

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MARY JONES,) CV 02-00-M-DWM
)
Plaintiff,)
)
vs.)
) **FINAL PRETRIAL ORDER**
WESTBEST NURSING HOME,)
)
Defendant.)
_____)

Pursuant to Fed. R. Civ. P. 16 and L.R. 16.4, the parties submit this Final Pretrial Order to govern the course of trial in this matter.

I. Nature of Action.

This is a negligence claim against Westbest Nursing Home that arises out of the injury and death of Mary Jones. Plaintiff claims the nursing home was negligent in physically restraining and then over-medicating Mary Jones. Mary Jones died when she became entangled in restraints caused by a medically induced disorientation.

Defendant denies it was negligent and claims it conformed to the applicable standard of care for nursing homes. Furthermore Defendant asserts that the cause of death was not related to either the restraints used or to the medications administered. Defendant also claims that Mary Jones was comparatively at fault because she ignored specific instructions about attempting to leave her bed, instructions given when she was in full possession of her faculties.

II. Jurisdiction and Venue.

Mary Jones is a citizen of the State of Montana. Westbest Nursing Home is a corporation organized under the laws of Oregon having its principle place of business in Oregon. Subject matter jurisdiction is based upon Diversity of Citizenship, 28 USC § 1332. Personal Jurisdiction is not questioned. Venue is proper in the Missoula Division as the incident occurred in Polson, Montana. L.R. 3.1(a)(1).

III. Jury.

The case is set for trial before a jury of 9 persons. Neither party contests trial of any issue by the jury.

IV. Agreed Facts.

The following facts are agreed upon and require no proof:

- (a) Mary Jones was born on July 4, 1914.
- (b) Mary Jones was a patient at Westbest Nursing Home in Polson, Montana from April 15, 2000 until May 23, 2000.
- (c) Mary Jones died at 1:30 p.m. on May 23, 2000.
- (d) The cause of Mary Jones's death was asphyxiation.
- (e) Mary Jones is survived by her daughter Anna Jones Murphy

and her son Thomas Jones.

- (f) The reasonable funeral expenses incurred are \$7,640.00.

V. Elements of Liability.

A plaintiff's *prima facie* case in an action against a nursing home for injury or death of a patient due to misuse of a chemical or physical restraint consists of the following elements:

- (a) A duty owed by the nursing home to the patient. Plaintiff contends that under the provisions of the Nursing Home Patients' Bill of Rights Westbest had a duty to keep Plaintiff free from chemical and physical restraints unless authorized by a physician.
- (b) The breach of that duty by the nursing home, either by omitting to perform or by performing wrongly, its duty to the patient. Plaintiff contends she was restrained for the convenience of the Westbest staff without authorization by her treating physician.
- (c) Injury to or death of the nursing home patient. Plaintiff died of asphyxiation from the restraints placed on her by Westbest staff.
- (d) Causation. Westbest Nursing Home's breach of duty caused the Plaintiff's injury or death.

VI. Defense Elements.

The following are elements of defenses asserted by Defendant:

- (a) The nursing home conformed to the applicable standard of care.
- (b) There is no causal relationship between the alleged negligent conduct and Mary Jones' injury or death.

(c) Mary Jones was comparatively at fault for her own injuries because she was negligent in failing to follow instructions. The sub-elements of this defense are:

- (1) Mary Jones had a duty to follow medical advice;
- (2) Mary Jones breached that duty by failing to follow specific instructions given to her by nurses and doctors;
- (3) Mary Jones' injuries were caused by her own actions.

VI. Relief Sought.

Plaintiff claims special and general damages for wrongful death and survivorship, including the following:

- (a) Funeral expenses in the amount of \$7,640.00.
- (b) Medical expenses after injury and before death \$5,200.00.
- (c) Mental and physical pain and suffering \$150,000.00.
- (d) Wrongful death \$150,000.00.
- (e) Survivorship \$75,000.00.

VII. Legal Issues.

The issue of causation will be disputed at the time of jury instruction. *See Busta v. Columbus Hospital Corp.* 276 MT 342 (1996); *Hunsaker v Bozeman Deaconess Foundation*, 179 MT 305 (1978).

IX. Dismissals.

The parties have stipulated to dismiss with prejudice Defendants Dr. Daniel Ork and Nurse Patricia Pattern.

X. Witnesses.

Attached to this pretrial order are the following *separate* witness lists:

- (a) Plaintiff's will call witnesses;
- (b) Plaintiff's may call witnesses;
- (c) Defendant's will call witnesses;
- (d) Defendant's may call witnesses.

XI. Exhibits.

Attached to this pretrial order are the following *separate* Exhibit Lists. Objections not disclosed on the Exhibit Lists, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, are waived unless excused by the Court for good cause.

- (a) Plaintiff's will offer exhibits;
- (b) Plaintiff's may offer exhibits;
- (c) Defendant's will offer exhibits;
- (d) Defendant's may offer exhibits.

XII. Discovery Documents.

Plaintiff will offer the following discovery documents:

- (a) Defendant's answers to Interrogatories
 - No. 1
 - No. 13
 - No. 20 (a) (b)
- (b) Defendant's responses to Requests for Admission
 - No. 3
 - No. 9
 - No. 15

- (c) Defendant's responses to Requests for Production
No. 7 (with attached documents)

Defendant will offer the following discovery documents:

- (a) Plaintiff's answers to Interrogatories
No. 17
No. 23
- (b) Plaintiff's responses to Requests for Admission
No. 10
No. 11

XIII. Estimate of Trial Time.

The parties estimate that Plaintiff will require two and one half (2 ½) days of trial to complete her case in chief. Defendant estimates it will require one (1) day to complete its case in chief. Plaintiff will call 16 lay witnesses and 2 expert witnesses. Defendant will call 7 lay witnesses and 2 expert witnesses.

This Order supplements and supersedes the pleadings in this matter.

Dated this _____ day of November, 2002.

DONALD W. MOLLOY, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Approved as to form and content:

Jane Doe, Lead Counsel for Plaintiff

James Doe, Lead Counsel for Defendant