

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
CIVIL DIVISION VI

STEVEN A. BRIGANCE, as personal
representative of the estate of Dorothy Brigance,
deceased; and on behalf of the wrongful death
beneficiaries of Dorothy Brigance

PLAINTIFF

v.

CV-2010- 1365

THE BROOKFIELD AT FIANNA OAKS, L.L.C.,
d/b/a THE BROOKFIELD AT FIANNA OAKS;
ROBERT "BOB" BROOKS; and MITZI
BAILEY

DEFENDANTS

FILED
JUL 15 11 3 51
Clerk of Court

COMPLAINT

Steven A. Brigance, as personal representative of the estate of Dorothy Brigance,
deceased, and on behalf of the wrongful death beneficiaries of Dorothy Brigance states:

JURISDICTIONAL STATEMENT

1. Steven A. Brigance is the personal representative of the estate of Dorothy
Brigance, deceased, pursuant to Letters Appointing Special Personal Representative
issued by the Circuit Clerk of Sebastian County Arkansas, which is attached hereto as
Exhibit "A".

2. The Statutory Wrongful Death Beneficiaries of Dorothy Brigance are
Marcelena Brigance, adult daughter of Dorothy Brigance, and Steven A. Brigance, adult
son of Dorothy Brigance.

3. Dorothy Brigance was an adult resident of Sebastian County, Arkansas
who died on or about December 14, 2009 in Sebastian County, Arkansas.

4. This action is brought pursuant to the Arkansas Survival of Actions Statute, Ark. Code Ann. § 1662-101 and the Arkansas Wrongful Death Act, Ark. Code Ann. § 1662-102.

5. Defendant The Brookfield at Fianna Oaks, LLC is an Arkansas domestic Limited Liability Company with its principal place of business at 2300 Fianna Oaks, Fort Smith, Arkansas, 72715. Its agent for service of process is the Corporation Service Company, 300 Spring Building, Suite 900, 300 S. Spring Street, Little Rock, Arkansas, 72201. The Brookfield at Fianna Oaks, LLC, owned and operated an assisted living facility wherein Dorothy Briggance, resided.

6. Defendant, Robert "Bob" Brooks ("B. Brooks"), an individual, was at all times relevant hereto the owner and operator of Defendant The Brookfield at Fianna Oaks, LLC. He exerted personal control over such business by personally supervising, inspecting, and overseeing the operations of Defendant The Brookfield at Fianna Oaks, LLC on or about the dates of the occurrences which made the basis of this lawsuit. Defendant, B. Brooks, for all times material to this lawsuit conducted business in Arkansas and continues to do business in Arkansas.

7. Defendant, Mitzi Bailey ("M. Bailey"), was at all times material hereto the administrator for The Brookfield at Fianna Oaks, LLC, on or about the dates of the occurrences, and is a resident of the State of Oklahoma. Defendant, M. Bailey, for all times material to this lawsuit conducted business in Arkansas and continues to do business in Arkansas. Defendant M. Bailey's contacts with Arkansas are systematic and ongoing such that Defendant M. Bailey could reasonably expect to be hailed into an Arkansas court.

8. This Court has jurisdiction over the parties hereto, the subject matter hereof, and venue is proper.

FACTUAL ALLEGATIONS

9. Dorothy Brigance was a resident of The Brookfield at Fianna Oaks, located at 2300 Fianna Oaks, Fort Smith, Arkansas, 72715, from on or about May 27, 2008, until December 14, 2009.

10. Prior to December 14, 2009, Dorothy Brigance's health and living condition had begun to deteriorate.

11. Subsequent to Dorothy Brigance's husband's death on January 7, 2009, the Defendants acted in concert to provide sub-quality care to attempt to get Dorothy Brigance to leave the facility.

12. The Defendant failed to provide Dorothy Brigance with even the minimum standard of care of cleanliness and hygiene. This included a persistent pattern of failing to answer call lights; letting her stay in soiled bed clothing; not removing soiled bedding from the room; and leaving her on the toilet without providing assistance.

13. On or about the night of November 19, 2009, Dorothy Brigance attempted to go to bathroom by herself due to the fact members of the Defendant's staff would not answer the call light and assist her.

14. As Dorothy Brigance attempted to get out of the bed, she fell on her face suffering a large gash in her mouth where her lower front teeth went through her lip, lacerations to her nose and right knee, numerous abrasions and contusions, and a severe head injury.

15. The acts and omissions of the Separate Defendant, The Brookfield at Fianna Oaks, LLC d/b/a The Brookfield at Fianna Oaks, were a proximate cause of the of the injuries and death of Dorothy Brigance.

16. The Separate Defendant, The Brookfield at Fianna Oaks, LLC d/b/a The Brookfield at Fianna Oaks, owed a non-delegable duty to residents of The Brookfield at Fianna Oaks, specifically including Dorothy Brigance, to provide the minimum standard of care regarding residents' hygiene, cleanliness, and safety.

17. The Separate Defendant, B. Brooks, failed to properly personally inspect, supervise, or maintain the facility in a safe, prudent manner. Defendant, Bob Brooks, further failed to properly screen the administrator so as to hire a qualified individual. As such, the acts and omissions of the Separate Defendant, B. Brooks, were a proximate cause of the injuries and death of Dorothy Brigance.

