

2012 WL 5505928 (Ariz.Super.) (Trial Pleading)
Superior Court of Arizona.
Pima County

Janice BATCHELDER, Personal Representative of the
Estate of Catherine Tapley on behalf of the Estate, Plaintiffs,

v.

VILLA MARIA CARE CENTER, L.L.C., a foreign corporation, dba Villa Maria Care Center;
Melissa D. Levine, M.D. and John Doe Levine, wife and husband; El Sol Family Medicine, P.C., an
Arizona Corporation; Laura L. Elliott, FNP, and John Doe Elliott, wife and husband;, Defendants.

No. C20126836.
November 2, 2012.

(Tort - Non-Motor Vehicle; **Elder Abuse**; Medical Malpractice; Wrongful Death)

Complaint

Haralson, Miller, Pitt, Feldman & McAnally, P.L.C., One South Church Avenue, Suite 900, Tucson, Arizona 85701, (520)
792-3836, [Thomas G. Cotter](#), State Bar No. 9059, Attorneys for Plaintiff.

Plaintiff alleges as follows:

JURISDICTION AND VENUE

DEFENDANT VILLA MARIA CARE CENTER

1. Plaintiff Janice Batchelder is the personal representative of the Estate of Catherine Tapley, deceased. Pima County Superior Court Cause No. PB2011-0508.
2. Defendant Villa Maria Care Center, L.L.C., was at all relevant times a foreign limited liability corporation doing business in Tucson, Pima County, Arizona as Villa Maria Care Center, 4310 East Grant Road.
3. At all relevant times, Defendant was licensed by the State of Arizona Department of Health Services as a nursing care institution and held itself out as being qualified to provide skilled nursing services, including rehabilitation services.
4. Catherine Tapley was a patient at Villa Maria Care Center from March 13, 2008 to November 3, 2010.

COUNT ONE

(Elder Abuse)

DEFENDANT VILLA MARIA CARE CENTER

5. At all relevant times, Catherine Tapley was an incapacitated and vulnerable adult, as those terms are defined in [A.R.S. § 46-451](#).

6. At all relevant times, Defendant was employed to provide care to Catherine Tapley.

7. Defendant caused or permitted the health of Catherine Tapley to be endangered through neglect so that she ultimately was injured, suffered greatly and died on November 3, 2012. Defendant's conduct, acting through its employees and agents, constitutes neglect and/or **abuse** as those terms are defined in [A.R.S. § 46-451](#). More specifically, on June 21, 2010, Ms. Tapley was assessed by Defendant's staff as having red skin in the area of her heels. Continuous heel care was ordered by her health care providers including the use of heel boots as preventative care. A nutrition assessment performed on June 26, 2012 indicated that Ms. Tapley was assessed as a high risk for contracting pressure ulcers. These significant changes should have triggered the duty on the part of defendant's staff to develop an individual care plan for Ms. Tapley to prevent and minimize pressure ulcers. No individualized care plan was prepared. Moreover, although weekly skin checks were required, no skin checks were actually performed between July 17, 2010 and August 9, 2010. During the skin check performed on August 15, 2010, eschar was noted. Ms. Tapley's care plan was not revised to include care for the developing pressure ulcers until August 17, 2010. Defendant's employees failed to perform the required weekly skin checks, failed to develop an individual care plan for Ms. Tapley and failed to carry out the orders of her physician and nurse practitioners regarding her heel care. The result of the foregoing was Catherine Tapley developed painful and unstageable heel ulcers on her left foot which then developed into sepsis. Catherine Tapley died on November 3, 2012 as a result of defendant's neglect and **abuse** as those terms are defined by [A.R.S. § 46-451](#).

8. Pursuant to [A.R.S. § 46-455](#), Plaintiff requests an award of Catherine Tapley's actual and consequential damages, as well as punitive damages, cost of suit and reasonable attorney's fees, and for such further relief as the Court deems proper. Actual and consequential damages include but are not limited to the costs of decedent's medical services made necessary by defendant's conduct, as well as the decedent's pain and suffering.

