

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

**JONI BAKER**, Executrix of  
the Estate of **IDA BLAZY**, deceased,

Plaintiff,

v.

Civil Action No. 13-C-114 H

**MOUND VIEW HEALTH CARE, INC.**,  
a West Virginia corporation,

Defendant.

**COMPLAINT**

1. Plaintiff, Joni Baker, is a citizen and resident of Jefferson County, Ohio, and is the duly qualified and acting Executrix of the Estate of Ida Blazy, deceased, who died on April 3, 2012. The Plaintiff brings this action for the benefit of her deceased mother's wrongful death beneficiaries, and to recover for the damages incurred by her decedent between the time of injury and death. Plaintiff brings this action under the provisions of the West Virginia Wrongful Death Statute, W. Va. Code §55-7-5, *et. seq.*

2. Defendant, Mound View Health Care, Inc. (hereinafter sometimes referred to as "Mound View"), is a West Virginia corporation, with its principle place of business at 2200 Floral Street, Moundsville, Marshall County, West Virginia, which is authorized and licensed to do business within the State of West Virginia, and is authorized and licensed to operate a nursing home facility in Moundsville, Marshall County, West Virginia known as Mound View Health Care, pursuant to West Virginia Code § 16-5C-1 *et. seq.* and 42 C.F.R. § 483 *et. seq.* wherein plaintiff's decedent was a resident for health care and social assistance.

**JURISDICTION AND VENUE**

3. The Plaintiff incorporates by reference, as if pleaded herein verbatim, the

allegations of all preceding paragraphs of the Complaint where appropriate.

4 The defendant is amenable to jurisdiction before the courts of West Virginia by virtue of the fact that it is a citizen and resident of West Virginia, and/or to the extent it maintains minimum contacts with and/or conducts systematic business in West Virginia such that jurisdiction over the defendant is consistent with traditional notions of fair play and substantial justice.

5 Pursuant to 28 U.S.C. § 1441(b) removal is improper as there is no federal question at issue, and defendant is a citizen and resident of West Virginia. Plaintiff is not asserting any claim against any defendant who was acting under any officer of the United States or any agency thereof, or person acting under him or her, for any act under color of such office, or against defendant during any time period when its facility was a federal enclave.

6 Venue is proper before this Court to the extent Ida Blazy's injuries and death occurred as a result of negligent care and treatment plaintiff's decedent received while a resident of Mound View Health Care in Marshall County, West Virginia.

#### **FACTUAL ALLEGATIONS**

7 Ida Blazy was a nursing home resident of defendant's nursing facility, Mound View Health Care, from September 5, 2008 to March 12, 2012.

8 During the period of time Ida Blazy was under the care of Mound View, the defendant had a statutorily mandated duty to provide Ida Blazy with her nursing home resident's rights as set forth in West Virginia C.S.R. § 64-13-1 *et. seq.*, including, but not limited to, the following:

- (a) The right to participate in planning her overall care;

(b) The right to be free of abuse, neglect, mistreatment or restraint by physical or chemical means except as allowed by the rules;

(c) The right to be adequately informed of her physical and mental conditions and proposed treatments; and

(d) The right to receive adequate and appropriate health care and protective and support services consistent with her resident care plan, with established and recognized practice standards within the community, and with rules and regulations adopted by Department of Health and Human Resources, including West Virginia Code § 16-5C-1 *et. seq.* and 42 C.F.R. § 483.

9. Defendant's duties outlined in the above-referenced rules and regulations were non-delegable duties such that defendant had and has direct liability for violations, deprivations, and infringements of Ida Blazy's nursing home resident's rights caused by any officers, managing agents, servants, employees, or outside care givers who were not "health care providers" under West Virginia Code § 55-7B-2 acting in furtherance of defendant's operations.

10. Defendant was and is vicariously liable for the negligence of defendant's officers, managing agents, servants, and employees acting within the course and scope of their employment by defendant, which occurred during Ida Blazy's residency at Mound View.

