

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

COBY TOWNSEND HURST

v.

CASE NO # 5:21-CV-05029 TLB-
CDC

DR MARK RUCKER, MERCY HOSPITAL

NORTHWEST ARK NURSE DANIEL

BURSON; MERCY HOSPITAL

NORTHWEST ARK AND

MERCY HOSPITAL ROGERS d/b/a

MERCY HOSPITAL NORTHWEST ARK.

OBJECTIONS TO SUMMARY
JUDGMENTS, AND
AMENDED COMPLAINT

COMES NOW COBY T. HURST IN HIS PRO^{SE}
OBJECTIONS TO SUMMARY JUDGMENTS AND
AMENDED COMPLAINT

AMENDS COMPLAINT FROM RAPE TO MEDICAL
BATTERY, ALL ELSE STAY THE SAME. MEDICAL
BATTERY (HEALING ARTS BATTERY) AN UNCONSENTED
MEDICAL PROCEDURE. MEDICAL BATTERY IS THE
PHYSICAL CONTACT, WITH A PATIENT BY A MEDICAL

CARE PROVIDER, THROUGH A MEDICAL PROCEDURE, OFTEN SURGERY, THAT WAS NOT DISCLOSED TO AND, CONSENTED BY THE PATIENT. [FORCED CATHETERIZATION] THE CONDUCT IN QUESTION DONE BY NURSE BURSON. THE PRIMARY CONSIDERATION IN A MEDICAL BATTERY CASE, IS SIMPLY WHETHER THE PATIENT KNEW OF AND, AUTHORIZED A PROCEDURE. EVEN THOUGH A COMPLAINT NEED NOT CONTAIN DETAILED FACTUAL ALLEGATIONS, THERES MORE THAN SHEER POSSIBILITY THAT NURSE BURSON ACTIONS CONSTITUTES MEDICAL BATTERY, THAT IS PLAUSIBLE ON ITS FACE, EXPLAINING THAT THE PLAUSIBILITY STANDARD ASK FOR MORE THAN A SHEER POSSIBILITY. THAT A DEFENDANT HAS ACTED UNLAWFULLY, AND REQUIRES THE COMPLAINT TO ALLOW THE COURT, TO DRAW THE REASONABLE INFERENCE THAT THE DEFENDANT, IS LIABLE FOR THE ALLEGED MISCONDUCT. (FED R. CIV. P. 8(D)(2) REQUIRES ONLY A SHORT AND PLAIN STATEMENT, OF THE CLAIM SHOWING THAT THE PLEADER IS ENTITLED TO RELIEF. (CITE) ERICKSON V. PARDUS 551 US AT 93 SPECIFIC FACTS ARE NOT NECESSARY, THE STATEMENT NEED ONLY GIVE THE DEFENDANT FAIR NOTICE OF WHAT THE CLAIM IS AND THE GROUNDS UPON WHICH IT RESTS BELL ATLANTIC V TWOMBLY 550 US 544 555, 127 S CT. 1955, 167 L ED 2D 929 (2007) ADDITIONS, WHEN RULING ON A DEFENDANTS MOTION TO DISMISS A JUDGE MUST ACCEPT AS TRUE ALL OF THE FACTUAL ALLEGATIONS CONTAINED IN THE COMPLAINT. WHERE A PATIENT GOES TO A HOSPITAL OR IS BROUGHT BY AMBULANCE SEEKING MEDICAL SERVICES. OF THE HOSPITAL, AND IS FORCED TO RELY ON THE HOSPITAL'S CHOICE OF PHYSICIANS TO RENDER THOSE SERVICES. THE HOSPITAL MAY BE FOUND VICARIOUSLY LIABLE FOR THE PHYSICIANS NEGLIGENCE (CITE) E.G. PAINTSVILLE HOSPITAL CO. V. ROSE 683 SW 2D 255 256-258 A. MOTION FOR SUMMARY JUDGMENT WHERE THERE'S NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND

AND THE MOVING PARTY IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW, BECAUSE THEIR ARE MATERIAL FACTS AT ISSUE IN THE DISMISSAL OF RALEIGH GENERAL HOSPITAL, WE FIND THAT THE GRANT OF SUMMARY JUDGMENT [17B W.VA. 142] THE TRIAL COURT WAS IMPROPER AND THEREFORE WE REVERSE ON THIS ISSUE.

THE ESSENTIAL QUESTION [FORCED CATHETERIZATION] IS THE FACT IT OCCURED AGAINST THE PATIENTS WILL, BY NURSE BURSON. THE ESSENTIAL QUESTION IS WHETHER ONE IS SUBJECT TO THE CONTROL OF ANOTHER, NOT ONLY TO THE WORK TO BE DONE BUT ALSO THE MANNER OF PERFORMANCE. (CITE) YORSTON V. PENNELL 397 PA. 2B, 153 A 2d 255 HOWEVER THE MASTER MUST HAVE CONTROL NOT ONLY OVER THE AGENT, BUT OVER THE WORK AND THE PERFORMANCE THERE OF BEFORE LIABILITY EXTENDS. IN DETERMINING THE QUESTION OF AGENCY YOU MUST CONSIDER A NUMBER OF FACTORS, WHOSE WORK WAS BEING DONE, WHO HAD THE RIGHT TO CONTROL THE WORK, AND THE MANNER OF DOING IT, WHO RECEIVED BENEFITS, AND HAD THE RIGHT TO RECIVE THE BENEFIT FROM THE PERFORMANCE OF THE WORK. [255 PA. SUPP 396]. IT SEEMS FROM THE EVIDENCE IN THIS CASE DR RUCKER WAS THE AGENT OF NURSE BURSON AT THE TIME OF THE [FORCED CATHETERIZATION] BUT I LEAVE IT TO THE COURT TO DECIDE THAT ISSUE. IN DETERMINING WHOSE WORK WAS BEING DONE AND WHO HAD THE RIGHT TO DIRECT AND CONTROL MERCY NORTHWEST ROGERS, DR RUCKER, NURSE BURSON INTERLACED VICARIOUSLY WITH EACH OTHER. WERE MEMBERS OF A PARTNERSHIP WITH THE ATTENDANT PERSONAL LIABILITIES OF THAT RELATIONSHIP. MERCY NORTHWEST ROGERS WAS IN CHARGE OF DR RUCKER, MERCY NORTHWEST ROGERS HAD THE RIGHT AND AND OBLIGATION TO ASSIGN THE VARIOUS STAFF MEMBERS TO ASSIGNED DUTIES EXERCISE FULL AND, COMPLETE AND, FINAL AUTHORITY OVER TREATMENT OF THE PATIENT. THE FACT THE HOSPITAL OR DR.

