



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
October 7, 2021 19:24

By: KENNETH P. ABBARNO 0059791

Confirmation Nbr. 2371274

ETHEL BURRIS, INDIV. & AS EXEC. E/O LEONARD
BURRIS

CV 21 954106

vs.

MONTEFIORE, ET AL.

Judge: STEVEN E. GALL

Pages Filed: 16

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ETHEL BURRIS, INDIVIDUALLY
AND AS EXECUTRIX OF THE
ESTATE OF LEONARD F. BURRIS
(DECEASED)



Plaintiff,

v.

MONTEFIORE
1 David N. Myers Parkway
Beachwood, Ohio 44122

and

THE MONTEFIORE FOUNDATION
c/o Seth R. Vilensky
1 David N. Myers Parkway
Beachwood, Ohio 44122

and

THE MONTEFIORE HOME
c/o Seth R. Vilensky
One David N. Myers Parkway
Beachwood, Ohio 44122

and

THE MONTEFIORE HOUSING
CORPORATION
c/o Seth R. Vilensky
One David N. Myers Parkway
Beachwood, Ohio 44122

and

MENORAH PARK FOUNDATION
c/o Taft Services Solutions Corp.
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202

CASE NO.:

JUDGE:

COMPLAINT

(Jury Demand Endorsed Hereon)

Affidavit of Merit Attached Hereto

and

ARIEL S. HYMAN

and

TINA R. KING

and

MARIE GELLE a/k/a MARIE RIZZO

Defendants.

Now comes Plaintiff, Ethel Burris, individually and as Executrix of the Estate of Leonard F. Burris (deceased), by and through undersigned counsel, and for her Complaint against Defendants, Montefiore, The Montefiore Foundation, The Montefiore Home, The Montefiore Housing Corporation, Menorah Park Foundation, Ariel S. Hyman, Tina R. King, and Marie Gelle a/k/a Marie Rizzo, states as follows:

PARTIES

1. Plaintiff is the duly appointed Executrix of the Estate of Leonard F. Burris, having been duly appointed by the Probate Court of Cuyahoga County, Ohio, on March 12, 2021. **See Exhibit "A".**

2. At all times relevant herein, Defendant Montefiore was an Ohio corporation, located in Cuyahoga County, Ohio and held itself out as a competent provider of medical care and treatment to the public and through its employees and agents, apparent or otherwise, and provided medical care and treatment to Plaintiff's decedent, Leonard F. Burris.

3. At all times relevant herein, Defendant The Montefiore Foundation was an Ohio corporation, located in Cuyahoga County, Ohio, with business entity number 884961, and held itself out as a competent provider of medical care and treatment to the public and through its employees and agents, apparent or otherwise, and provided medical care and treatment to Plaintiff's decedent, Leonard F. Burris.

4. At all times relevant herein, Defendant The Montefiore Home was an Ohio corporation, located in Cuyahoga County, Ohio, with business entity number 13183, and held itself out as a competent provider of medical care and treatment to the public and through its employees and agents, apparent or otherwise, and provided medical care and treatment to Plaintiff's decedent, Leonard F. Burris.

5. At all times relevant herein, Defendant The Montefiore Housing Corporation was an Ohio corporation, located in Cuyahoga County, Ohio, with business entity number 953975, and held itself out as a competent provider of medical care and treatment to the public and through its employees and agents, apparent or otherwise, and provided medical care and treatment to Plaintiff's decedent, Leonard F. Burris.

6. At all times relevant herein, Defendant Menorah Park Foundation was an Ohio corporation, located in Cuyahoga County, Ohio, with business entity number 862146, and held itself out as a competent provider of medical care and treatment to the public and through its employees and agents, apparent or otherwise, and provided medical care and treatment to Plaintiff's decedent, Leonard F. Burris.

7. At all times relevant herein, Defendant Ariel S. Hyman was an Ohio licensed nursing home administrator, license number 6600, residing in Beachwood, Ohio, and was an

administrator involved in providing and ensuring patient safety to the residents of The Montefiore Home including, but not limited to, Plaintiff's decedent, Leonard F. Burris.

8. At all times relevant herein, Defendant Tina R. King was an Ohio licensed nurse, license number RN.311702, residing in Tallmadge, Ohio, and held herself out as a competent provider of medical care and treatment to the public and provided medical care and treatment to Plaintiff's decedent, Leonard F. Burris.

