



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

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
September 24, 2021 11:39

By: THOMAS D. ROBENALT 0055960

Confirmation Nbr. 2358920

THOMAS NEMETH

CV 21 953475

vs.

Judge: DICK AMBROSE

MONTEFIORE, ET AL.

Pages Filed: 9

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

THOMAS NEMETH, Executor of the
ESTATE OF ANTHONY BERARDINELLI



Plaintiff,

v.

MONTEFIORE
One David N. Myers Parkway
Beachwood, Ohio 44122

and

THE MONTEFIORE FOUNDATION
c/o Seth R. Vilensky
One 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 FOR MEDICAL**
) **MALPRACTICE AND/OR NURSING**
) **HOME NEGLECT AND**
) **WRONGFULL DEATH**

) **MOTION FOR EXTENSION OF TIME**
) **TO FILE AN AFFIDAVIT OF MERIT**

) **(Jury Demand Endorsed Herein)**

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home called Montefiore where Decedent was a resident located Ohio such that they are responsible for any actions or inactions at that nursing home.

4. At all times material Defendant, The Montefiore Home was and is a corporation and/or other legal entity duly organized and existing pursuant to the laws of the State of Ohio and/or a foreign corporation in Ohio, and operated health care facilities located within Cuyahoga County, Ohio, and held themselves out as a provider of medical care services to the public including Decedent. More specifically The Montefiore Home owned, operated, and/or otherwise controlled the nursing home called Montefiore where Decedent was a resident such that they are responsible for any actions or inactions at that nursing home.

5. At all times material Defendant, The Montefiore Housing Corporation was and is a corporation and/or other legal entity duly organized and existing pursuant to the laws of the State of Ohio and/or a foreign corporation in Ohio, and operated health care facilities located within Cuyahoga County, Ohio, and held themselves out as a provider of medical care services to the public including Decedent. More specifically The Montefiore Housing Corporation owned, operated, and/or otherwise controlled the nursing home called Montefiore where Decedent was a resident such that they are responsible for any actions or inactions at that nursing home.

6. At all times material Defendant, Menorah Park Foundation was and is a corporation and/or other legal entity duly organized and existing pursuant to the laws of the State of Ohio and/or a foreign corporation in Ohio, and operated health care facilities located within Cuyahoga County, Ohio, and held themselves out as a provider of medical care services to the public including Decedent. More specifically Menorah Park Foundation owned, operated, and/or otherwise controlled the nursing home called Montefiore where Decedent was a resident such that they are responsible for any actions or inactions at that nursing home.

7. At all times material, Defendant Ariel Hyman (hereinafter “Hyman”) was an administrator for Montefiore practicing in the State of Ohio. Said Defendant held himself out to the public, including Plaintiff and decedent, as having the requisite skills to render quality medical care. At all times material, he/she was an administrator of the nursing home where decedent was and/or in a patient/physician / nurse practitioner relationship with decedent.

8. At all times material Tina King (hereinafter “King”) was and is a nurse duly licensed and practicing in the State of Ohio. King held herself out to the public, including Plaintiff and decedent, as having the requisite skills to render quality medical care. At all times material, he/she was in a patient/physician / nurse relationship with decedent.

9. At all times material, Marie Gelle (hereinafter “Gelle”) was and is a nurse duly licensed and practicing in the State of Ohio. Gelle held herself out to the public, including Plaintiff and decedent, as having the requisite skills to render quality medical care. At all times material, she was in a patient/physician / nurse relationship with decedent.

10. At all times material, Montefiore employed and/or contracted with physicians, nurses, and other medical care providers who provided medical care to Decedent, and in so doing, said physicians, nurses, and other medical care providers were acting within the course and scope of the duties of their employment and/or agency relationship with Defendants Montefiore such that said Defendants are liable for their conduct pursuant to the doctrine of *respondeat superior*.

11. At all times material, all the medical care and services that were provided to Decedent that are the subject of this Complaint were understood by Plaintiff and Decedent to be provided by Montefiore and took place at facilities owned and/or operated by Montefiore. Said Defendants represented to patients that it was Defendants’ employees who provided care to the patients, not independent contractors. If medical care and services were provided by an individual

not named as a Defendant, and that care was negligent and below the standard of care Plaintiff and Decedent understood, and there was no indication to the contrary, then those medical care and services were provided by the Montefiore Defendants.

12. Pursuant to Civ.R. 10(D)(2)(b), Plaintiff has filed simultaneously herewith a Motion for Extension of Time to File Affidavit of Merit and Plaintiff moves herein for an extension of time to provide an affidavit of merit as Plaintiff is still in the process of collecting medical records in the possession of Defendants, and other medical providers. Moreover, the ongoing pandemic has caused delays.

13. This complaint involves several distinct allegations against Defendants. Amongst those distinct allegations is that Defendants acted with reckless disregard for the consequences to Decedent and other residents with regard to covid 19 quarantine procedures, covid 19 containment procedures, and covid 19 procedures such that Decedent contracted Covid as a direct result and so as to affect the life or health of Decedent and other residents and this was with intentional misconduct and willful or wanton misconduct. Also, amongst those distinct allegations, is that Defendants, once Decedent contracted covid 19, were negligent and breached the standard of care in caring for Decedent in that Decedent exhibited signs and symptoms requiring emergency hospitalization and treatment, referral to a doctor and oxygen and Defendants failed to provide emergency hospitalization and treatment, referral to a doctor and oxygen and this was a breach of the normal standard of care.

