



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

**Court of Common Pleas**

**New Case Electronically Filed: COMPLAINT**  
**October 4, 2021 16:14**

By: HOWARD D. MISHKIND 0009238

Confirmation Nbr. 2367414

MARIE WIMBERLY, ET AL

CV 21 953915

vs.

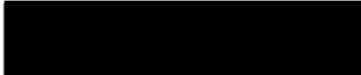
**Judge: JOSEPH D. RUSSO**

MONTEFIORE, ET AL

**Pages Filed: 10**

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

MARIE WIMBERLY, Administrator of  
the ESTATE OF VIVIAN C. WILSON



Plaintiffs,

vs.

MONTEFIORE  
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 FOUNDATION  
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

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

CASE NO.:

JUDGE:

COMPLAINT FOR MEDICAL  
MALPRACTICE AND/OR NURSING  
HOME NEGLIGENCE AND WRONGFUL  
DEATH

MOTION FOR EXTENSION OF TIME  
TO FILE AN AFFIDAVIT OF MERIT

*(Jury Demand Endorsed Hereon)*

and

ARIEL S. HYMAN

and

TINA R. KING

and

MARIE GELLE

Defendants.

Now comes Plaintiff, Marie Wimberly, as Administrator of the Estate of her mother Vivian C. Wilson by and through her attorneys and for her Complaint against the above-named Defendants, states and avers as follows:

**FIRST CAUSE OF ACTION - SURVIVAL CLAIM**

1. Plaintiff, Marie Wimberly ("Plaintiff") is the duly appointed administrator of the Estate of Vivian C. Wilson ("Decedent") by the Probate Court of Cuyahoga County, Ohio and brings this First Cause of Action as a claim pursuant to R.C.2125.01 for Medical Malpractice, nursing home neglect, violation of Ohio Nursing Home Patient's Bill of Rights, R.C. 3721.01 et seq and for other reckless and/or wanton misconduct and/or malicious and intentional misconduct which exposed Decedent to avoidable and preventable harm and exposure to SARS-COV2 and other negligence and/or wanton and reckless acts that caused Decedent to suffer profound injury and eventual death

2. At all times material, Defendant Montefiore is and was a nursing home located at One David N. Myers Parkway, Beachwood, Ohio where Decedent was a resident and/or stayed and/or was provided care at.
3. At all times material, Defendants, The Montefiore Foundation, The Montefiore Home, The Montefiore Housing Corporation, and Menorah Park Foundation, were and remain corporations and/or other legal entities duly organized and existing pursuant to the laws of the State of Ohio, that operated health care facilities located with in Cuyahoga County, Ohio, and held themselves out as a provider of medical care services to the public including Decedent. More specifically, said Defendants owned, operated and or otherwise controlled the nursing home called Montefiore or The Montefiore Home, where Decedent was a resident, such that they are directly and vicariously liable for any negligence, recklessness, intentional acts or other misconduct that caused harm to Plaintiff's decedent.
4. At all times material, Defendant Ariel 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 care and to administer the functions as a nursing home administrator. At all times, material, he was the administrator of the nursing home where decedent was a patient and as such owed decedent a duty to render safe and quality care in his capacity as the administrator.
5. At all times material, Defendant Tina King was a nurse duly licensed and practicing in the State of Ohio. She owed a duty to the decedent to provide safe and competent care.
6. At all times material, Defendant Marie Gelle was a nurse duly licensed and practicing in the State of Ohio. She owed a duty to the decedent to provide safe and competent care.

7. At all times material, Montefiore employed and/or contracted with physicians, nurses, and other medical care providers who provided medical care to Decedent, including but not limited to Defendant King and Gelle and in so doing, said physicians, nurses, and other medical care providers were action within the course and scope of the duties of their employment and/or agency relationship with Defendants Montefiore such that said Defendants are vicariously liable for their conduct pursuant to the doctrine of *respondeat superior* and/or ostensible agency.
8. 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 the named Defendants and took place at facilities owned and/or operated by Montefiore.
9. 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, having just recently received Defendant's records and having said records reviewed by an expert for purposes of providing an affidavit of merit. Moreover, the ongoing pandemic has caused delays.
10. Defendants acted with recklessness and conscious disregard for the consequences to Decedent and other residents with regard to SARS-COV2 -Covid-19 quarantine procedures, SARS-COV2 -Covid-19 containment procedures and falsified and or intentionally hid the results of SARS-COV2-Covid-19 testing thereby putting Decedent and others at risk of contracting SARS-COV2 -Covid-19 and putting Decedent at risk of serious injury and death.

