

FILED

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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 11 CVS _____
HAYWOOD COUNTY, C.S.C.

STATE OF NORTH CAROLINA

COUNTY OF HAYWOOD

MATT ROBINSON, Administrator of the
Estate of JESSICA LYNN MARTIN, RY _____

Plaintiff,

v.

PAMELA SMATHERS, individually and as an
employee of the Haywood County Sheriff's
Department; HAYWOOD COUNTY, a body
politic; BOBBY R. SUTTLES, Sheriff of
Haywood County, and TRAVELERS
INSURANCE COMPANY; TRAVELERS
CASUALTY COMPANY OF
CONNECTICUT; TRAVELERS CASUALTY
INSURANCE COMPANY OF AMERICA;
TRAVELERS CASUALTY AND SURETY
COMPANY; TRAVELERS CASUALTY
AND SURETY COMPANY OF AMERICA;
TRAVELERS COMMERCIAL CASUALTY
COMPANY; TRAVELERS COMMERCIAL
INSURANCE COMPANY; TRAVELERS
EXCESS AND SURPLUS LINES
COMPANY; TRAVELERS GROUP; THE
TRAVELERS HOME AND MARINE
INSURANCE COMPANY; TRAVELERS
INDEMNITY COMPANY; TRAVELERS
INDEMNITY COMPANY OF AMERICA;
TRAVELERS INDEMNITY COMPANY OF
CONNECTICUT; TRAVELERS MOTOR
CLUB; TRAVELERS PERSONAL
INSURANCE COMPANY; TRAVELERS
PERSONAL SECURITY INSURANCE
COMPANY; TRAVELERS PROPERTY
CASUALTY COMPANY OF AMERICA;
TRAVELERS PROPERTY CASUALTY
INSURANCE COMPANY; TRAVELERS
PROTECTIVE ASSOCIATION OF
AMERICA,

COMPLAINT

Defendants.

NOW COMES the Plaintiff, complaining of the Defendants, and says and alleges as follows:

1. That the Plaintiff is the duly appointed Administrator of the Estate of Jessica Lynn Martin, having been so appointed on 17 August 2011. A copy of the duly executed and issued Letter of Administration is attached hereto and incorporated herein by reference as if fully set out pursuant to Rule 10(c) of the North Carolina Rules of Civil Procedure.

2. The Defendant Pamela Smathers is and was at all relevant times alleged herein a citizen and resident of Haywood County.

3. That upon information and belief, the Defendant Pamela Smathers, is a Licensed Practical Nurse, who at all relevant times alleged herein, upon information and belief, was an employee of the Haywood County Sheriff's Department. That upon information and belief, the Defendant Pamela Smathers was a health care provider who had the duty and responsibility of providing health care services to the Plaintiff's decedent at all relevant times

4. At all times relevant hereto, the Defendant Pamela Smathers was acting within the course and scope of her employment with the Haywood County Sheriff's Department. Pamela Smathers is sued in both her capacity as a nurse employed by the Haywood County Sheriff's Department and in her individual capacity.

5. That at all relevant times alleged herein, Defendant Smathers was engaged in the course and scope of her employment with the Haywood County Sheriff's Department and was acting for on behalf of the Haywood County Sheriff's Department and Haywood County Sheriff by authority extended to her by him.

6. That at all relevant times alleged herein the Defendant Sheriff Bobby R. Suttles was a citizen and resident of Haywood County. That at all relevant times alleged herein Sheriff Suttles was the duly elected and serving Sheriff of Haywood County, acting for and on behalf of himself, the Haywood County Sheriff's Department and the County of Haywood, North Carolina, having all of the powers and duties prescribed by law. This Complaint is specifically made against Sheriff Suttles both in his official capacity as Sheriff of Haywood County, and also in his individual capacity.

7. That Haywood County is a body politic pursuant to the provisions of N.C.G.S. § 153A-10, and is a political subdivision and constituent part of the state of North Carolina. It is further alleged upon information and belief that Haywood County, and/or the Haywood County Sheriff's Department, has purchased liability insurance applicable to this occurrence and claim and has thus waived any immunity for the matters herein alleged pursuant to the provisions of N.C.G.S. § 153A-435.

