

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

GREGORY WOLFE,
as ADMINISTRATOR of the
ESTATE OF LEONARD K. WOLFE,

Plaintiff,

v.

Civil Action No.: 20-C-231
Judge _____

MONONGALIA HOME CORPORATION
A West Virginia Corporation, d/b/a
SUNDALE NURSING HOME,

Defendant.

COMPLAINT

NOW COME the Plaintiff, Gregory Wolfe, as Administrator of the Estate of Leonard K. Wolfe, by Counsel, Robert V. Berthold, Jr., and Robert V. Berthold, III, of Berthold Law Firm, PLLC, who for his Complaint states as follows:

PARTIES

1. Plaintiff, Gregory Wolfe, is the Administrator of the Estate of Leonard Kermit Wolfe. Plaintiff Gregory Wolfe is and was at all times relevant to this Complaint were, the son of Leonard Kermit Wolfe, deceased, and a resident of Preston County, West Virginia.
2. Defendant, Monongalia Home Corporation d/b/a Sundale Nursing Home (hereinafter "Sundale") is a West Virginia Corporation, with a principal place of business located 800 J.D. Anderson Dr., Morgantown, WV 26505. The Notice of Process agent and address is Michael Hicks, NHA, 800 J.D. Anderson Dr., Morgantown, WV 26505. Defendant Sundale is a nursing home situated in Morgantown, Monongalia County West Virginia, where Leonard Kermit Wolfe was a resident.

ORIGINAL DOCUMENT FILED
WITH CIRCUIT CLERK

8-12-2020

JURISDICTION & VENUE

3. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 2 of this Complaint as if fully set forth herein.

4. Jurisdiction and Venue are proper in the Circuit Court of Monongalia County, West Virginia, as Defendant Sundale operates its nursing home in Morgantown, Monongalia County, West Virginia.

FACTS

5. The Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 4 of this Complaint as if fully set forth herein.

6. The Plaintiff, Gregory Wolfe, is the son of Leonard K. Wolfe, and is the Administrator of the Estate of Leonard K. Wolfe.

7. At all times alleged herein, Leonard K. Wolfe was a resident of Defendant Sundale's nursing home, and remained under their care.

8. On or about March 25, 2020, Defendant Sundale, without permission of Leonard K. Wolfe or his family, released false information to government entities and social media and persons/entities that Leonard K. Wolfe had died of COVID-19, when in fact, Leonard K. Wolfe was alive.

9. Said release of information to government entities and social media and to unauthorized sources caused members of the public to believe that Leonard K. Wolfe was a COVID-19 fatality, when in fact he was alive.

10. Said release of information on social media and to unauthorized sources caused members of Leonard K. Wolfe's family to believe he had died of COVID-19, when in fact, he was alive.

COUNT I- NEGLIGENCE

11. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 10 of this Complaint as if fully set forth herein.

12. While residing as a resident of Defendant Sundale, Defendant Sundale had a duty to ensure that information related to his medical care and treatment was protected and not redisclosed to members of the public or unauthorized sources, per West Virginia regulations and Legislative Rules.

13. Per Title 64 Legislative Rules West Virginia Division of Health, Series 13 Nursing Home Licensure Rule, Section 13.1c (hereinafter "Nursing Home Licensure Rules"), Defendant Sundale had a duty to "safeguard clinical record information against loss, destruction, or unauthorized use." Here, there was no authorized use permitting Defendant Sundale to disclose confidential health records and information regarding Leonard K. Wolfe.

14. Per Section 13.2 of the Nursing Home Licensure Rules, Defendant Sundale was required to "keep all information contained in . . . [Leonard Wolfe's] clinical record confidential, except when release was required by:" (a) transfer to another health care institution, (b) law, (c) third party payment contract, or (d) to the resident. Here, Defendant Sundale breached its duties to maintain confidential health information and records of Leonard K. Wolfe, as no exception to Section 13.2 permitted such a disclosure.

15. Per Section 3.9f of the Nursing Home Licensure Rules, Defendant Sundale was neither required nor permitted to publicly disclose the confidential medical records of Leonard K. Wolfe, a resident of the facility. Here, Defendant Sundale failed to comply with this legislative rule, as it caused the public disclosure of Leonard K. Wolfe's confidential health records/information.

16. To the extent that any information related to Leonard K. Wolfe could be arguably considered public information, which the Plaintiff disputes, Defendant Sundale was required to delete any confidential information that would reasonably permit identification of the resident as required by Section 3.9g of the Nursing Home Licensure Rules. Here, Defendant Sundale failed to comply with this Legislative Rule, as it did not delete confidential information that would prevent identification of the resident, but instead identified the resident by name.

17. Defendant Sundale did not properly hire, train and oversee their employees and/or agents in the execution of their duties to protect confidential health record information, much less in correct information. Defendant Sundale failed to monitor and supervise the activities of its employees with regard to the protection and maintenance of confidential health record information.

18. As a direct and proximate result of the actions described herein, the Plaintiff Administrator has suffered severe emotional trauma/distress, and some members of the family have required medical care. Other members of the Estate were also traumatized by the false disclosure of their father's death, which caused severe emotional turmoil and anguish.