COUNT TWO

(Medical Malpractice)

DEFENDANT VILLA MARIA CARE CENTER

9. Plaintiff re-alleges all the allegations set forth in paragraphs 1-9 above as if set forth fully herein.

10. Defendant and its employees are health care providers as the term is used in the Arizona Medical Malpractice Act, [A.R.S. § 12-561 et seq.](#)

11. Defendant's employees provided care to Catherine Tapley while acting within the course and scope of their employment with Defendant. Defendant is vicariously liable for their employee's negligence.

12. Defendant's employees owed a duty to Catherine Tapley to exercise the degree of care, skill and learning expected of a reasonable, prudent health care provider in the same profession or class to which they belong within Arizona acting under the same or similar circumstances.

13. Defendant's employees failed to exercise that degree of care, skill and learning expected of a reasonable, prudent health care provider in the profession or class to which they belong within the State acting under the same or similar circumstances.

14. Defendant's employees' failure described above proximately caused Catherine Tapley's death.

JURISDICTION AND VENUE

DEFENDANTS LEVINE, EL SOL FAMILY MEDICINE, AND ELLIOTT

15. Plaintiff re-alleges all of the allegations set forth in paragraphs 1-14 above as if set forth fully herein.

16. Defendants Melissa D. Levine, M.D. and John Doe Levine, are residents of Pima County, Arizona. At all relevant times, Defendant Melissa D. Levine, M.D. was acting on behalf of her marital community with John Doe Levine.

17. Defendant El Sol Family Medicine, P.C., ("El Sol") was at all relevant times an Arizona Corporation doing business in Tucson, Pima County, Arizona.

18. At all relevant times, Defendant Melissa D. Levine, M.D. was acting as an employee and within the course and scope of her employment with El Sol Family Medicine, P.C.

18. Defendants Laura L. Elliott, FNP, and John Doe Elliott, are residents of Pima County, Arizona. At all relevant times, Defendant Laura L. Elliott, FNP was acting on behalf of her marital community with John Doe Elliott.

19. Defendants Levine, El Sol and Elliott are health care providers as the term is used in the Arizona Medical Malpractice Act, [A.R.S. § 12-561](#) *et.seq.*

20. Defendants provided care to Catherine Tapley while she was a patient at Villa Maria Care Center from March 13, 2008 to November 3, 2010.

COUNT THREE

(Elder Abuse)

DEFENDANTS LEVINE, EL SOL FAMILY MEDICINE, AND ELLIOTT

21. At all relevant times, Catherine Tapley was an incapacitated and vulnerable adult, as those terms are defined in [A.R.S. § 46-451](#).

22. At all relevant times, Defendants had been employed to provide care to Catherine Tapley.

23. Defendants caused or permitted the health of Catherine Tapley to be endangered through neglect so that she ultimately was injured, suffered greatly and died on November 3, 2012. Defendants' conduct constitutes neglect and/or **abuse** as those terms are defined in [A.R.S. § 46-451](#)

24. Pursuant to [A.R.S. § 46-455](#), Plaintiff requests an award of Catherine Tapley's actual and consequential damages, as well as punitive damages, cost of suit and reasonable attorney's fees, and for such further relief as the Court deems proper. Actual and consequential damages include the costs of decedent's medical services made necessary by defendants' conduct, as well as the decedent's pain and suffering.

COUNT FOUR

(Medical Malpractice)

DEFENDANTS LEVINE, EL SOL FAMILY MEDICINE, AND ELLIOTT

25. Plaintiff re-alleges all the allegations set forth in paragraphs 1-24 as if set forth fully herein.

26. Defendants are health care providers as the term is used in the Arizona Medical Malpractice Act, [A.R.S. § 12-561](#) *et.seq.*

27. Defendants owed a duty to Catherine Tapley to exercise the degree of care, skill and learning expected of a reasonable, prudent health care providers in the same profession or class to which they belong within Arizona acting under the same or similar circumstances.

28. Defendants failed to exercise that degree of care, skill and learning expected of reasonable, prudent health care providers in the profession or class to which they belong within the State acting under the same or similar circumstances.

29. Defendants failure described above proximately caused Catherine Tapley's death.

WHEREFORE, Plaintiff seeks compensatory and general damages, costs of suit, and such other and further relief as is appropriate under the facts and law.

Dated this 1st day of November, 2012.

HARALSON MILLER, PITT,

FELDMAN & MCANALLY, P.L.C.

By:

Thomas G. Cotter

Attorney for Plaintiff

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