8. That upon information and belief, the following listed Travelers Insurance Companies, or one of them, is the surety for the Haywood County Sheriff's Department. That the Plaintiff does allege, that one of the companies listed below, pursuant to Rule 8(e) of the

North Carolina Rules of Civil Procedure, does provide the surety bond for the Haywood County Sheriff's Department and the Haywood County Sheriff:

- a. Travelers Casualty Company of Connecticut;
- b. Travelers Casualty Insurance Company of America;
- c. Travelers Casualty and Surety Company;
- d. Travelers Casualty and Surety Company of America;
- e. Travelers Commercial Casualty Company;
- f. Travelers Commercial Insurance Company;
- g. Travelers Excess and Surplus Lines Company;
- h. Travelers Group;
- i. The Travelers Home and Marine Insurance Company;
- j. Travelers Indemnity Company;
- k. Travelers Indemnity Company of America;
- l. Travelers Indemnity Company of Connecticut;
- m. Travelers Motor Club;
- n. Travelers Personal Insurance Company;
- o. Travelers Personal Security Insurance Company;
- p. Travelers Property Casualty Company of America;
- q. Travelers Property Casualty Insurance Company;
- r. Travelers Protective Association of America.

9. That in addition, pursuant to Rule 8(e) of the North Carolina Rules of Civil Procedure, the Plaintiff does allege that Travelers Insurance Company provides the surety bond for the Haywood County Sheriff and/or the Haywood County Sheriff's Department.

FACTUAL BACKGROUND

10. Jessica Lynn Martin was originally arrested by duly authorized law enforcement officers for failing to appear on a probation violation. She was then placed within the confines of the Haywood County Detention Center beginning on or about August 5, 2011, where she remained up to and including August 10, 2011.

11. That upon information and belief, on or about the fifth day of August, 2011, the Plaintiff's decedent reported complaints of her abnormal physical condition to employees of the Haywood County Sheriff's Department including the Defendant Pamela Smathers, and said employees and Smathers were acting within the course and scope of their employment with the Haywood County Sheriff's Department at all relevant times alleged herein. Upon information and belief, the Defendant Smathers undertook an examination and assessment of the physical condition of Plaintiff's decedent at that time.

12. Again on or about August 8, 2011, the Plaintiff's decedent again made complaints to employees of the Haywood County Sheriff's Department, and upon information and belief, no appropriate examination nor follow up was made to determine what treatment or care the Plaintiff's decedent needed. As a result of this failure, Plaintiff's decedent did not receive proper care or treatment on August 8, 2011.

13. That on or about 10 August 2011, Plaintiff's decedent again made other complaints of physical problems to employees of the Haywood County Sheriff's Department including Pamela Smathers. Upon information and belief, Pamela Smathers undertook another assessment of the physical condition of Decedent at that time.

14. That shortly after the assessment by Defendant Smathers on 10 August 2011, upon information and belief, within a short period of time after the Defendant Smathers saw Plaintiff's decedent and purported to make an assessment of her physical condition, an emergency call was placed to Haywood County EMS noting that the nature of the call was "emergency unconscious," that Plaintiff's decedent was on the second floor court holding area outside the courtroom, and that she was having a hard time breathing. Plaintiff's decedent was rushed to the local hospital where she died a few hours later.

FIRST CAUSE OF ACTION
(N.C.G.S. § 90-21.12)

15. Plaintiff incorporates by reference paragraphs 1-14 of this Complaint as if fully set out herein pursuant to Rule 10(c) of the North Carolina Rules of Civil Procedure.