11. All Defendants were responsible for providing medical care and treatment to Decedent from her admission to Defendant facility beginning on September 6, 2020 after undergoing left knee replacement surgery at University Hospitals.
12. Prior to her discharge from University Hospitals and prior to her admission to University Hospitals for her surgery, Decedent was tested for SARS-COV2 -Covid-19, which test results were negative.
13. Prior to her discharge from Defendant's facility, Decedent was told that she had been tested for SARS-COV2-Covid-19 and that her test result was negative. Defendant falsified the test result.
14. All Defendants were responsible for being careful and not acting negligently and recklessly during Decedent's stay with them
15. Shortly after being discharged from Defendant's facility, Decedent began to have trouble breathing and became severely ill and was taken by ambulance to Ahuja Medical Center where she was diagnosed with an advanced case of SARS-COV2 - Covid-19.
16. Decedent died on October 19, 2019 as a result of SARS-COV2 -Covid-19.
17. 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.
18. Decedent had been tested by Defendants prior to her discharge and was told she tested negative.

19. As a result of the foregoing, 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. Defendant's actions show a lack of care so great that it is a conscious indifference to the rights of others and gross and willful 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.
20. As a direct and proximate result of the actions of Defendants described above, Decedent contracted SARS-COV2 prior to her discharge from Defendant's facility and was told that she was Covid-19 negative.
21. All Defendants failed to provide safe medical, diagnostic, and preventative care to Plaintiff's Decedent.
22. All Defendants had a duty to provide safe medical care to and to be reasonably careful when providing medical care and treatment to Decedent causing her undue pain and suffering.
23. All Defendants had a duty to avoid causing injury to Decedent and had a duty to prevent avoidable harm to Decedent.
24. 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 at a time when such medical care, treatment, and attention was required.
25. All Defendants, jointly and/or severally, were negligent in their care and treatment of Decedent by negligently, recklessly, and maliciously exposing Plaintiff's decedent to covid.

26. 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.
27. 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.
28. Defendants, Montefiore and Menorah Park and all named Defendants were negligent in failing to employ individuals who could and would treat Decedent in accordance with accepted practices of health care facilities.
29. Defendants recklessly and with malicious intent improperly implemented SARS-COV2 related illness prevention measures and conducted improper testing and falsifying tests and further hid the fact that other patients had been exposed to SARS-COV2.
30. Defendants 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.
31. 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.
32. The acts of the 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 her damages.



33. Defendants' conduct shows a reckless disregard for the consequences so as to affect the life and health of decedent and they acted with intentional misconduct. Their acts and or omissions represent a conscious indifference to the rights of others including but not limited to Decedent.

34. As a direct and proximate result of the collective and/or individual negligent and intentional misconduct 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 her untimely death. The conduct of the Defendants was intentional and or willful and or wanton misconduct and represented a conscious disregard for the welfare of patients, including decedent and as a consequence, decedent was damaged and injured and caused to suffer irreparable harm and loses resulting eventually in her demise for which her Estate demands damages both compensatory and punitive as a consequence of the events set forth in Count One.

#### **COUNT TWO – WRONGFUL DEATH**

35. Plaintiff incorporates herein by reference all of the statements and allegations contained in Count One and further say as follows.

36. Plaintiff brings this Count Two pursuant to Ohio Revised Code § 2125.02(A)(1) as the administrator of her mother's Estate, pursuant to the State of Ohio's Wrongful Death and *et seq.* and R.C. 2305.21, for the benefit of Decedent's heirs, beneficiaries, and next of kin, who have suffered a loss of support, services, attention, and guidance, and who have endured mental anguish and have been otherwise damaged by the wrongful and untimely death of Decedent Vivian C. Wilson on October 19, 2020.

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37. As a direct and proximate result of Defendants' negligent, reckless and/or wanton acts and/or omissions as set forth in Count One, Decedent came wrongfully to her death October 19, 2020.

38. The Decedent's next-of-kin have been caused the loss of services, loss of society, including companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education of the Decedent.

39. In addition, the Decedent's next-of-kin have been caused to suffer severe mental anguish as a result of Decedent's death.

40. In addition, the Defendant's next-of-kin have incurred burial and funeral expenses all to the further damages of the Estate of the Decedent.

**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, and exemplary and punitive damages as a result of the reckless and wanton and/or intentional misconduct and the fraudulent falsification of test results as alleged herein 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/ Howard D. Mishkind  
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*Attorney for Plaintiff*

**JURY DEMAND**

Plaintiffs hereby request a Trial by Jury on this matter.

/s/ Howard D. Mishkind

Howard D. Mishkind, Esq. (0009238)

David A. Kulwicki, Esq. (0041106)

*Attorneys for Plaintiffs*

**TO THE CLERK**

**PLEASE SERVE DEFENDANTS BY FEDERAL EXPRESS, RETURN  
RECEIPT REQUESTED AT THE ADDRESSES LISTED IN THE CAPTION OF  
THE COMPLAINT.**

/s/ Howard D. Mishkind

Howard D. Mishkind, Esq. (0009238)

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*Attorneys for Plaintiffs*