9. At all times relevant herein, Defendant Marie Gelle a/k/a Marie Rizzo was an Ohio licensed nurse, license number RN.446573, residing in Northfield, Ohio, and held herself out as a competent provider of medical care and treatment to the public and provided medical care and treatment to Plaintiff's decedent, Leonard F. Burris.

10. Collectively, during the times relevant herein, Defendants as identified in paragraphs 2 through 9 (collectively referred to hereinafter as "Defendants") worked together either individually or through their employees and agents, apparent or otherwise, in direct or supervisory roles, to provide medical care and treatment to Plaintiff's decedent, Leonard F. Burris.

FACTS

11. On February 21, 2020, the Centers for Disease Control ("CDC") issued COVID-19 recommendations for health care professionals, which included review of infection prevention and control policies, and CDC recommendations for implementation of precautions.

12. On March 9, 2020, Ohio Governor Michael DeWine issued Executive Order 2020-01D declaring a state of emergency in Ohio to protect the well-being of the citizens of Ohio from the dangerous effects of COVID-19 and authorizing the Ohio Department of Health and State Agencies to implement procedures to alleviate the public health threat.

13. On March 11, 2020, the WHO declared COVID-19 a global pandemic.

14. Pursuant to the above on April 3, 2020 the Ohio Department of Health provided a Pre-Surge Tool Kit to all long-term health care facilities, including the Montefiore facility, that included:

- a. Patient/Resident Population Assessment Checklist
- b. Personnel Population Risk Assessment Checklist
- c. Assessment of COVID-19 + Clinical Level of Severity (NEWS2)
- d. Scoring Matrix for NEWS2
- e. COVID-19 Symptom Monitoring Log
- f. Patient/Resident Transfer Checklist
- g. Hospital Discharge Criteria Checklist
- h. Tips for Patient/Resident Social and Emotional Wellbeing
- i. Tips for Staff Social and Emotional Wellbeing
- j. Tips for Staff Attire and Personal Protective Equipment (PPE)
- k. PPE Quick Guide - Contingency Capacity
- l. PPE Quick Guide - Crisis Capacity
- m. Tips for Cleaning and Disinfecting Homes and Congregate Care Settings

15. The CDC warned that persons at high risk for severe illness or death from COVID-19 include people 65 years and older, people who live in a nursing home or long-term care facility and people who have a serious underlying medical condition.

16. The recommendations and Pre-Surge Tool Kit as listed above were for direct safety and benefit of patients such as Plaintiff's decedent Leonard F. Burris.

17. In response to the COVID-19 Pandemic, upon information and belief, Defendants implemented some restrictive protocols, or at least were supposed to do so. The restrictions included, among other items, suspension of all family visitation; suspension of group activities; meals served only in residents' rooms; daily monitoring of COVID symptoms; all employees to wear masks and gloves and to follow strict hand-washing procedures; use of hand sanitizer; all employees to have their temperatures taken and be screened for symptoms prior to each shift.

18. The above stated protocols were issued by the Defendants in order to protect the health and well-being of nursing home residents and associates, yet they were not followed.

19. Additionally, COVID-19 test results were falsified or improperly ran by all Defendants.

20. The Defendants ignored complaints from staff about COVID-19 prevention and treatment protocols.

21. According to public statements from Defendants King and Gelle, these Defendants expressed grave concern about Defendants' COVID-19 protocol, including the failure to use the Defendants' "Point of Care" testing machine, that would allow COVID test results within minutes, instead of days.

22. The Defendants refused to use the nursing home's own "Point of Care" testing machine, fearing that it would reveal "too many" positive results.

23. Further, according to public statements made by Defendants King and Gelle, each expressed further concern about staffing shortages to their immediate superiors, but their concerns were ignored.

24. Defendants' decision to not implement the recommendations and pre-surge tool kit, as well as the understaffing of their facility, resulted in unsafe conditions that led to the injuries and death of Plaintiff's decedent as detailed below.

VENUE

25. Venue is proper in this Court pursuant to Civ. R. 3(C) because the events that gave rise to the allegations in this Complaint occurred in this county as well as one or more of the Defendants resides in this county.

COUNT I

26. Plaintiff incorporates all preceding paragraphs as if fully re-written herein.

27. From on or about February 3, 2020 through November 29, 2020, Plaintiff's decedent, Leonard F. Burris was a resident at Defendants' facility, The Montefiore Home, where it was expected and understood that Defendants would provide competent and qualified medical and nursing treatment, within acceptable medical and nursing treatment standards of care.