16. That the medical care provided to the Plaintiff's decedent, as alleged herein, was not in accordance with the standards of practice of members of the same health care profession having similar training and experience, situated in the same or similar communities, as said Defendant Smathers at the time of the rendering of such medical services, in violation of N.C.G.S. § 90-21.12, and further constituted a lack of reasonable care by and failure to exercise the best judgment, of the Defendant Smathers in the following particulars, including but not limited to:

- a. By failing to timely appreciate and act upon the signs and symptoms of Plaintiff's decedent herein;
- b. By failing to conduct an adequate and timely assessment and examination of the Plaintiff;
- c. By failing to request a consultation from a supervising physician or other appropriate health care provider;
- d. By failing to secure and/or provide for appropriate medical care for the Plaintiff's decedent; and
- e. Was otherwise negligent in the care and treatment of Plaintiff's decedent under the circumstances then existing as alleged herein.

17. That as a direct and proximate result of the Defendants' negligence as alleged herein, Jessica⁴Lynn Martin died on 10 August 2011.

18. That as a direct and proximate result of the Defendants' negligence as alleged herein, the Plaintiff, Matt Robinson, as Administrator of the Estate of Jessica Lynn Martin, is entitled to recover from these Defendants:

- a. Expenses for the care, treatment and hospitalization incident to the injury resulting in death.
- b. Compensation for the pain and suffering of Ms. Martin.
- c. The funeral expenses of Ms. Martin.
- d. The present monetary value of the Decedent, Ms. Jessica Martin, to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of the reasonably expected:
 - (1) Services, protection, care and assistance of the Decedent, whether voluntary or obligatory, to the persons entitled to damages recovered and
 - (2) Society, companionship, comfort, guidance, kindly offices, and advice of the Decedent to the persons entitled to the damages recovered all in the sum exceeding \$10,000.00.

**SECOND CAUSE OF ACTION
(Best Judgment)**

19. Plaintiff incorporates by reference paragraphs 1-18 of this Complaint as if fully set out herein pursuant to Rule 10(c) of the North Carolina Rules of Civil Procedure.

20. That the negligence and substandard treatment of the Defendant Smathers as alleged herein also constituted a failure of said Defendant to exercise her best judgment incident to the care provided to the Plaintiff's decedent.

**THIRD CAUSE OF ACTION
(Reasonable Care)**

21. Plaintiff incorporates by reference paragraphs 1-20 of this Complaint as if fully set out herein pursuant to Rule 10(c) of the North Carolina Rules of Civil Procedure.

22. That the negligence and substandard treatment of the Defendant Smathers as alleged herein constituted a failure to exercise reasonable care as to the Plaintiff's decedent.

**FOURTH CAUSE OF ACTION
(Negligence)**

23. Plaintiff incorporates by reference paragraphs 1-22 of this Complaint as if fully set out herein pursuant to Rule 10(c) of the North Carolina Rules of Civil Procedure.

24. That the failure of Sheriff Suttles, and in addition, the failure of the Haywood County Sheriff's Department employees who were engaged in the management and operation of the jail facility as alleged herein, and for which employees, Sheriff Suttles and the office of the Sheriff of Haywood County, along with Haywood County, are vicariously liable, and failed to exercise reasonable care with regard to the management and oversight and assessment of the Plaintiff's decedent, Ms. Martin, during the period of time that she was in the sole custody of the Haywood County Sheriff's Department, as said Defendants owed Plaintiff's decedent a duty of reasonable care in the monitoring and assessment of her during the period of time that she was in their custody.

25. That Sheriff Suttles, directly and vicariously, and said employees as alleged herein, were negligent in the following particulars, including but not limited to:

- a. By failing to assess and monitor Plaintiff's decedent;
- b. By failing to request appropriate medical care for the Plaintiff's decedent;
- c. By failing to provide appropriate medical care to Plaintiff's decedent;
- d. Was otherwise negligent.

**FIFTH CAUSE OF ACTION
(Ordinary Negligence, Pain and Suffering)**

26. Plaintiff incorporates by reference paragraphs 1-25 of this Complaint as if fully set out herein pursuant to Rule 10(c) of the North Carolina Rules of Civil Procedure.

27. Plaintiff does allege this cause of action in the alternative to Plaintiff's claim for the Plaintiff's decedent's wrongful death pursuant to Rule 8 of the North Carolina Rules of Civil Procedure and established North Carolina authority and is pled as a separate claim for damages sustained by the Plaintiff's decedent by reason of the negligent actions of the Defendants, or one of them, during her lifetime.

