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IN THE CIRCUIT COURT OF PULASKI, ARKANSAS

SEAN LYNN; et al. PLAINTIFFS

v. Case No. 60CV-26-216

BOARD OF TRUSTEES of the UNIVERSITY of ARKANSAS, in their official capacity; et al. DEFENDANTS

Sean Lynn and Laura Hammett's Joint Brief in Support of Opposition in Response to Nathan Ernst's Motion to Dismiss Sean Lynn

Defendant Nathan Ernst, while acting under color of his position as a government employee, unlawfully detained and physically assaulted Plaintiff Sean Lynn over a period of approximately two weeks. During this period of confinement, Plaintiff Lynn's physical health deteriorated substantially. But for the intervention, advocacy, and protection provided by Hammett,

Plaintiff Lynn would have faced a substantial risk of death at the hands of Defendant Ernst and individuals acting in concert with him.

Defendant Ernst's compensation was funded, in part, through Medicaid reimbursements associated with the provision of medical services. These services included non-consensual treatment resulting in hospital-acquired conditions, including but not limited to: (a) blood in his urine caused by forced catheterization, and (b) dislocation of Plaintiff Lynn's left ossicular chain, resulting in hearing loss.

UAMS, Ernst's employer, denied any negligence by Ernst. Defendant Ernst has not asserted a meritorious defense to the conduct alleged herein and instead relies upon assertions of immunity, purported insufficiency of service of process and alleged lack of factual specificity. Immunity is meant to allow government employees to concentrate on their work instead of time consuming litigation, even when they act negligently; it is not entitlement for Ernst to engage in intentional conduct toward vulnerable individuals under the guise of legitimate medical or governmental action.

I. Immunity does not extend to defendants named as individuals for intentional acts.

While sovereign immunity under Article 5, Section 20 may bar official-capacity claims against state officers in certain circumstances, the plaintiffs have expressly stated in the Complaint that clinician defendants, including Ernst, are named as individuals. Compl. ¶ 3. Ernst's own brief concedes this point by framing the official-capacity immunity argument as made only "out of an abundance of caution." *Ernst Br.*, at p. 2. Because the Complaint expressly names Ernst as an individual defendant and not in his official capacity, the sovereign immunity doctrine applicable to official-capacity suits is simply inapplicable here. The Court need not reach the official-capacity

immunity question at all, and Ernst's preemptive argument on this point should not be used to recharacterize the nature of the claims or to extend immunity protections beyond their intended scope.

Ernst argues that in his individual capacity, he is entitled to statutory immunity under Arkansas Code Annotated § 19-10-305(a), which was formerly the number of the statute that immunizes state officers and employees from liability and suit for non-malicious acts occurring within the course and scope of their employment, except to the extent covered by liability insurance. Ark. Code Ann. § 25-44-305(a); *Ernst Br.*, at p. 2-3. Ernst argues that Lynn was required to assert Ernst maintains liability insurance; and Ernst concludes that he "acted in good faith in performing his duties as an emergency room nurse and is entitled to statutory immunity." *Ernst Br.*, at p. 2.

When a defendant pleads an affirmative defense of immunity, that defendant must plead and prove no liability coverage. *City of Little Rock v. Dayong Yang*, 2017 Ark. 18, 5, 509 S.W.3d 632, 635 (2017). Ernst attempts to shift that burden to the plaintiffs. *Ernst Br.*, at p. 3 ("Plaintiff's Complaint makes no allegation that Ernst maintains liability insurance that would subject him to this lawsuit."). There is no way for the plaintiffs to know if Ernst has insurance coverage until given an opportunity to ask him by interrogatory or requests for admission. Because neither plaintiff was able to work full time on this case, the plaintiffs hope to serve discovery requests in the next month, after Hammett catches up with the backlog. (Lynn is pursuing a life goal that ends in August, and cannot work at a desk or computer, but he is in daily communication with Hammett, leads plaintiffs' discussions, drafts sections as best he can within the limitations of aphasia and working on a cell-phone, and makes all corrections to plaintiffs' joint documents as he deems appropriate.)

