in denying its Motion to Dismiss, the Circuit Court committed clear error and exceeded its jurisdiction.

Although Petitioner's Motion to Dismiss and its Petition for Writ of Prohibition do not directly involve Respondent Mounts Funeral Home, Inc., it is Respondent's position that the MPLA does not apply here. "Medical professional liability means 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." W. Va. Code § 55-7B-2(i).


Further, W. Va. Code § 55-7B-2(e)(2) defines "health care" as "Any act, service, or treatment performed... for, to or on behalf of a patient." There was no patient here as stillborn or fetal remains do not constitute a patient, and no treatment was rendered. Under the MPLA, , a "patient" is a "natural person who receives or should have received healthcare...." W. Va. Code § 55-7B-2(m).

CONCLUSION

The Circuit Court did not err in denying Petitioner's Motion to Dismiss. Accordingly, Respondent Mounts Funeral Home, Inc., respectfully requests that this Court deny Petitioner's request for a Writ of Prohibition.

MOUNTS FUNERAL HOME, INC.,

By Counsel,



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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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Respondents.

CERTIFICATE OF SERVICE

I, George A. Halkias, counsel for Respondent, Mounts Funeral Home, Inc., do hereby personally certify that a true and correct copy of the foregoing *Respondent Mounts Funeral Home, Inc.'s Response to Amended Petition for Writ of Prohibition Filed by Petitioner Charleston Area Medical Center D/B/A Women and Children's Hospital* was served upon the following via United States Mail, First Class, postage prepaid, as well as via the Circuit Court of Mingo County, West Virginia's electronic filing system this 18th day of July, 2022 which shall send notice of the same to the following:

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Judge of the Circuit Court of Mingo County, West Virginia

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