28. That as a direct and proximate result of the Defendants' negligence as alleged herein, the Plaintiff's decedent did sustain personal injuries including but not limited to pain and suffering, loss of use of part of the body, mental anguish, inconvenience, loss of capacity for enjoyment of life and discomfort as set out herein.

29. That as a direct and proximate result of the negligence of the Defendants as alleged herein, the Plaintiff's decedent, Ms. Jessica Martin, sustained personal injuries and pain

and suffering up to and including the time of her death which occurred on 10 August 2011, for which Defendants are liable to the Plaintiff in his capacity as Administrator of the Estate of Jessica Lynn Martin in the sum exceeding \$10,000.00.

**SIXTH CAUSE OF ACTION
(Action on Sheriff's Surety Bond)**

30. Plaintiff incorporates by reference paragraphs 1-29 of this Complaint as if fully set out herein pursuant to Rule 10(c) of the North Carolina Rules of Civil Procedure.

31. That under the provisions of N.C.G.S. § 162-8, the Sheriff is required to furnish a bond payable to the State of North Carolina for the faithful execution of his office.

32. Upon information and belief, the entities listed in Paragraphs 7 and 8 of this Complaint, or one of them, have issued said bond.

33. That pursuant to the provisions of N.C.G.S. § 162-12, said Surety is liable for the defaults in the Sheriff's official duties.

34. That pursuant to the provisions of N.C.G.S. § 162-2, the Sheriff has a responsibility for the care and custody of the Haywood County Jail.

35. It is alleged upon information and belief, that the Sheriff's employees, all of whom were acting in their official capacities, and under color of their office for and on behalf of the Defendant Sheriff Suttles, received Jessica Lynn Martin and observed her while she was detained within the Haywood County Detention Center and failed to act upon her complaints and symptoms as set out herein, all of which was a failure to exercise reasonable care and was negligent.

36. It is herein alleged that Sheriff Suttles and the Surety herein had a duty to provide medical care to a prisoner known to be in need of such care and is liable for the negligent failure to do so.

37. It is further alleged that the Haywood County Sheriff's Department, by and through its Sheriff and officers and other employees had a statutory duty to provide appropriate medical care to prisoners pursuant to the provisions of N.C.G.S. § 153A-225 and other relevant provisions, including but not limited to N.C.G.S. § 153A-221.

38. It is alleged that the Sheriff in his official capacity may be held liable for the acts and omissions of his appointed jailers and thus, so can the Sheriff's Surety.

39. That Jessica Lynn Martin, by virtue of the fact she had been deprived of her liberty, and was in the custody of the Haywood County Sheriff's Department, and by virtue of said deprivation of liberty, could not provide medical care for herself.

40. That the County of Haywood had a nondelegable duty to provide adequate medical treatment to those in its custody, including obtaining timely assessment of complaints from persons in its custody.

41. That anyone within the custody of the Haywood County Sheriff's Department must rely on said authorities to treat their medical needs as, if said authorities fail to do so, those needs will not be met. And as such, Jessica Lynn Martin was deprived of her Eighth Amendment rights under the United States Constitution, and also Article I, Section 27 of the North Carolina Constitution.

42. That as a direct and proximate result of the negligence of said Defendants the Plaintiff has been damaged as alleged herein.

SIXTH CAUSE OF ACTION
(Haywood County; Pamela Smathers; Sheriff Bobby R.Suttles
Constitutional Claim)

43. Plaintiff incorporates paragraphs 1-42 of this Complaint as if fully set out herein pursuant to Rule 10(c) of the North Carolina Rules of Civil Procedure.

44. Plaintiff brings this action in the alternative and in addition to the foregoing claims for wrongful death contained within this Complaint.

