

CASE NO. 09-CI-00143

FILED
DAVID N. HUNT
FEB 26 2009
CLARK CIRCUIT COURT
DIVISION I
BY *[Signature]*
CLARK COUNTY CHIEF CLERK
D.C.

GREG BAKER as Administrator
of the Estate of WILLIAM BAKER,

PLAINTIFF,

vs.

KINDRED NURSING CENTERS LIMITED
PARTNERSHIP d/b/a WINCHESTER CENTRE
FOR HEALTH AND REHABILITATION,

DEFENDANT,

Address: 680 South Fourth Avenue
Louisville, KY 40222

Serve: CT Corporation System
4169 Westport Road
Louisville, KY 40207

PAULA CALVERT, ARNP,

DEFENDANT,

Address: Winchester Medical Associates, LLC
475 Shoppers Drive
Winchester, KY 40391

Serve: Paula Calvert, ARNP
475 Shoppers Drive
Winchester, KY 40391

WINCHESTER MEDICAL ASSOCIATES, LLC,

DEFENDANT,

Address: Winchester Medical Associates, LLC
475 Shoppers Drive
Winchester, KY 40391

Serve: Ralph A. Alvarado
475 Shoppers Drive
Winchester, KY 40391

COMPLAINT

Plaintiff, Greg Baker, as Administrator of the Estate of his father, William Baker, by counsel, and for his Complaint against Defendants states as follows:

1. At the time of his death on January 31, 2008, William Baker, was a resident of Madison County, Kentucky.

2. On or about February 27, 2008, Greg Baker was appointed Administrator of the Estate of his father, William Baker, by the Madison District Court.

3. Defendant Kindred Nursing Centers Limited Partnership d/b/a Winchester Centre for Health & Rehabilitation ("Winchester"), upon information and belief, is a limited partnership organized under the laws of Delaware with the authority to transact business in the Commonwealth of Kentucky. At all times material to this action, Winchester was the licensee and was authorized to do business in Kentucky and to operate a nursing home in Clark County, Kentucky. Winchester's principal place of business is in Clark County, Kentucky. Upon information and belief, Winchester was and remains a proprietary partnership engaged in the for-profit custodial care of elderly, helpless individuals who are chronically infirm, mentally impaired and in need of nursing care and treatment, and is a wholly owned subsidiary of Kindred Nursing Centers Limited Partnership ("Kindred") which exercised control over it and was the parent company and alter ego of Winchester and which is liable for Winchester's misconduct as well as its own independent misconduct.

4. At all relevant times mentioned herein, the partnership and nursing home Defendant owned, operated, and controlled the nursing facility, either directly or through the agency of each other and other diverse subalterns, agents, subsidiaries, servants, or employees. The actions of these Defendants and each of its agents, subsidiaries, servants, and employees as

set forth herein are imputed to each of these Defendants, jointly and severally. All Defendants operate as a joint enterprise and as a result all are liable for the others actions and inactions with regard to the operation of Winchester.

5. Defendant Paula Calvert, ARNP, is a registered nurse practitioner duly licensed under the laws of Kentucky. At all times relevant herein, she provided medical/nursing care and treatment to Mr. Baker. At all times complained of herein, Ms. Calvert was employed in Clark County, Kentucky.

6. At all times herein, Defendant Winchester Medical Associates, LLC, ("the LLC") was a company organized and existing under the laws of the Commonwealth of Kentucky, with the ability to sue and be sued. Defendant Calvert was an employee of Defendant LLC, providing medical and nursing care to patients and at all times herein was acting within the scope of her authority and employment.

COUNT I

7. On or about January 25, 2008, William Baker was admitted as a patient to Winchester located in Clark County, Kentucky. Mr. Baker was placed in the Defendants' care since he was not able to care for himself due to his physical limitations, and because the Defendant held them self out as being able to care for Mr. Baker. Defendants should have been well aware of the condition of Mr. Baker and aware of the safety, monitoring, assistance, and personal attention that needed to be provided to him. While under the care of the Defendants, Mr. Baker suffered and died.

8. The Defendant Nursing Home actively sought residents with similar medical and nursing needs as William Baker in order to fill their empty beds and increase their rate of occupancy and overall revenue. In fact, William Baker was the kind of resident whose care, paid

for by the government, Defendant Nursing Home actively sought to fill their empty beds and to increase their rate of occupancy.