28. Throughout the time that Plaintiff's decedent was receiving medical care from Defendants, Defendants accepted this responsibility when they provided medical care and treatment to Plaintiff's decedent.

29. The medical care and treatment provided to Plaintiff's decedent Leonard F. Burris by Defendants referenced herein fell below acceptable standards of medical care and treatment in that they did not act in the same manner as a reasonable and prudent medical or healthcare providers acting in the same or similar situation.

30. Furthermore, from on or about September 2020 through the end of October 2020, Defendants recklessly, intentionally, willfully, and wantonly conducted improper and false testing of Plaintiff's decedent for SARS-CoV-2. Further, Defendants recklessly, intentionally, willfully, and wantonly hid the fact that other patients and residents of Montefiore were infected with SARS-CoV-2 and/or COVID-19, thereby exposing Plaintiff's decedent and all other residents/patients of Montefiore to SARS-CoV-2.

31. During this time, Defendants also breached various Ohio Administrative Code standards set forth to protect patients such as Plaintiff's decedent, Leonard F. Burris, which includes but is not limited to OAC 3701-17-11(A).

32. Defendants' breaches and actions that fell below the standard of care in the care and treatment of Plaintiff's decedent and were the direct and proximate cause of Plaintiff's decedent permanent and substantial injuries.

33. As a direct and proximate result of Defendants' breaches of the standard of care, Plaintiff's decedent Leonard F. Burris was permanently and substantially injured, underwent medical care and treatment, experienced pain and suffering, mental anguish, and loss of enjoyment of life.

34. As a further direct and proximate cause of Defendants' breaches of the standard of care, Plaintiff's decedent incurred medical and health care expenses.

35. An Affidavit of Merit, attached hereto as **Exhibit "B"**, satisfies the procedural requirements of Ohio Civil Rule 10.

COUNT II
In the alternative to Count I

36. Plaintiff incorporates all preceding paragraphs as if fully re-written herein.

37. From on or about February 3, 2020 through November 29, 2020, Plaintiff's decedent, Leonard F. Burris was a resident at Defendants' facility, The Montefiore Home, where it was expected and understood that Defendants would provide competent and qualified medical and nursing treatment, within acceptable medical and nursing treatment standards of care.

38. Throughout the time that Plaintiff's decedent was receiving medical care from Defendants, Defendants accepted this responsibility when they provided medical care and treatment to Plaintiff's decedent.

39. The medical care and treatment provided to Plaintiff's decedent Leonard F. Burris by Defendants referenced herein fell below acceptable standards of medical care and treatment in that they did not act in the same manner as a reasonable and prudent medical or healthcare providers acting in the same or similar situation.

40. Furthermore, from on or about September 2020 through the end of October 2020, Defendants were grossly negligent in conducting and reporting false testing of Plaintiff's decedent

for SARS-CoV-2. Further, Defendants were grossly negligent in addition to being recklessly, intentionally, willfully, and wantonly in that they hid the fact that other patients and residents of Montefiore were infected with SARS-CoV-2 and/or COVID-19, thereby exposing Plaintiff's decedent and all other residents/patients of Montefiore to SARS-CoV-2.

41. During this time, Defendants also breached various Ohio Administrative Code standards set forth to protect patients such as Plaintiff's decedent, Leonard F. Burris, which includes but is not limited to OAC 3701-17-11(A).

42. Defendants' breaches and actions that fell below the standard of care in the care and treatment of Plaintiff's decedent and were the direct and proximate cause of Plaintiff's decedent permanent and substantial injuries.

43. As a direct and proximate result of Defendants' breaches of the standard of care, Plaintiff's decedent Leonard F. Burris was permanently and substantially injured, underwent medical care and treatment, experienced pain and suffering, mental anguish, and loss of enjoyment of life.

44. As a further direct and proximate cause of Defendants' breaches of the standard of care, Plaintiff's decedent incurred medical and health care expenses.

45. An Affidavit of Merit, attached hereto as **Exhibit "B"**, satisfies the procedural requirements of Ohio Civil Rule 10.

COUNT III

46. Plaintiff incorporates all preceding paragraphs as if fully re-written herein.

47. From on or about February 3, 2020 through November 29, 2020, Plaintiff's decedent, Leonard F. Burris was a resident at Defendants' facility, The Montefiore Home, where

it was expected and understood that Defendants would provide competent and qualified medical and nursing treatment, within acceptable medical and nursing treatment standards of care.

48. Throughout the time that Plaintiff's decedent was receiving medical care from Defendants, Defendants accepted this responsibility when they provided medical care and treatment to Plaintiff's decedent.