COUNT II
RECKLESS INFLICTION OF EMOTIONAL DISTRESS
AGAINST DEFENDANT SUNDALE

19. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 18 of this Complaint as if fully set forth herein.

20. Defendant Sundale's conduct concerning the release of false confidential medical record information concerning Leonard K. Wolfe's death due to COVID-19 was atrocious, intolerable, and so extreme and outrageous to exceed the bounds of decency.

21. Defendant Sundale's actions were sufficiently reckless inasmuch as it was certain/likely that the Plaintiff and members of the Estate would suffer emotional distress from

Defendant Sundale's improper actions.

22. Defendant Sundale's reprehensible and disgusting actions surrounding the release of false confidential medical record information concerning Leonard K. Wolfe's death due to COVID-19 caused the Plaintiff and members of the Estate severe emotional distress.

23. The emotional distress Plaintiff and members of the Estate were forced to endure arising from the conduct described herein is so severe that no individual should be forced to endure said conduct.

**COUNT III
INVASION OF PRIVACY
AGAINST DEFENDANT SUNDALE**

24. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 23 of this Complaint as if fully set forth herein.

25. The actions of Defendant Sundale constitute an unreasonable intrusion upon the seclusion of Leonard K. Wolfe and his Estate.

26. The actions of Defendant Sundale constitutes unreasonable publicity given to the private life of Leonard K. Wolfe.

27. The actions of Defendant Sundale constitute a highly offensive intrusion into the private life of Leonard K. Wolfe.

28. As a direct and proximate result of the conduct described herein, Plaintiff and members of the Estate have suffered damages including emotional distress and mental anguish, and some members of the family have required medical care.

COUNT IV
RECKLESS INFLICTION OF EMOTIONAL DISTRESS
AGAINST DEFENDANT SUNDALE

29. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 27 of this Complaint as if fully set forth herein.

30. Defendant Sundale's conduct concerning the release of false confidential medical record information concerning Leonard K. Wolfe's death due to COVID-19 was atrocious, intolerable and so extreme and outrageous to exceed the bounds of decency.

31. Defendant Sundale's actions were sufficiently reckless inasmuch as it was certain that the Plaintiff and members of the Estate would suffer as a result from Defendants' actions.

32. Defendant Sundale's reprehensible and disgusting actions surrounding the release of false confidential medical record information concerning Leonard K. Wolfe's death due to COVID-19 Plaintiff and members of the Estate severe emotional distress. Additionally, some members of Plaintiff's Estate have required medical care as a result of Defendant Sundale's actions.

33. The emotional distress Plaintiff and members of the Estate were forced to endure arising from the conduct described herein is so severe that no individual should be forced to endure said conduct.

COUNT IV
INVASION OF PRIVACY
AGAINST DEFENDANT SUNDALE

34. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 33 of this Complaint as if fully set forth herein.

35. The actions of Defendant Sundale constituted an unreasonable intrusion upon the seclusion of Leonard K. Wolfe.

36. The actions of Defendant Sundale constituted unreasonable and false publicity given to the private life of Leonard K. Wolfe.

37. The actions of Defendant Sundale constituted a highly offensive intrusion into Leonard K. Wolfe's private life.

38. As a direct and proximate result of the conduct described herein, Plaintiff and members of the Estate have suffered damages including emotional distress and mental anguish. Additionally, the members of Plaintiff's Estate have required medical care.

COUNT V
OUTRAGE AGAINST DEFENDANT SUNDALE

39. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 38 of this Complaint as if fully set forth herein.

40. The Defendant's actions surrounding the facts alleged in this Complaint are outrageous and outside the bounds of decency and what is accepted by society as a whole.

41. The Defendant's actions arise to the tort of outrage as enumerated by the applicable common law.

42. As a direct and proximate result of the conduct described herein, Plaintiff and members of the Estate have suffered damages including emotional distress and mental anguish, and some members of the family have required medical care.

COUNT VI
PUNITIVE DAMAGES

43. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 42 of this Complaint as if fully set forth herein.

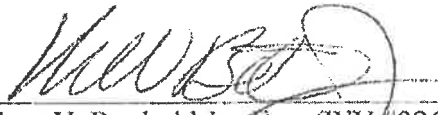
44. As a direct and proximate result of the willful, wanton, intentional acts, reckless and/or the willful, wanton, intentional acts, reckless and/or the willful, wanton, intentional and

reckless failures to act by Defendant, Plaintiff and members of the Estate suffered the aforesaid damages and, as such, Plaintiff demands that punitive damages be awarded against Defendant Sundale.

WHEREFORE, Plaintiff and members of the Estate hereby demands compensatory and punitive damages from Defendant, jointly and severally, in such sums that are far in excess of any sum necessary to confer jurisdiction upon this Court, together with prejudgment and post judgment interest as provided by law, all costs expended herein, attorney fees, and such further and general relief as this Court may deem proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

**GREGORY WOLFE,
AS ADMINISTRATOR OF THE
ESTATE OF LEONARD K. WOLFE,
By Counsel**



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