11. At all times material hereto, Mound View was a licensed professional nursing home and had a duty to provide care and services to Ida Blazy in accordance with regulations promulgated in the West Virginia Code of State Rules and the Code of Federal Regulations, and in a reasonably prudent and careful manner under common law, consistent with accepted practice standards in the area.

12. Defendant further had a duty to properly train, supervise, hire, retain and dismiss any servants, employees and agents, or outside care-givers or contractors for services utilized by defendants in furtherance of its operations as a nursing home facility, which occurred during Ida Blazy's residency.

13. During her residency at Mound View, Ida Blazy suffered serious injuries from a pattern of poor care, neglect and abuse rendered by Mound View and its staff, which injuries included, but were not limited to wound infections, including infected decubitus ulcers; septicemia, septic shock, respiratory failure, urinary tract infections, upper respiratory tract infections, MRSA, c. difficile, e-coli, and staphylococcus aureus. The negligent care and treatment of Ida Blazy by the staff at Mound View caused significant destruction of her physical condition during her residency and directly and proximately contributed to her death on April 3, 2012.

14. The negligence and carelessness of the Mound View servants, employees and agents contributed substantially in causing serious injuries to Ida Blazy resulting in pain and suffering.

### **COUNT ONE**

#### **(Statutory Violations)**

15. Plaintiff realleges and incorporates herein by reference paragraphs 1-14 above, as if repeated herein verbatim, and further states as follows:

16. W. Va. Code §16-5C-15(c) provides that "any nursing home that deprives a resident of any right or benefit created or established for the well-being of this resident by the

terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, shall be liable to the resident for injuries suffered as a result of such deprivation.”

17. Defendant owed a duty to Ida Blazy to comply with rights or benefits created or established for her well-being by the terms of any contract, state statute or rule, or by any applicable federal statute or regulation.

18. Notwithstanding the duty of defendant to provide Ida Blazy with her nursing home residents’ rights mandated by statute during the relevant time periods, Ida Blazy was deprived of her right to receive adequate and appropriate health care and protective and support services consistent with her care plan, with recognized practice standards and with rules as adopted by the Department of Health and Human Resources, by the acts and omissions of defendant, its agents, servants, employees, or outside care givers who were not “health care providers” under West Virginia Code § 55-7B-2, including, but not limited to, the following:

(a) Failing to keep Ida Blazy and her family members fully informed of her total health status and of her medical condition during her residency at defendant’s facility;

(b) Failing to provide a sufficient number of staff to provide adequate and appropriate nursing care to all its residents, including Ida Blazy, and in accordance with its resident care plans;

(c) Failing to provide health care services in compliance with state law and applicable Federal and State Rules and Regulations and with acceptable professional standards and principles applicable to the personnel providing those services at the nursing home facility;

(d) Failing to care for Ida Blazy in a manner and in such an environment so as to promote the maintenance or enhancement of her quality of life;

- (e) Failing to implement, revise, and/or execute an appropriate and adequate resident care plan;
- (f) Failing to provide monitoring, coordinating, and evaluation of the quality of care;
- (g) Failing to provide adequate and appropriate care and treatment, nursing services, physician services, and other health care in an effort to enhance or maintain Ida Blazy's quality of life and medical condition;
- (h) Failing to generate and/or maintain complete and accurate medical records pertaining to the care, treatment and condition of Ida Blazy;
- (i) Failing to follow the Mound View policies and procedures; and
- (j) Such other acts and/or omissions which will be discovered in this action.

19. Defendant failed to exercise all care reasonably necessary to prevent and limit the deprivation and injury and death of Ida Blazy, such that plaintiff is entitled to an assessment of compensatory damages in an amount sufficient to compensate for the injuries to and death of Ida Blazy.

20 Defendant's acts and omissions during the relevant time period also violated Ida Blazy's right to be treated courteously, fairly and with the fullest measure of dignity.

21. As a direct and proximate result of the acts and omissions by defendant, described above, Ida Blazy sustained serious injuries including but, not limited to wound infections, including infected decubitus ulcers; septicemia, septic shock, respiratory failure, urinary tract infections, upper respiratory tract infections, MRSA, c. difficile, e-coli, and staphylococcus

aureus. Said acts and omissions were a direct cause and proximately contributed to Ida Blazy's death on April 3, 2012.