49. The medical care and treatment provided to Plaintiff's decedent Leonard F. Burris by Defendants referenced herein fell below acceptable standards of medical care and treatment in that they did not act in the same manner as a reasonable and prudent medical or healthcare providers acting in the same or similar situation

50. Furthermore, on or about October 13, 2020, Defendants, recklessly, intentionally, willfully, and wantonly conducted improper and false testing of Plaintiff's decedent for SARS-CoV-2. Further, Defendants recklessly, intentionally, willfully, and wantonly hid the fact that other patients and residents of Montefiore were infected with SARS-CoV-2 and/or COVID-19, thereby exposing Plaintiff's decedent and all other residents/patients of Montefiore to SARS-CoV-2.

51. During this time, Defendants also breached various Ohio Administrative Code standards set forth to protect patients such as Plaintiff's decedent, Leonard F. Burris, which includes but is not limited to OAC 3701-17-11(A).

52. Defendants' breaches and actions that fell below the standard of care in the care and treatment of Plaintiff's decedent Leonard F. Burris were the direct and proximate cause of Plaintiff's decedent's permanent injuries. Defendants' actions or omission that resulted in them falling below the standard of care were the direct and proximate cause of Leonard F. Burris's premature and untimely death on November 29, 2020.

53. Plaintiff's decedent Leonard F. Burris, estate opened in Cuyahoga County Probate Court with Case No. 2021EST258417, died on November 29, 2020, leaving surviving heirs at law and/or next-of-kin, and this action is brought on their behalf under the statutes of the State of Ohio, including, but not limited to, O.R.C. §2125.02 for such cases made and provided.

54. As a direct and proximate result of Defendants' actions or omission that resulted in them falling below the standard of care, the statutory beneficiaries have suffered damages, including but not limited to: funeral and burial expenses, loss of services of the Plaintiff's decedent, loss of the society of Plaintiff's decedent, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education suffered by the next-of-kin of Plaintiff's decedent; loss of prospective inheritance to Plaintiff's decedent's heirs at law at the time of her death; and mental anguish incurred by the next-of-kin of Plaintiff's decedent, including but not limited to her surviving children and all other next-of-kin.

55. An Affidavit of Merit, attached hereto as **Exhibit "B"**, satisfies the procedural requirements of Ohio Civil Rule 10.

COUNT IV

56. Plaintiff incorporates all preceding paragraphs as if fully re-written herein.

57. Defendants' actions and failures constituted gross negligence because they willfully and wantonly failed to perform their duties owed to Plaintiff's decedent with an intentional and reckless disregard for the rights and safety of Plaintiff's decedent. Defendants' actions had a great probability of causing—and did cause—substantial harm and death.

58. As a direct and proximate result of Defendants' gross negligence and reckless, intentional, willful, and wanton disregard for Plaintiff's decedent's rights and interests, Defendants damaged Plaintiff's decedent and caused his death.

59. As a direct and proximate result of Defendants' reckless, intentional, willful, and wanton disregard for Plaintiff's decedent's rights and interests, Plaintiff is entitled to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, for not less than \$25,000.00, including but not limited to:

- A. Compensatory and consequential damages against all Defendants in an amount to be determined by the Court in excess of the Court's jurisdictional amount;
- B. Equitable relief, including, without limitation, prejudgment interest;
- C. Attorneys' fees and the costs of this action and other costs that may be associated with this action;
- D. Punitive damages for Defendants' reckless, intentional, willful, and wanton disregard for Plaintiff's decedent's rights and interests; and
- E. Any and all other relief that this Court deems equitable, just and proper.

Respectfully submitted,

/s/Kenneth P. Abbarno

KENNETH P. ABBARNO (0059791)
MARK M. ABRAMOWITZ (0088145)
DICELLO LEVITT GUTZLER LLC
7556 Mentor Avenue
Mentor, Ohio 44060
P: (440) 953-8888
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kabbarno@dicellolevitt.com
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Counsel for Plaintiff

JURY DEMAND

Plaintiff hereby demands a trial by jury comprised of the maximum number of jurors permitted by law.

/s/Kenneth P. Abbarno

KENNETH P. ABBARNO (0059791)

MARK M. ABRAMOWITZ (0088145)

DICELLO LEVITT GUTZLER LLC

Counsel for Plaintiff

AFFIDAVIT OF MERIT

Pursuant to Ohio Civil Rule 10, Plaintiff hereby attaches as **Exhibit “B”** the Affidavit of Merit of Erik R. Dubberke, M.D.

