

2012 WL 11943572 (Ohio Com.Pl.) (Trial Pleading)

Court of Common Pleas of Ohio.

Hamilton County

Patricia HULSMEYER,

v.

HOSPICE OF SOUTHWEST OHIO, INC., et al.

No. A1201578.
February 28, 2012.

Complaint with Jury Demand Endorsed Hereon

[Robert A. Klingler](#) (0031603), for plaintiff.

For her Complaint against Defendants Hospice of Southwest Ohio, Inc., Joseph Killian, and Brookdale Senior Living, Inc., Plaintiff Patricia Hulsmeyer states as follows:

PARTIES AND VENUE

1. Ms. Hulsmeyer is an individual residing in Loveland, Ohio. She is a registered nurse and a former employee of Defendant Hospice of Southwest Ohio, Inc.
2. Defendant Hospice of Southwest Ohio, Inc. ("Hospice") is an Ohio for profit corporation with its principal place of business in Hamilton County, Ohio. Hospice provides hospice care to residents of long-term care facilities and residential care facilities as those terms are defined in [R.C. § 3721.21](#).
3. Defendant Joseph Killian is an individual residing in Warren County, Ohio. Mr. Killian is the Chief Executive Officer of Hospice.
4. Defendant Brookdale Senior Living, Inc. ("Brookdale") is a Delaware for profit corporation conducting business in Hamilton County, Ohio. Brookdale operates a long-term care facility and residential care facility as those terms are defined in [RC. § 3721.21](#).
5. Venue is appropriate in this Court pursuant to [Rule 3\(B\)\(3\) of the Ohio Rules of Civil Procedure](#) because Defendants conducted the activity that gave rise to the claims in Hamilton County, Ohio.

FACTUAL ALLEGATIONS

6. Ms. Hulsmeyer was an employee of Hospice for nearly two years. At the time of her termination, Ms. Hulsmeyer held the position of Team Manager. Ms. Hulsmeyer was responsible for overseeing the care of Hospice's patients and monitoring the work of various other nurses and aides employed by Hospice.
7. Hospice provides hospice care to residents at various long-term care and residential care facilities in the Greater Cincinnati area. When a resident is placed on hospice care, Hospice is retained to provide nursing and other services to the residents, even though they remain in the long-term care or residential care facility in which they reside. The long-term care or residential care facility's staff also continues to provide the residents care.

8. Brookdale operates Brookdale Place at Kenwood. Hospice provided hospice services to residents at that location.

9. On October 19, 2011, Ms. Hulsmeyer attended a team meeting at Hospice's facility to discuss various patients. During that meeting, a nurse, Roxanne Schneider, indicated that one of Hospice's patients at Brookdale ("Patient") had suffered some bruising. She further indicated that she felt the bruising was inconsistent with previous falls and she suspected abuse and/or **neglect** at the hands of Brookdale staff. Subsequently, an aide present at the meeting, Rachel Brown, indicated that she had taken a photograph of additional marks on Patient's skin, at Patient's request, with her mobile telephone. Ms. Brown then forwarded the photograph to Ms. Hulsmeyer's mobile telephone as well as to other staff. All present concluded that the likely cause of the marks in the photograph was an excessively-tightened bag from a Foley catheter.

10. After the revelation of suspected abuse and/or **neglect**, while still in the meeting, John Back, a nurse, Brian Keegan, M.D., Hospice's staff physician, and Ann Schuur, LSW, all informed Ms. Hulsmeyer that she was obligated to call both Brookdale and Patient's family immediately to report the suspected abuse or **neglect**.

11. During the meeting, Ms. Hulsmeyer called Brookdale and spoke to Cindy Spaunagle, the Director of Nursing at Brookdale. Ms. Hulsmeyer relayed her suspicions of abuse and/or **neglect** to Ms. Spaunagle, who said that she would perform a full-body examination of Patient and take appropriate measures. Ms. Spaunagle also indicated that she would contact Patient's daughter after the examination.