22. As a direct and proximate result of the actions and omissions by defendant described above, Ida Blazy was required to undergo medical care for which she incurred medical expenses, bodily injuries, pain and suffering, mental anguish, inconvenience, physical impairment, and loss of the capacity for the enjoyment of life, and which ultimately resulted in her untimely death.

23. The actions and omissions alleged above arise to the level of reckless, wanton disregard and support an award of punitive damages.

## **COUNT TWO**

### **(Negligence)**

24. Plaintiff realleges and incorporates herein by reference paragraphs 1-23 above, as if repeated verbatim, and further states as follows:

25. Defendant had duty to act with reasonable care in the provision of services to Ida Blazy during the course of her residency at Mound View.

26. Defendant breached its duty to Ida Blazy as set forth hereinabove.

27. As a direct and proximate result of the negligence of the defendant's employees, agents, and servants, committed during her admission and in the course and scope of their agency and employment, Ida Blazy sustained serious injuries including, but not limited to, wound infections, including infected decubitus ulcers; septicemia, septic shock, respiratory failure, urinary tract infections, upper respiratory tract infections, MRSA, c. difficile, e-coli, and staphylococcus aureus. Said acts and omissions were a direct cause and proximately contributed

to Ida Blazy's death on April 3, 2012.

28. As a direct and proximate result of the negligence of said employees and agents committed during the relevant time period in the course and scope of their agency and employment, Ida Blazy sustained bodily injuries resulting in pain and suffering, mental anguish, inconvenience, physical impairment, loss of capacity for the enjoyment of life, aggravation of existing diseases and physical defects, and ultimately death and incurred medical expenses.

29. The actions and omissions alleged above arise to the level of reckless, wanton disregard and punitive damages are warranted.

### **COUNT THREE**

#### **(Negligent Hiring, Training and Retention of Employees)**

30. Plaintiff realleges and incorporates herein by reference paragraphs 1-29 above, as if repeated verbatim, and further states as follows:

31. Defendant hired unqualified persons to care for the residents of Mound View and knew or should have known of the lack of qualifications.

32. Defendant inadequately trained the persons hired to care for the residents of Mound View, including Ida Blazy, and knew or should have known of the inadequate training.

33. Defendant knew or should have known of the unqualified and inadequately trained persons and nevertheless retained them as employees to care for residents of Mound View, including Ida Blazy.

34. Defendant owed a duty to its residents, including Ida Blazy, to provide qualified persons who were adequately trained in the provision of health services, custodial care services, protection services, and support services.



35 Defendant negligently breached its duty to Ida Blazy, and as a direct and proximate result thereof, Ida Blazy suffered injuries and death and had conscious pain and suffering for all of which plaintiff is entitled to recover damages.

36. The acts and failures to act of the defendant which resulted in the injury to and death of Ida Blazy were willful or in reckless disregard of the lawful rights of Ida Blazy such that punitive damages may be assessed.

#### **COUNT FOUR**

#### **(Wrongful Death)**

37. Plaintiff realleges and incorporates by reference paragraphs 1-36 above, as if repeated herein verbatim, and further states as follows:

38. Defendant, Mound View, employed certain care givers who provided protective and support services to Ida Blazy, such services not constituting “health care” or “medical care” or “treatment or diagnosis” as defined in West Virginia Code § 55-7B-2.

39. Said agents, servants, and employees of defendant, Mound View, participated in the care and services provided to Ida Blazy.

40. Defendant, Mound View, and its agents, servants, and employees had a duty to act with reasonable care in the provision of care and services to Ida Blazy during the course of its nursing home operations.

41. Defendant, Mound View, breached its duties to plaintiff’s decedent, Ida Blazy, by and through the acts and omissions of their agents, servants, and employees, both managerial and non-managerial, while acting in the course and scope of their employment, and/or while acting in the scope of their agency relationship, in one or more of the ways described herein above.