9. In an effort to assure that William Baker and other patients were placed at Winchester, the Defendants held themselves out to the public at large as being:

- a) Skilled in the performance of nursing, rehabilitative, and other medical support services;
- b) Properly staffed, supervised, and equipped to meet the total needs of its nursing home residents;
- c) Able to specifically meet the total nursing home, medical, and physical therapy needs of its nursing home residents; and
- d) Complying on a continual basis with all rules, regulations, and standards established for nursing homes.

10. The Defendants failed to discharge their obligations to care for Mr. Baker. As a consequence thereof, Mr. Baker suffered and died. As a consequence of the Defendants' failures, Mr. Baker suffered catastrophic injuries, extreme pain, suffering, and mental anguish. The scope and severity of the recurrent negligence and abuse afflicted on Mr. Baker while he was under the care of the Defendants accelerated the deterioration of his health and physical condition. More specifically, the lack of care and attention caused Mr. Baker to suffer in a most traumatic fashion and ultimately die.

11. Plaintiff will show that Mr. Baker was repeatedly subjected to abuse and neglect, as more fully delineated below, which resulted in loss of dignity and well-being, abandonment by staff, improper hygiene, and overall deterioration of body and mind.

12. While under the Defendants' care, and continuing thereafter until the termination of his residency in Winchester, Defendants, directly and through their agents, servants,

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employees, and/or ostensible agents, were negligent, grossly negligent, and/or acted with reckless disregard in their care for him, including but not limited to the following:

- a. Failure to adequately and competently assess Mr. Baker's personal and medical needs;
- b. Failure to provide a safe, secure, and sanitary environment;
- c. Failure to adequately and competently document Mr. Baker's condition;
- d. Failure to provide sufficient staffing of personnel to provide care and treatment;
- e. Failure to properly train and monitor the personnel who provided care for Mr. Baker and other similarly situated residents;
- f. Failure to care for Mr. Baker in a manner and in an environment that promotes maintenance or enhancement of his quality of life;
- g. Failure to promote care for Mr. Baker in a manner and in an environment that maintains and enhances his dignity and respect in full recognition of his individuality;
- h. Failure to provide Mr. Baker the necessary nursing, medical and psychosocial services to attain and maintain the highest possible mental and physical functional status, as defined by the comprehensive assessment and plan of care; and
- i. In additional respects.

13. The Defendants failed to discharge their obligations of care to William Baker with a conscious disregard for his rights and safety. At all times mentioned herein, Defendants had knowledge of, ratified and otherwise authorized all of the acts or omissions that caused the injuries suffered by William Baker.

14. At all times relevant herein, the Defendant Nursing Home Partnership operated and managed its facilities so as to maximize profits by reducing the staffing levels and supplies below that needed to provide care to residents that would comply with federal and state regulations governing skilled nursing facilities. Specifically, the Defendant Nursing Home

Partnership intentionally and with knowing and reckless disregard for the consequences of their actions caused staffing levels and supplies to be set at a level where the personnel on duty at any given time could not reasonably attend to the needs of their respective assigned residents. The Defendant knowingly established staffing levels that created recklessly high nurse/resident ratios and that disregarded resident acuity levels as well as the minimal time required for such personnel to perform the essential functions of the job. All of these acts of malfeasance directly caused injury to William Baker and the other residents of the facility, and were known to the Defendant and their business officers and administrators identified herein. The acts and omissions of the Defendant were motivated by a desire to increase the profitability of Winchester by reducing expenditures needed for staff, training, supervision, supplies, and care to levels that would predictably lead to severe injury and pain and suffering to Mr. Baker.

15. That as a direct and proximate result of the Defendants' failures to provide proper care to Mr. Baker, the Defendants breached the applicable standards of care, and as a direct and proximate result of the aforementioned negligence, Mr. Baker was caused to sustain serious, permanent and painful injuries to his body, and that said injuries caused Mr. Baker severe suffering of both body and mind, mental anguish, loss of enjoyment of life, to incur medical expenses and die.

16. That the aforementioned damages of the Plaintiff's Estate are in excess of the limit necessary to invoke the jurisdiction of this Court, exclusive of costs and interest.