12. After contacting Brookdale, Ms. Hulsmeyer immediately went to the office of her supervisor, Isha Abdullah, the Chief Clinical Officer of Hospice. Ms. Hulsmeyer informed Ms. Abdullah about the suspected abuse or **neglect** and that Mr. Back, Dr. Keegan, and Ms. Schuur had counseled her to contact Brookdale and Patient's family. Ms. Abdullah dismissively stated, "Oh, more stuff with [Patient]."

13. Ms. Hulsmeyer then left Ms. Abdullah's office and placed a call to Patient's daughter ("Daughter"). Ms. Hulsmeyer informed Daughter about the bruising and that she suspected abuse or **neglect** by Brookdale's staff. Ms. Hulsmeyer also recounted her conversation with Ms. Spaunagle and told Daughter that Ms. Spaunagle would be calling her.

14. After her telephone conversation with Daughter, Ms. Hulsmeyer returned to Ms. Abdullah's office and showed her the picture of the marks on Patient's skin. Ms. Abdullah exclaimed, "Oh, my gosh, who would leave a Foley bag on like that!"

15. The next day, during the daily morning meeting with Ms. Abdullah, Ms. Hulsmeyer submitted a written report concerning the suspected abuse and/or **neglect** of Patient.

16. On October 21, 2011, at Daughter's request, aide Rachel Brown took additional photographs of the bruising on Patient. When Ms. Brown returned to Hospice's facility, she showed the pictures to Ms. Hulsmeyer and Betty Barnett, Hospice's Chief Operating Officer and Director of Human Resources.

17. On Monday, October 24, 2011, Ms. Hulsmeyer received a voicemail message from Daughter stating that Ms. Spaunagle had not yet contacted her. Daughter then called Ms. Hulsmeyer later in the day and informed Ms. Hulsmeyer that she had contacted Ida Hecht, the Executive Director of Brookdale, because she had not heard from Ms. Spaunagle. Ms. Hecht told Daughter that she had not heard about the suspected abuse or **neglect**, and that she was "very disturbed" about that breakdown in communication.

18. On November 4, 2011, a meeting was held at Brookdale to discuss Patient's care. In attendance were Ms. Hulsmeyer, Ms. Spaunagle, Ms. Hecht, Roxanne Schneider, Daughter, Patient's son, Ann Schuur, and Jane Keller, a nurse employed by Hospice. During the meeting, the attendees first discussed billing matters. Once that was concluded, they passed around Rachel Brown's phone containing a picture of Patient's bruising.

19. On November 11, 2011, Ms. Hulsmeyer began a leave of absence to undergo a medical procedure. She was set to return on November 28, 2011.

20. During Ms. Hulsmeyer's leave of absence, Jackie Lippert, a Regional Health and Wellness Director for Brookdale, contacted Ms. Abdullah and Ms. Barnett. Ms. Lippert was angry and demanded that Ms. Abdullah and Ms. Barnett tell her who informed Daughter about Patient's bruising. Toward the end of the telephone call, Ms. Lippert stated, "We got rid of our problem [Ms. Spaunagle], what are you going to do?" Brookdale terminated Ms. Spaunagle.

21. On November 28, 2011, Ms. Hulsmeyer's first day back at work since her leave of absence, Ms. Abdullah asked Ms. Hulsmeyer to join her in her office shortly after Ms. Hulsmeyer arrived at Hospice. Ms. Barnett, Hospice's COO and Director of Human Resources, was also in Ms. Abdullah's office. They explained to Ms. Hulsmeyer that they all had to call Ms. Lippert.