14. All Defendants were responsible for providing medical care and treatment to Decedent from on or about September 1, 2020, to October 2, 2020. All Defendants were responsible for being careful and not acting negligently during Decedent's stay with them from on or about September 1, 2020 to October 2, 2020.

15. On or about September 1, 2020 decedent was transferred to Montefiore for rehabilitation, care, and treatment after a hip repair surgery. Upon his transfer he did not have SARS-COV2 and/or any other form of covid-19 or covid-19 related illness.

16. Montefiore and the Defendants, however, had been negligently, recklessly, and with malicious intent improperly implementing SARS-COV2 and/or any other form of covid-19 or covid-19 related illness prevention measures. Moreover, they were negligently, recklessly, and with malicious intent conducting improper testing and falsifying tests. They intentionally hid the fact that other patients and/or residents of Montefiore had SARS-COV2 and/or any other form of covid-19 or covid-19 related illness. As a result, Decedent and others were unnecessarily exposed, without their knowledge, to SARS-COV2 and/or any other form of covid-19 or covid-19 related illness. This was not limited to the well published and admitted false testing by Defendants but went on prior to it being well published and admitted to by Defendants and directly affected Decedent. Defendants' actions show a lack of care so great that it is a conscious indifference to the rights of others and gross negligence. Moreover, Defendants showed reckless disregard for the consequences so as to affect the life or health of decedent and acted with intentional misconduct or willful or wanton misconduct.

17. Defendants did not properly quarantine new admissions and/or new residents when they arrived at their facilities. Defendants did not follow well established guidelines and standards for quarantine of new admissions and/or residents. Defendants did not follow basic infection prevention procedures such as washing hands and wearing masks. In addition to intentionally falsifying covid tests on residents Defendants also purposefully, willfully, and recklessly did not properly test their employees that would come into contact with residents such as Decedent. Moreover, Decedents forced employees to work that had symptoms of covid 19.

18. As a direct and proximate result of the actions of Defendants described above decedent contracted SARS-COV2 on or about September 24, 2020 and/or any other form of covid-19 or covid-19 related illness and died from SARS-COV2 on October 17, 2020.

19. All Defendants failed to provide safe medical, diagnostic, and preventative care to Plaintiff's Decedent.

20. All Defendants had a duty to provide safe medical care to and to be reasonably careful when providing medical care and treatment to Decedent and all Defendants failed.

21. All Defendants had a duty to avoid causing injury to Decedent and had a duty to prevent avoidable harm to Decedent.

22. All Defendants, jointly and/or severally, themselves and/or by and through their employees and/or agents, failed to properly provide appropriate infection control measures, infection prevention measures, quarantine, and infection testing a time when such medical care, treatment, and attention was required.

23. All Defendants, jointly and/or severally, were negligent in their care and treatment of Decedent by, *inter alia*, negligently, recklessly, and maliciously exposing him to covid.

24. Defendants Montefiore and Menorah Park were negligent in failing to employ and/or contract with individuals who could and would treat Decedent with the same level of care that other reasonably careful medical providers and physicians would provide under the same circumstances.

25. Defendants Montefiore and Menorah Park themselves and/or through their employees and/or agents, including but not limited to those listed herein, failed to properly provide medical services, failed to provide appropriate staffing, and failed to have proper protocols and policies in place.

26. Defendants Montefiore and Menorah Park were negligent in failing to employ individuals who could and would treat Decedent in accordance with accepted practices of health care facilities.

27. Defendants Montefiore and Menorah Park negligently failed to establish appropriate standards for physicians, nurses, aides, and/or other medical providers who were employed by and/or were in a contractual relationship with said Defendants to provide medical care to the public from the Montefiore facilities.

28. Pursuant to the Ohio Nursing Home Patients' Bill of Rights, R.C. 3721.01 *et seq.*, Decedent had the right to, among other things, a safe living environment and adequate and appropriate medical treatment and nursing care.

29. The acts of the Montefiore and Menorah Park Defendants violated Decedent's rights guaranteed by the Ohio Nursing Home Patients' Bill of Rights, R.C. 3721.01 *et seq.*, directly and proximately causing him damages.

30. As a direct and proximate result of the collective and/or individual negligence of all Defendants, jointly and/or severally, by themselves and/or through their employees and/or agents, Decedent was not provided proper medical treatment commensurate with the requisite standard of care, and suffered injuries and damages including, but not limited to his untimely death.

WHEREFORE, based upon the foregoing claims and averments, Plaintiff, requests judgment against all Defendants, jointly and/or severally, on all counts set forth above, in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) for compensatory damages, plus pre- and/or post-judgment interest, attorney fees, costs of litigation, and/or any and all other relief in law or equity that this Court may deem just and appropriate to adequately compensate Plaintiff in this matter.

Respectfully submitted,

/s/ Thomas D. Robenalt

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JURY DEMAND

Pursuant to Civ.R. 38, Plaintiff hereby demands a trial by jury on all issues.

/s/ Thomas D. Robenalt

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