Under Arkansas law, immunity is an affirmative defense, and the party asserting it bears the burden of proving it. *Camden - Progressive Eldercare Servs., Inc. v. Robinson*, 2025 Ark. App. 562, 14, 726 S.W.3d 645, 655 (2025). Ernst did not present evidence to support his assertion that he acted in good faith. See *Ernst Br.*

Regardless, the plaintiffs asserted that Ernst acted, individually and in concert with the "Team" as an aider and abettor, as discussed in depth in Section III below.

II. Ernst Fails to Establish Insufficient Service or Lack of Personal Jurisdiction.

Defendant Ernst asserts that he has not been served by Plaintiff Lynn and, on that basis, contends that this Court lacks personal jurisdiction. That argument is unsupported by citation to authority and fails to satisfy the requirements of the Arkansas Rules of Civil Procedure.

Ernst cites no authority interpreting Ark. R. Civ. P. 4, which governs issuance and service of summons, nor Ark. R. Civ. P. 5, which governs service of pleadings and other papers. A motion to dismiss premised on insufficient service must identify a specific defect in process or service recognized under those rules. Ark. R. Civ. P. 7(b)(2). Ernst does neither.

Instead, Ernst relies solely on the assertion that he "has not been served by Separate Plaintiff Lynn," without explaining why service of a summons effected in this case is legally insufficient under Rule 4. The Arkansas Rules of Civil Procedure do not impose a requirement that each named plaintiff personally effect service where a defendant has received a summons and complaint in the action. See Ark. R. Civ. P. 4.

It is undisputed that Ernst received a summons and a copy of the complaint in this matter. Thus, he received actual notice of the claims against him. Due process requires notice reasonably

calculated to apprise a defendant of the action, which has plainly been satisfied here. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

Moreover, Arkansas has expressly adopted a substantial-compliance standard for service of process. See Ark. R. Civ. P. 4(k). The Arkansas Court of Appeals has recognized that this standard applies to challenges to service and may preclude dismissal where a defendant has received notice notwithstanding technical defects. *Carter v. Livingston*, 2021 Ark. App. 363, 3, 635 S.W.3d 351, 355.

Accordingly, even if Ernst had identified a technical defect in the summons or service—which he has not—dismissal would not be warranted where, as here, the defendant received actual notice and cannot demonstrate prejudice.

To the extent Defendant suggests that Hammett's role in filing documents renders service invalid, that argument improperly conflates procedural filing mechanics with the unauthorized practice of law. Arkansas law defines the unauthorized practice of law as conduct undertaken "with intent to obtain any economic benefit." Ark. Code Ann. § 16-22-501(a).

No such intent exists here. Hammett has not sought, and will not receive, any economic benefit for assisting Lynn with filing or logistical matters. Her role was limited to facilitating access to the electronic filing system for a co-plaintiff who lacks such access. Lynn is able to review and approve all joint filings, but cannot transmit them through the eFlex system.

Ernst also attempts to adopt and incorporate by reference the motion to dismiss filed by Defendant Aljiboori pursuant to Ark. R. Civ. P. 10(c). That reliance is misplaced. Rule 10(c) applies to pleadings, and a motion to dismiss is not a pleading. See Ark. R. Civ. P. 7(a). Accordingly, incorporation by reference under Rule 10(c) is not permitted in this context.

Even if the Court were to permit such incorporation, fundamental fairness requires reciprocal treatment. Plaintiffs have been granted an extension of time to respond to Defendant Aljiboori's motion. Allowing Ernst to incorporate that motion here, while requiring Plaintiffs to respond immediately, would effectively nullify that extension.

Accordingly, if the Court permits Ernst to rely on Defendant Aljiboori's motion by reference, Plaintiffs respectfully request that their forthcoming response to that motion be deemed incorporated into this response as well.