RUCKER DID NOT PERFORM THE FORCED CATHETERIZATION, DID NOT MINIMIZE THE AUTHORITY OR THE AGENCY RELATIONSHIP THAT THEY HAD WITH NURSE BURSON. DR RUCKER, NURSE BURSON FOR THEIR EMPLOYMENT WERE PAID BY MERCY NORTH WEST ROGERS, WHICH WAS INCLUDED IN THE CHARGE TO THE PATIENT.

IT IS ABUNDANTLY CLEAR, THAT DR RUCKER POSSESSED THE REQUISITE CONTROL OVER NURSE BURSON, AS A BORROWED SERVANT. THE COURTS CONSIDERED WHETHER BOTH A HOSPITAL AND ATTENDING ER. DR COULD BOTH BE LIABLE IN TORT IN CONCLUDING IN THE AFFIRMATIVE THE COURT STATED AT [329 A 2D 501] WE CONCLUDED THAT AGENCY LAW PRINCIPLES APPLICABLE TO OTHERS SHOULD ALSO APPLY TO HOSPITALS AND, DOCTORS. [225 PA SUPER 398] OWE A DUTY TO THE PATIENT. IF THAT DUTY IS BREACHED UNDER CIRCUMSTANCES FOR WHICH A JURY COULD REASONABLY CONCLUDE THAT THE NEGLIGENT PARTY WAS AT THE SAME TIME THE SERVANT OF TWO MASTERS BOTH MASTERS MAY BE LIABLE. MILAN V. AMERICAN VISION CENTER, THOUGH THE HOSPITAL COULD NOT HAVE BEEN HELD LIABLE, FOR THE ACT OF ITS INDEPENDANT CONTRACTOR PHYSICIANS UNDER, [34 F. SUPP 2D 279 ED. PA 1998] TRADITIONAL NOTIONS OF RESPONDENT SUPERIOR OR AGENCY. THE SUPREME COURT HELD THAT IT COULD BE FOUND LIABLE, ON THE THEORY OF CORPORATE LIABILITY, FOR ADVERSE EFFECTS OF TREATMENT OR SURGERY APPROVED BY DOCTORS, ALTHOUGH THE DOCTOR'S WERE NOT EMPLOYEES OF THE HOSPITAL. THOMPSON [591 A 2D AT 706] AFTER UNDER TAKING A LENGTHY HISTORICAL DISCUSSION OF COMMON LAW LIABILITY OF HOSPITALS [ID 591 A 2D AT 706-07] THE SUPREME COURT DECIDED TO ADOPT AS A THEORY OF HOSPITAL LIABILITY THE DOCTRINE OF CORPORATE NEGLIGENCE OR CORPORATE LIABILITY, UNDER WHICH THE HOSPITAL IS LIABLE IF IT FAILED TO UPHOLD THE PROPER STANDARD OF CARE OWED TO ITS PATIENTS.

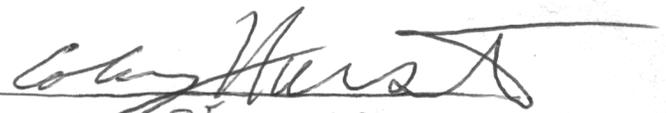
THE PLAINTIFF IS EXPERIENCING DISCOMFORT AND EMBARRASSMENT BECAUSE OF THE VIOLATION OF HIS PERSON, WHEN NURSE BURSON FORCED CATHETERIZATION UPON HIM, AND CAUSED PAIN AND SUFFERING, MENTAL ANGUISH IN THE FORESEEABLE FUTURE. THE PLAINTIFF STILL FEELS DISCOMFORT DURING EJACULATION.

THEREFORE UNDER ARKANSAS CONSTITUTION ARTICLE 2 SECTION 13 REDRESS OF WRONGS. EVERY PERSON IS ENTITLED TO A CERTAIN REMEDY IN THE LAWS FOR ALL INJURIES OR WRONGS HE MAY RECEIVE IN HIS PERSON, PROPERTY OR CHARACTER, HE OUGHT TO OBTAIN JUSTICE FREELY, AND WITHOUT PURCHASE; COMPLETELY, AND WITHOUT DENIAL; PROMPTLY AND WITHOUT DELAY; CONFORMABLY TO THE LAWS.

IT IS SO PRAYED THAT THIS MOST HONORABLE COURT GRANT THESE OBJECTIONS AND ALLOW THE PLAINTIFF TO AMEND THE COMPLAINT AND DENY DEFENDANTS SUMMARY JUDGMENT IT IS SO PRAYED

RESPECTFULLY SUBMITTED

PLAINTIFF'S SIGNATURE
COBY TOWNSEND HURST


PRO SE 99103