22. They placed a call to Ms. Lippert. Ms. Abdullah explained to Ms. Hulsmeyer that Ms. Lippert wanted to know why Ms. Hulsmeyer had informed Daughter about the suspected abuse and/or **neglect**, and why the photographs were taken and shown to Patient's family. Ms. Lippert was irate. She stated that Daughter had told her that she would not recommend Brookdale to anyone. She accused Ms. Hulsmeyer of making Brookdale "look bad" and "stirring up problems." Ms. Lippert then stated that she could not believe that the others in the room (Ms. Abdullah and Ms. Barnett) thought Ms. Hulsmeyer had done the right thing. Ms. Barnett asked what should have been done differently. Ms. Lippert snapped, "The family should not have been called and the photographs should not have been taken." Finally, Ms. Lippert - that Brookdale would cease recommending Hospice to its residents. Hospice derives a substantial amount of business from Brookdale, at both its Brookdale Place at Knwood location and other Brookdale facilities in the Greater Cincinnati area.

23. On November 30, 2011, Ms. Hulsmeyer went to Ms. Abdullah's office to discuss another concern regarding Patient that had arisen on the overnight shift. While there, Ms. Abdullah raised the issue of photographs being taken of Patient, allegedly without consent. Ms. Hulsmeyer repeated that she did not authorize the aide to take the photographs, and that she did not know about the photographs until the meeting on October 19, 2011, when she first learned about the suspected abuse or **neglect**, nor did she know about the additional photographs taken by the aides on October 21, 2011, until they were shown to her at the Hospice facility.

24. At approximately 1:15 p.m. on November 30, 2011, Ms. Barnett called Ms. Hulsmeyer in her office and informed her that she was going to be terminated. Ms. Hulsmeyer attempted to meet with Defendant Joe Killian in his office, but Ms. Barnett intercepted her. Ms. Barnett told Ms. Hulsmeyer that she had already spoken with Mr. Killian and that he had instructed her to "cut ties" with Ms. Hulsmeyer. He further stated, "I don't want to be associated with her. I don't have time."

25. Hospice presented Ms. Hulsmeyer with a termination letter on November 30, 2011. In the letter, Hospice falsely claimed that Ms. Hulsmeyer did not timely notify Hospice's "Management" about the suspected abuse or **neglect**. The letter also criticized Ms. Hulsmeyer for notifying Daughter that "[Ms. Hulsmeyer] suspected **neglect**." Finally, the letter falsely claims that the first time Hospice's "upper management" learned about the suspected abuse and/or **neglect** of Patient was when Ms. Lippert contacted Ms. Abdullah.

26. Defendant Killian and Ms. Abdullah signed the termination letter.

27. Hospice's stated justification for terminating Ms. Hulsmeyer is demonstrably false and is pretext for illegal retaliation against Ms. Hulsmeyer for reporting suspected abuse or **neglect** to Daughter.

Count I

(Retaliation In Violation Of R.C. § 3721.24 Against Hospice)

28. Ms. Hulsmeyer repeats the allegations contained in paragraphs 1 through 27 of the Complaint as if fully restated herein.

29. Ohio law provides: "No person or government entity shall retaliate against an employee or another individual used by the person or government entity to perform any work or services who, in good faith, makes a report of suspected abuse or **neglect** of a resident...."

30. To establish a *prima facie* case of retaliation, Ms. Hulsmeyer must show that she engaged in protected activity, that she was the subject of adverse employment action, and that a causal link existed between the protected activity and the adverse action.

31. Ms. Hulsmeyer engaged in protected activity when she reported the marks and bruising on Patient to Daughter, which she suspected to be abuse and/or **neglect**.

32. Ms. Hulsmeyer suffered an adverse action when Hospice terminated her on November 30, 2011.

33. A causal link existed between the protected activity and the adverse action as demonstrated by Hospice's termination letter, the temporal proximity between the report of suspected abuse and/or **neglect** and Ms. Hulsmeyer's termination, Brookdale's threat to cease recommending Hospice, and all other facts pled above.

34. Hospice retaliated against Ms. Hulsmeyer for making a report of suspected abuse and/or **neglect** of a resident by terminating her employment.