Because Ernst has failed to identify any defect in service recognized under the Arkansas Rules of Civil Procedure, and because he indisputably received notice of this action, his motion to dismiss for insufficient service and lack of personal jurisdiction should be denied.

III. Lynn pled sufficient facts against Ernst individually and for acts taken in concert.

The Court must "treat the facts alleged in the complaint as true and view them in a light most favorable to the plaintiff. *Goff v. Harold Ives Trucking Co., Inc.*, 342 Ark. 143, 27 S.W.3d 387 (2000); *Arkansas Tech Univ. v. Link*, 341 Ark. 495, 17 S.W.3d 809 (2000)." *Davenport v. Lee*, 348 Ark. 148, 155–56, 72 S.W.3d 85, 89 (2002).

The Court may, under the right circumstances, treat a motion to dismiss as a motion for summary judgment.

> Rule 12(b)(8) states, "[i]f, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."

Barrows/Thompson, LLC v. HB Ven II, LP, 2020 Ark. App. 208, 12, 599 S.W.3d 637, 645–46 (2020). But here, Ernst did not provide any evidence for his assertion that "he acted in good faith in performing his duties as an emergency room nurse[.]" *Ernst Br.*, at 2.

Ernst recognized that he is a "clinician defendant" as the plaintiffs asserted on Complaint ¶ 3. His argument seems to be that the plaintiffs should replace "clinician defendants" with each of the 81 individual names. That would be about 45 replacements, at an additional 45 pages. Plaintiffs intend to amend, but to improve an already sufficient complaint.

Therefore, plaintiffs ask for leave to amend with permission to keep Ernst as a defendant. Rather than using the detailed timeline that mentions Ernst and each defendant by name, the plaintiffs plan to have 71 subsections that go into more specificity for each known defendant and two sections for the Doe defendants.

There are enough facts concerning Ernst in particular to fill a volume. For brevity, only enough facts are given here to show that the existing facts alleged against Ernst are sufficient to bring suit and, alternatively, that amendment is not futile by changing the structure of the complaint:

Ernst is liable to Lynn for the following claims subsumed under medical injury: gross negligence (if Ernst has insurance), criminal[1] and civil false imprisonment, criminal[2] and civil battery, trespass to chattels and outrage.

A. Negligence

To establish liability in tort, a plaintiff must show that damages were sustained, that the defendant was negligent, and that such negligence was a proximate cause of the damages. *J.E.*

[1] Civil Action by Crime Victim, Ark. Code Ann. § 16-118-107 (2011).
[2] Id.

Merit Constructors, Inc. v. Cooper, 345 Ark. 136, 142, 44 S.W.3d 336, 340 (2001); *Ouachita Wilderness Inst. v. Mergen*, 329 Ark. 405, 412, 947 S.W.2d 780, 784 (1997). Negligence is the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do. *Schubert v. Target Stores, Inc.*, 2010 Ark. 466, 4, 369 S.W.3d 717, 719 (2010). To prove negligence, it must be shown that the defendant failed to exercise reasonable care in carrying out a legal duty owed to the plaintiff under the circumstances. *Shannon v. Wilson*, 329 Ark. 143, 158, 947 S.W.2d 349, 356 (1997). A negligent act occurs when a reasonable person in the same circumstances would recognize a significant risk of harm to others and would either refrain from acting or proceed with greater caution. *Ouachita Wilderness*, 329 Ark. at 412, 947 S.W.2d at 784.

Proximate cause is that which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. *Chambers v. Stern*, 347 Ark. 395, 406, 64 S.W.3d 737, 744 (2002), cert. denied, 536 U.S. 940 (2002). There must be a causal connection between the negligence of the defendant and the damage shown by the evidence to prove negligence. Chambers, 347 Ark. at 406, 64 S.W.3d at 744 (2002), cert. denied, 536 U.S. 940.