18. The Separate Defendant, M. Bailey, failed to properly personally inspect, supervise, or maintain the facility in a safe, prudent manner. As such, the acts and omissions of Separate Defendant, M. Bailey, were a proximate cause of the injuries and death of Dorothy Brigance.

19. The acts or omissions set forth above are matters which were within each of the Defendants areas of responsibility. More specifically, the injuries, suffering, and death of Dorothy Brigance were directly and proximately caused by acts of negligence on the part of the Defendants both jointly and severally, as follows:

- a. Failure to have staff available to care for Dorothy Brigance;
- b. Failure to assist Dorothy Brigance to the bathroom and shower;
- c. Failure to remove soiled bedding or other items from the room;

- d. Failure to answer call lights in a timely manner; and
- e. Failure to instruct, properly train and supervise staff on caring for residents;

20. As a direct and proximate result of each of the Defendants' failure to perform the responsibilities as set forth above, Dorothy Brigance suffered physical injuries, including a fall where her front teeth went through her upper lip, lacerations to her nose and right knee, head injury including swelling of the brain, and numerous contusions and abrasions. Dorothy Brigance also suffered extreme pain, suffering, mental anguish, and knowledge of her impending demise and death.

**GROSS NEGLIGENCE, WILLFUL, WANTON,
RECKLESS, AND/OR INTENTIONAL CONDUCT**

21. Plaintiff incorporates all of the allegations made in paragraphs 1-20 above.

22. The manner, scope, and severity of Defendants' failures and actions as heretofore described constitute malice and gross negligence which evidences a continuous and systematic pattern of neglect.

23. The malice and gross negligence which evidences a continuous and systematic pattern of neglect for the care of others, including Dorothy Brigance and includes, but is not limited to, one or more of the following acts and omissions:

- a. The failure to take proper care of the upkeep of the facility;
- b. The failure to adequately inspect the facility;
- c. The failure to adequately supervise the facility;
- d. The failure to provide a safe living environment for Dorothy Brigance and other residents;

27. By virtue of the nature of the services rendered to Dorothy Brigance by Defendants, and the special relationship which developed between the Defendants and Dorothy Brigance, as well as the huge disparity of power and unequal bargaining position existing between the Defendants and Dorothy Brigance, the Defendants occupied a position of confidence toward Dorothy Brigance which required fidelity, loyalty, good faith, and fair dealing by the Defendants.

26. Dorothy Brigance and her family relied upon the supposed superior knowledge, skill, and abilities of the Defendants that the Defendants held themselves out to have.

25. As a resident of the separate Defendant The Brookfield at Fanna Oaks which was owned, operated by, and inspected by separate Defendant B. Brooks and run by separate Defendant M. Bailey, Dorothy Brigance, was particularly dependent for her daily care and well-being upon the Defendants, their employees, and agents. Because of the nature of this dependence and the representations of the Defendants that they could and would provide necessary care, Dorothy Brigance, and her family held in the Defendants a special confidence and trust which the Defendants accepted by allowing Dorothy Brigance, to be a resident of their facility.

as if fully set forth herein.

24. The Plaintiff re-alleges and incorporates the allegations in Paragraphs 1-20

BREACH OF FIDUCIARY DUTY AGAINST SEPARATE DEFENDANTS THE BROOKFIELD AT FANNA OAKS, LLC, B. BROOKS, and M. BAILEY

c. The failure to adopt adequate guidelines, policies, and procedures for proper care of residents regarding their hygiene and cleanliness;

28. The Defendants breached their fiduciary duty and duty of good faith and fair dealing to Dorothy Brigance by failing to provide even the bare minimum of the standard of care to which Dorothy Brigance should have lived in.

RESERVATION OF ADDITIONAL CLAIMS

29. Plaintiff reserves the right to plead further upon additional discovery, to state additional claims and to name additional parties to this action.

DAMAGES

30. As a direct and proximate result of the acts of negligence on the part of the defendants, Dorothy Brigance suffered a serious personal injury including, but not limited to, medical expenses, pain, suffering and loss of life. The Statutory Wrongful Death Beneficiaries each suffered damages as allowed by law for loss of companionship and association with Dorothy Brigance. The Estate of Dorothy Brigance and the Statutory Wrongful Death Beneficiaries are entitled to such damages as a jury may award at the trial of this cause.

31. The actions of the Defendants were in conscious disregard to the care and welfare of Dorothy Brigance from which malice may be inferred entitling the Plaintiff to punitive damages.

DEMAND FOR JURY TRIAL

The Plaintiff demands a jury trial for all issues of fact presented by this action.

WHEREFORE, PREMISES CONSIDERED, plaintiff prays that summons be issued for the defendants, and that following a jury trial of this action the plaintiff be awarded a judgment against the defendants in an amount to which the plaintiff may be entitled to fully and fairly compensate plaintiff for all damages that have been suffered,

for punitive damages as are appropriate under the circumstances, and for any and other damages, costs, fees, and all other proper relief to which plaintiff may be entitled in the premises.

RESPECTFULLY SUBMITTED.

By: 

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