35. As a result of Hospice's unlawful actions, Ms. Hulsmeyer has suffered loss of employment, loss of past and future income, emotional pain and suffering, inconvenience, and loss of enjoyment of life.

36. Hospice acted with malice and a conscious disregard for the rights of others that had a great probability of causing substantial harm.

Count II

(Retaliation In Violation Of R.C. § 3721.24 Against Killian)

37. Ms. Hulsmeyer repeats the allegations contained in paragraphs 1 through 36 of the Complaint as if fully restated herein.

38. Ohio law provides: "No person or government entity shall retaliate against an employee or another individual used by the person or government entity to perform any work or services who, in good faith, makes a report of suspected abuse or **neglect** of a resident...."

39. To establish a *prima facie* case of retaliation, Ms. Hulsmeyer must show that she engaged in protected activity, that she was the subject of adverse employment action, and that a causal link existed between the protected activity and the adverse action.

40. Ms. Hulsmeyer engaged in protected activity when she reported the marks and bruising on Patient to Daughter, which she suspected to be abuse and/or **neglect**.

41. Ms. Hulsmeyer suffered an adverse action when Killian terminated her on November 30, 2011.

42. A causal link existed between the protected activity and the adverse action as demonstrated by Killian's termination letter, the temporal proximity between the report of suspected abuse and/or **neglect** and Ms. Hulsmeycr's termination, Brookdale's threat to cease recommending Hospice, and all other facts pled above.

43. Killian retaliated against Ms. Hulsmeycr for making a report of suspected abuse and/or **neglect** of a resident by terminating her employment.

44. As a result of Killian's unlawful actions, Ms. Hulsmeyer has suffered loss of employment, loss of past and future income, emotional pain and suffering, inconvenience, and loss of enjoyment of life.

45. Killian acted with malice and a conscious disregard for the rights of others that had a great probability of causing substantial harm.

Count III

(Wrongful Discharge In Violation Of Ohio Public Policy Against Hospice)

46. Ms. Hulsmeycr repeats the allegations contained in paragraphs 1 through 45 of the Complaint as if fully restated herein.

47. Ohio has a clear public policy against the abuse and **neglect** of residents in long-term care or residential care facilities.

48. Hospice's termination of Ms. Hulsmeycr for her report to Daughter of suspected abuse and/or **neglect** of Patient, as set forth above, jeopardized Ohio public policy to the extent that her report was not protected under [R.C. § 3721.24](#).

49. Ms. Hulsmeycr's termination was motivated by her report to Daughter of suspected abuse and/or **neglect** of Patient.

50. Hospice lacked an overriding legitimate business justification for dismissing Ms. Hulsmeycr.

51. As a result of Hospice's unlawful actions, Ms. Hulsmeycr has suffered loss of employment, loss of past and future income, emotional pain and suffering, inconvenience, and loss of enjoyment of life.

52. Hospice acted with malice and a conscious disregard for the rights of others that had a great probability of causing substantial harm.

Count IV

(Tortious Interference With Business Relationship Against Brookdale)

53. Ms. Hulsmeyer repeats the allegations contained in paragraphs 1 through 52 of the Complaint as if fully restated herein.

54. Ms. Hulsmeyer had a business relationship with Hospice. She served as the Managing Nurse, for which she received compensation.

55. Brookdale knew of the business relationship.

56. Brookdale intentionally and improperly interfered with the business relationship between Ms. Hulsmeyer and Hospice, resulting in her termination. Brookdale was angry that Ms. Hulsmeyer reported suspected abuse and/or **neglect** to Daughter, insisted that Hospice terminate Ms. Hulsmeyer as a result, and threatened to terminate its business relationship with Hospice to

force Hospice to terminate Ms. Hulsmeyer. Brookdale was motivated by a desire to protect its reputation over serving and protecting its **elderly** residents, which is contrary to the interests of society and Brookdale's residents.