Negligence is the proximate cause of an injury only if the injury is the natural and probable consequence of the negligent act and ought to have been foreseen in the light of attending circumstances. *Lindle Shows v. Shibley*, 249 Ark. 671, 675, 460 S.W.2d 779, 782 (1970). To prove negligence in this state, the injury must have been reasonably foreseeable. *Benson v. Shuler Drilling Co.*, 316 Ark. 101, 112, 871 S.W.2d 552, 558 (1994).

The original complaint made clear and convincingly that Ernst is the person who started the reckless adoption of the narrative created by an EMT, that Lynn fell 35 feet. The difference

between the truth, jumping ten feet, and the falsity, is the difference between marking off one criteria for calling it a level one, two or three trauma, and marking off no criteria. *Compl.* ¶ 37.

Lynn was damaged by this negligence, because it was the basis for each other defendant to rationalize holding Lynn against his will and contacting him continually for two weeks without consent. See *Compl.*

A reasonably careful person would ask a person in the condition Lynn was in how he was hurt before treating him as if he fell from a three story high building. Ernst did not ask Lynn the mechanism of injury, despite that his condition was a miracle if he fell 35 feet. *Compl.* ¶¶ 31, 316; Compl. ¶¶ 32-55.

Ernst had a legal duty not to commit battery on Lynn, but he did as shown below. Ernst had a duty not to falsely imprison Lynn, but he did as shown below. Ernst had a legal duty to petition a court, or verify that someone on his "team" had petitioned a court for permission to hold and treat Lynn against his will. Ark. Code Ann. § 20-9-604; *Compl.* ¶¶ 91, 264. Ernst failed to do this, did not make any notes that showed he considered his duty.

Ernst caused a significant risk of harm to Lynn by injecting him with fentanyl. Lynn's brother, Hammett's other son, died from a single dose of pharmaceutical methadone. A reasonable person would not force fentanyl on anyone.

B. Civil Battery

Battery is when a person intends to cause some harmful or offensive contact with another person, and that harmful or offensive contact results. Mann v. Pierce, 2016 Ark. 418, 7, 505 S.W.3d 150, 154 (2016). Liability for battery is not limited to the individual who makes the contact; an accomplice that enables or assists the act is liable as a principal and responsible for its full consequences. Costner, 82 Ark. App. 148, 156, 121 S.W.3d 164, 170.

Regardless of whether Lynn fell 35 feet or had injuries consistent with that fall—which he did not—Ernst had no legal authority to keep Lynn in the hospital nor inject him with fentanyl without consent. *Compl.* ¶ 62. Ernst had no legal consent to inject Lynn with levetiracetam. *Compl.* ¶ 62. Etc. These were harmful and offensive contacts that Ernst meant to make.

Ernst is also liable for each contact made by each defendant who relied upon Ernst's negligent report that Lynn fell 35 feet.

C. Criminal Battery

Arkansas Code Annotated section 16–118–107 (Supp.2001), which was enacted in 1997, provides:

(a)(1) Any person injured or damaged by reason of conduct of another person that would constitute a felony under Arkansas law may file a civil action to recover damages based on the conduct.

(2) The burden of proof for showing conduct that constituted a felony shall be a preponderance of the evidence.

(3) If the person who is injured or damaged prevails, he or she shall be entitled to recover costs and attorney's fees.

(b) The action may be maintained by the person who was injured or damaged or, after the person's death, the executor, administrator, or representative of his or her estate.

(c) The remedy provided in this section shall be in addition to any other remedies in law or equity.

Costner v. Adams, 82 Ark. App. 148, 157, 121 S.W.3d 164, 170–71 (2003).

A person commits battery in the first degree if acting alone or with one (1) or more other persons the person commits or attempts to commit a felony; and in the course of and in furtherance of the felony or in immediate flight from the felony the person or an accomplice causes serious physical injury to any person under circumstances manifesting extreme indifference to the value of human life. Ark. Code Ann. § 5-13-201.

Ernst attempted and indeed committed the felony of false imprisonment (discussed below) by using physical and chemical restraints or having an accomplice use physical or chemical restraints on Lynn, showing complete indifference to the fact that Lynn might be allergic to the drugs administered. Also, that Lynn had a history of substance abuse that he recovered from 10 years earlier and reintroducing drugs into Lynn's system might cause him to start using again. In the later case, Lynn might eventually die and have a traumatic life in the meantime.