/s/Kenneth P. Abbarno

KENNETH P. ABBARNO (0059791)

MARK M. ABRAMOWITZ (0088145)

DICELLO LEVITT GUTZLER LLC

Counsel for Plaintiff

PROBATE COURT OF CUYAHOGA COUNTY, OHIO
ANTHONY J. RUSSO, PRESIDING JUDGE
LAURA J. GALLAGHER, JUDGE

ESTATE OF: **LEONARD F. BURRIS DECEASED**

Case Number: **2021EST258417**

ENTRY APPOINTING FIDUCIARY; LETTERS OF AUTHORITY
(For Executors and all Administrators)

Name of Fiduciary: **ETHEL BURRIS**

On hearing in open court the application of the above fiduciary for authority to administer decedent's estate, the Court finds that:

Decedent died (check one of the following)

- ☒ testate
☐ intestate

on **11/29/2020**, domiciled in **HIGHLAND HILLS, OH 44125**.

(Check one of the following)

- ☒ Bond is dispensed with by the Will
☐ Bond is dispensed with by law
☐ Applicant has executed and filed an appropriate bond, which is approved by the Court; and

Applicant is a suitable and competent person to execute the trust.

The court therefore appoints applicant as such fiduciary, with the power conferred by law to fully administer decedent's estate. This entry of appointment constitutes the fiduciary's letters of authority.

03/12/2021

Date appointed



JUDGE ANTHONY J. RUSSO

CERTIFICATE OF APPOINTMENT AND INCUMBENCY

The above document is a true copy of the original kept by me as custodian of the records of this Court. It constitutes the appointment and letters of authority of the named fiduciary, who is qualified and acting in such capacity.

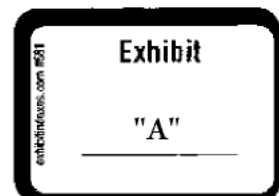
(Seal)

ANTHONY J. RUSSO, PRESIDING JUDGE



Deputy Clerk

03/12/2021
Issue Date



STATE OF MISSOURI) SS:
)
COUNTY OF ST. LOUIS) AFFIDAVIT OF MERIT OF ERIK R.
) DUBBERKE, M.D.
)

Affiant, Erik R. Dubberke, M.D., after first being duly sworn according to law,
deposes and says as follows:

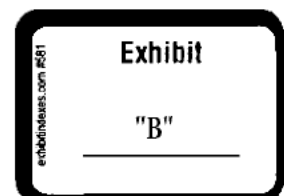
1. I have personal knowledge of the facts contained in this Affidavit.
2. I am a medical doctor licensed to practice medicine in the State of Missouri.
3. I devote at least 3/4 of my professional time to the active clinical practice in my field of licensure, or to its instruction, in an accredited school.
4. I am Board Certified in Internal Medicine by the American Board of Internal Medicine with certification in the subspecialty of infectious disease.
5. I have reviewed all medical records reasonably available to me concerning the care and treatment provided to Leonard F. Burris.
6. I am familiar with the applicable standard of care.
7. To a reasonable degree of medical probability, Montefiore, The Montefiore Foundation, The Montefiore Home, The Montefiore Housing Corporation, and Menorah Park Foundation, through their staff and/or agents, apparent or otherwise, and/or independent contractors and/or employees, which include but are not limited to: Ariel S. Hyman, Tina R. King, and Marie Gelle who, while providing nursing care and treatment to Leonard F. Burris, breached the standard of care by way of their gross negligence, reckless conduct and/or intentional misconduct and/or willful or wanton misconduct as well as Ohio Administrative Code 3701-17-11(A).
8. The breaches in the standard of care resulting from such reckless conduct and/or intentional misconduct and/or willful or wanton misconduct were a direct and proximate cause of Leonard F. Burris' injuries and death.

FURTHER AFFIANT SAYETH NAUGHT.



ERIK R. DUBBERKE, M.D.

07 OCT 2021



STATE OF MISSOURI

COUNTY OF ST. LOUIS

) SS:

)

) AFFIDAVIT OF MERIT OF

) ERIK R. DUBBERKE, M.D.

)

On October 7, 2021, before me, Erik Dubberke, personally appeared Erik R. Dubberke, M.D. who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury, under the laws of the State of Ohio, that the foregoing paragraph is true and correct.

WITNESS my hand and official seal:

Patricia J. Goessling
Notary Public