57. Brookdale was a third party to the business relationship between Ms. Hulsmeyer and Hospice.

58. Brookdale was motivated by a desire to interfere with the business relationship between Ms. Hulsmeyer and Hospice.

59. Brookdale had no privilege to interfere with the business relationship.

60. Ms. Hulsmeyer suffered damages as a direct result of Brookdale's interference with her business relationship with Hospice, including loss of employment, loss of past and future income, emotional pain and suffering, inconvenience, and loss of enjoyment of life.

61. Brookdale acted with malice and a conscious disregard for the rights of others that had a great probability of causing substantial harm.

Count V

(Retaliation In Violation Of [R.C. § 3721.24](#) Against Brookdale)

62. Ms. Hulsmeycr repeats the allegations contained in paragraphs 1 through 61 of the Complaint as if fully restated herein.

63. Ohio law provides: "No person or government entity shall retaliate against an employee or another individual used by the person or government entity to perform any work or services who, in good faith, makes a report of suspected abuse or **neglect** of a resident... retaliatory actions include discharging, demoting, or transferring the employee or other person, preparing a negative work performance evaluation of the employee or other person, reducing the benefits, pay, or work privileges of the employee or other person, and any other action intended to retaliate against the employee or other person." ***

64. To establish a prima facie case of retaliation, Ms. Hulsmeycr must show that she engaged in protected activity, that she was the subject of adverse employment action, and that a causal link existed between the protected activity and the adverse action.

65. Ms. Hulseyer engaged in protected activity when she reported the marks and bruising on Patient to Daughter, which she suspected to be abuse and/or **neglect**.

66. Ms. Hulsmeycr suffered an adverse action when Hospice and Defendant Killian terminated her on November 30, 2011.

67. A causal link existed between the protected activity and the adverse action as demonstrated by Hospice's termination letter, the temporal proximity between the report of suspected abuse and/or **neglect** and Ms. Hulsmeycr's termination, Brookdale's threat to cease recommending Hospice, and all other facts pled above.

68. Brookdale engaged in a retaliatory action pursuant to [R.C. § 3721.24](#) by inducing Hospice and Killian to terminate Ms. Hulsmeyer, as alleged above. Such action was intended to retaliate against Ms. Hulsmeycr for reporting suspected abuse and/or **neglect** to Daughter.

69. As a result of Brookdale's unlawful actions, Ms. Hulsmeycr has suffered loss of employment, loss of past and future income, emotional pain and suffering, inconvenience, and loss of enjoyment of life.

70. Brookdale acted with malice and a conscious disregard for the rights of others that had a great probability of causing substantial harm.

WHEREFORE, Plaintiff Patricia Hulsmeyer demands judgment against Defendants Hospice, Killian, and Brookdale as follows:

1. An award of back pay and benefits in the amount Ms. Hulsmeyer would have earned from the date of her wrongful discharge until the date of judgment, with prejudgment interest, in an amount in excess of \$25,000;
2. Reinstatement to her position as Managing Nurse, or if reinstatement is not feasible, an award of front pay equal to the amount she would have earned from the date of judgment forward, in an amount in excess of \$25,000;
3. An award of compensatory damages against Defendants for all emotional distress and other damages Ms. Hulsmeyer has suffered as a result of Defendants' wrongful actions, in an amount in excess of \$25,000;
4. An award of punitive damages in an amount in excess of \$25,000;
5. An award of attorney fees, including litigation expenses and the costs of this action; and
6. All other relief to which she may be entitled.

Jury Demand

Plaintiff, by and through counsel, demands a trial by jury on all matters so triable.

Respectfully submitted,

/s/Robert A. Klingler

Robert A. Klingler (0031603)

Brian J. Butler (0082675)

ROBERT A. KLINGLER CO., L.P.A.

525 Vine Street, Suite 2320

Cincinnati, Ohio 45202-3133

Telephone: (513) 665-9500

Facsimile: (513) 621-3240

Email: rak@klinglerlaw.com

bjb@klinglerlaw.com

Attorneys For Plaintiff