42. As a direct and proximate result of the negligence of defendant's agents, servants and/or employees, committed in the course and scope of their agency and employment, plaintiff's decedent, Ida Blazy, suffered serious injuries from a pattern of poor care, neglect and abuse rendered by defendant, Mound View, and its staff, which injuries included, but not limited to, wound infections, including infected decubitus ulcers; septicemia, septic shock, respiratory failure, urinary tract infections, upper respiratory tract infections, MRSA, c. difficile, e-coli, and staphylococcus aureus. The negligent care and abuse of Ida Blazy by the staff at Mound View caused significant destruction of her physical condition during her admission and residency at Mound View and proximately contributed to her death on April 3, 2012.

43. As a direct and proximate result of the negligence of defendants' agents, servants, and/or employees committed in the course and scope of their agency and employment, Ida Blazy died, and plaintiff and the heirs of the Estate of Ida Blazy have sustained mental pain and suffering and loss of companionship and guidance as a result of her death.

44. As a direct and proximate result of the negligence of defendant, Mound View, and its agents, servants, employees, plaintiff, and the heirs of the Estate of Ida Blazy, have incurred medical expenses for the care and treatment of the conditions that led to her death and, additionally, the estate has incurred funeral expenses.

45. The actions and omissions alleged above rise to the level of reckless, wanton disregard and support an award of punitive damages.

### **DAMAGES**

46. As a result of her injuries, Ida Blazy suffered and sustained severe illness and injury to his person which forced her to obtain medical treatment, and to incur medical expenses

by way of doctor, hospital, and drug bills for which the Plaintiff is entitled to recover damages in this action.

47. Ida Blazy further suffered great pain, extreme nervousness and mental anguish as a direct result of his aforesaid injuries for which the Plaintiff is entitled to recover damages in this action.

48. As a direct and proximate result of his aforesaid injuries disease, Ida Blazy's enjoyment of life was greatly impaired for which the Plaintiff is entitled to recover damages in this action.

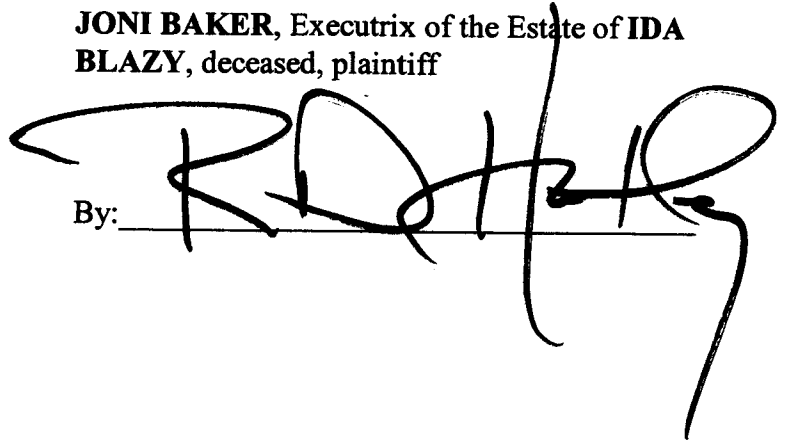
49. As a result of the aforesaid injuries and by reason of the death of Ida Blazy, her wrongful death beneficiaries have suffered sorrow, mental anguish, solace, which includes deprivation of society, companionship, guidance, kindly offices and advice of their decedent; loss of services, protection, and care and assistance provided by their decedent; and reasonable funeral and medical expenses, all to their damage, and for which Plaintiff is entitled to recover damages in this action.

WHEREFORE, plaintiff demands compensatory damages from defendants in an amount to be determined by the trier of fact, as well as an award of punitive damages in an amount to be determined by the trier of fact. Plaintiff further demands prejudgment and post-judgment interest, as well as such other relief as a judge or jury shall find fair and just.

**PLAINTIFF DEMANDS A TRIAL BY JURY.**

Dated: June 28, 2013,

**JONI BAKER, Executrix of the Estate of IDA  
BLAZY, deceased, plaintiff**

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