45. That should it be determined that Haywood County has not purchased liability insurance or that Plaintiff's claims are barred under any immunity such as sovereign or governmental immunity in any of its various forms or that any such immunity exists, which Plaintiff denies, then in that event, Plaintiff has no adequate remedy at law and asserts the acts and omissions and negligence of the above-named Defendants which constituted a proximate cause of the death of the Plaintiff's decedent as being in violation of the Plaintiff's decedent's rights as established in Article I, § 1 of the North Carolina Constitution (The Equality and Rights of Persons), including the rights of health and safety, Article I, § 19 (Law of the Land; Equal Protection of the Laws), and Article I, § 36 (Other Rights of the People).

46. That the Plaintiff is afforded the opportunity to assert these rights under such circumstances as alleged within this cause of action pursuant to Article I, § 18 entitled "Courts Shall be Open."

47. That the Defendants Haywood County, Pamela Smathers, and Sheriff Bobby R. Suttles in their individual and official capacities, undertook and assumed an affirmative duty under the constitutional provisions as set out herein, and the statutory duty imposed by law to ensure the safety, health, and security of said inmate, as it did Jessica Lynn Martin at all relevant times alleged herein.

48. The Defendants' actions and omissions as alleged herein in failing to provide Jessica Lynn Martin, who was in their custody, with care consistent with competent professional judgment, and as a result caused Martin's suffering and subsequent death.

49. The substantive constitutional rights of the Plaintiff's decedent included, but were not limited to, the right to protection from unnecessary harm and to be reasonably safe from harm while in government custody.

50. That as a direct and proximate result of the acts and omissions of the Defendants including the Haywood County, Office of the Haywood County Sheriff and its employee, Pamela Smathers, agents and employees in their official capacities, as alleged herein, the Plaintiff's decedent died, and, as alleged herein, said Defendants are liable to this Plaintiff jointly and severally for the wrongful death of the Plaintiff's decedent, in a sum exceeding \$10,000.

Rule 9(j) Certification

51. Plaintiff incorporates by reference paragraphs 1-50 of this Complaint as if fully set out herein pursuant to Rule 10(c) of the North Carolina Rules of Civil Procedure.

52. That attorneys representing Plaintiff object to the requirements of Rule 9(j) of the North Carolina Rules of Civil Procedure on the basis that this rule seems to require Plaintiff to prove her case before factual discovery is even begun, and that this rule denies medical malpractice plaintiffs their right of due process and legal protection of the law, of the right to open courts, and of the right to a jury trial (in violation of both United States and North Carolina Constitutions). Furthermore, Rule 9(j) is an unconstitutional violation of the following:

- a. Amendment VII and Amendment XIV of the United States Constitution; and
- b. Article I, Sections 18, 19, and 25 of the North Carolina Constitution.

Without waiving these objections, the attorneys for the Plaintiff provide information below to comply with Rule 9(j). Pursuant to Rule 9(j) of the North Carolina Rules of Civil Procedure, the medical care by Defendants have been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the North Carolina Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standards of care.

53. In addition, should a court later determine that any of the persons who have reviewed the medical care by the Defendants do not meet the requirement of Rule 702(b) or 702(c) of the North Carolina Rules of Evidence, then the Plaintiff will seek to have such persons qualified as expert witnesses by motion under Rule 702(e) of the North Carolina Rules of Evidence, and Plaintiff moves the Court (as provided in Rule 9(j) of the North Carolina Rules of Civil Procedure, and Rule 702(e) that such persons be qualified as expert witnesses under Rule 702(e) of the North Carolina Rules of Evidence. Plaintiff does not waive her objections on the grounds stated to the purported certification requirements of Rule 9(j) by providing this certification, and specifically preserves objections to any "discovery" related to Rule 9(j).

Prayer for Relief

WHEREFORE, Plaintiff respectfully prays the Court as follows:

1. That the Plaintiff have and recover of the Defendants, jointly and severally, in a sum in excess of \$10,000.00 as set out herein.
2. That costs of this action be taxed to the Defendants.
3. For trial by jury.
4. For such other and further relief as this Court may deem just and proper.

This the 30th day of September, 2011.

LONG, PARKER, WARREN, ANDERSON & PAYNE, P.A.

By: _____

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