

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

AMANDA F. STEWART, INDIVIDUALLY AND/OR IN HER
CAPACITY AS ADMINISTRATRIX OF THE
ESTATE OF JOHN D. STEWART, JR.,

PLAINTIFF,

VS.

CIVIL ACTION NO. 21-C-101

MONONGALIA COUNTY COMMISSION a/k/a
MONONGALIA COUNTY SHERIFF'S DEPARTMENT,
and JOHN DOE DEPUTY;

DEFENDANTS.

ORDER FROM JULY 25, 2022 HEARING

On the 25th day of July, 2022, came the plaintiff, Amanda F. Stewart, Individually and/or in her Administratrix of the Estate of John D. Stewart, Jr., by and through her counsel, Chad C. Groome and Angotti & Straface, L.C., and came the defendants, Monongalia County Commission and John Doe Deputy, by and through its counsel, Nathaniel D. Griffith and Pullin, Fowler, Flanagan Brown & Poe, PLLC, for a hearing on *Defendants' Motion to Dismiss Amended Complaint for Wrongful Death*.

The Court, having entertained the positions and arguments of counsel, both orally and as contained in the various briefs of the parties, hereby finds as follows:

1. The defendants' *Motion to Dismiss* Counts I, II, and III of the *Amended Complaint for Wrongful Death* is hereby **DENIED** for those reasons previously articulated by the Court in regard to the defendants' *Motion to Dismiss* filed in reference to the original *Complaint for Wrongful Death*;
2. The defendants' *Motion to Dismiss*, to the extent that it relates to the defense of "qualified immunity," is hereby **DENIED** for those reasons previously articulated by the Court in regard to the defendants' *Motion to Dismiss* filed in reference to the original *Complaint for Wrongful Death*;
3. The defendants' *Motion to Dismiss*, to the extent that it relates to the issue of punitive damages, is hereby **DENIED** for those reasons previously articulated by the Court in regard to the

defendants' *Motion to Dismiss* filed in reference to the original *Complaint for Wrongful Death*.

As previously held, the Court will determine the propriety of punitive damages in this case at a later time; and

4. Lastly, the plaintiff advised the Court that the claim for tort of outrage as set forth in the *Amended Complaint for Wrongful Death* at Count IV is **WITHDRAWN** and **DISMISSED WITH PREJUDICE**. Accordingly, the defendants' *Motion to Dismiss* with respect to the tort of outrage claim (Count IV) is **MOOT**

It is so **ORDERED**.

Objections and exceptions are saved.

The Clerk shall transmit a copy this Order to all counsel of record.


Entered this 7th day of September, 2022.

BY:


HON. PHILLIP D. GAUJOT, JUDGE

Prepared by:


BY:


JOHN R. ANGOTTI, ESQUIRE (#5068)
DAVID J. STRAFACE, ESQUIRE (#3634)
CHAD C. GROOME, ESQUIRE (#9810)
ANGOTTI & STRAFACE, LC
274 Spruce Street
Morgantown, WV 26505
Of Counsel for Plaintiff

ENTERED: Sept 7, 2022
DOCKET LINE 40, Jean Friend, Clerk

Approved as to From Only By:

BY:


TIMOTHY R. DUAST, ESQUIRE (#7441)
NATHANIEL D. GRIFFITH, ESQUIRE (#11362)
PULLIN FOWLER FLANAGAN BROWN & POE, PLLC
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Of Counsel for Defendants

STATE OF WEST VIRGINIA SS:

I, Jean Friend, Clerk of the Circuit Court and Family Court of Monongalia County State aforesaid do hereby certify that the attached Order is a true copy of the original Order made and entered by said Court.


Jean Friend, Circuit Clerk