A person commits battery in the second degree if the person recklessly causes serious physical injury to another person by means of a deadly weapon. Ark. Code Ann. § 5-13-202. "Deadly weapon" means anything that in the manner of its use is capable of causing death or serious physical injury. Ark. Code Ann. § 5-1-102.

Again, Ernst injected fentanyl into Lynn, which caused a bad reaction. The unbroken chain of events with his accomplices left Lynn with a dislocated oscillator chain in his left ear and severe hyponatremia. It is also clear from the refusal of one accomplice, Edward Williams, to allow Lynn free outpatient testing for his sodium level for three days, that the accomplices did not "treat" Lynn out of concern or "love"—but out of a desire to generate revenue. *Compl.* ¶ 286.

D. Civil False Imprisonment

False imprisonment is the unlawful violation of the personal liberty of another consisting of detention without sufficient legal authority. *Headrick v. Wal-Mart Stores, Inc.*, 293 Ark. 433, 435, 738 S.W.2d 418, 420 (1987). Ernst detained Lynn with no lawful authority.

E. Criminal false imprisonment

A person commits the offense of false imprisonment in the first degree if, without consent and without lawful authority, the person knowingly restrains another person so as to interfere substantially with the other person's liberty in a manner that exposes the other person to a substantial risk of serious physical injury. Ark. Code Ann. § 5-11-103. False Imprisonment in the second degree does no expose the victim to serious bodily injury. Ark. Code Ann. § 5-11-104.

Ernst had no lawful authority to restrain Lynn, and did so, which exposed Lynn to serious physical injury.

F. Trespass to Chattels

Trespass to chattels is the lesser-included form of conversion, involving interference that falls short of complete dominion. In discovery, plaintiffs may learn of the person who physically took Lynn's phone. It was likely to be the triage nurse, Ernst. In the least, Ernst was an accomplice.

G. Outrage

To establish an outrage claim, a plaintiff must demonstrate the following elements: (1) the actor intended to inflict emotional distress or knew or should have known that emotional distress was the likely result of his conduct; (2) the conduct was "extreme and outrageous," was "beyond all possible bounds of decency," and was "utterly intolerable in a civilized community"; (3) the actions of the defendant were the cause of the plaintiff's distress; and (4) the emotional distress sustained by the plaintiff was so severe that no reasonable person could be expected to endure it. *McQuay v. Guntharp*, 331 Ark. 466, 470, 963 S.W.2d 583, 585 (1998).

Ernst should have known that emotional distress was the likely result of his holding a man in the hospital without contacting his family, even though he had more access to Lynn's phone than Lynn had. Injecting a person with Fentanyl when the person said his pain level was 2 out of 10 and the person refused the drug is beyond belief. That Ernst is making it difficult to resolve the dispute, hoping to get the case thrown out because Lynn's name and mailing address were on the summons but not his home address! This document is due to be filed in a short time.

Plaintiffs will file as it is and pray the Court's grace.

Wherefore, the plaintiffs request the Court deny Separate Defendant Nathan Ernst's motion to dismiss claims made by Lynn or grant plaintiffs leave to amend no more than 30 days after plaintiffs' anticipated renewed motion for an extension of time to serve summonses is decided.

Respectfully submitted,

_____ May 14, 2026
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/s/ Laura Hammett May 14, 2026
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Certificate of Service

I, Laura Hammett, hereby certify that on May 14, 2026, I entered for filing the foregoing electronically with the Clerk of Court using the Arkansas Judiciary Electronic Filing System, which shall send notification to all attorneys in this matter. I also served a copy by email of the unstamped copy to each attorney by email. I also will deliver a copy of the file stamped copy by email to Plaintiff Sean Lynn at SeanLynnP@yahoo.com.

/s/ Laura Hammett

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