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FILED
APR 16 2015
MICHAEL E. KUNZ, Clerk
By [Signature] Dep. Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

ERIKA TARNOSKI and MICHAEL TOBIAS, :
Administrators of the ESTATE OF EILEEN :
DININO, :

Plaintiffs, :

v. :

COUNTY OF BERKS; PRIMECARE :
MEDICAL, INC.; JOHN DOE; :
MARY ROE, :

Defendants. :

15 2000

C.A. No.

Jury Trial Demanded

COMPLAINT

1. This is a civil rights and wrongful death action under 42 U.S.C. § 1983 and state law arising out of the death of the deceased, Eileen DiNino, who was denied appropriate and necessary medical care for serious medical needs by the defendants during her commitment to the Berks County Jail System ("the Jail").

2. Ms. DiNino was an inmate at the Jail on June 6-7, 2014, having been sentenced to a term of 48 hours for failure to pay a fine on a charge of violation of the school compulsory attendance for her children.

3. At her admission to the jail on the evening of June 6, 2014, Ms. DiNino was provided a medical screen and examination by defendant PrimeCare Medical, Inc. ("PCM") and was diagnosed with extremely high blood pressure with a medical history of hypertension. Later that night, at about 2 a.m. on June 7, 2014, Ms. DiNino found herself in a serious medical condition, including severe pain from her legs to her chest area, significant difficulty in breathing, and an inability to sleep. A PCM nurse was called to the cell, but Ms. DiNino was not provided any medical care or attention.

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4. Two hours later, in a serious and worsening medical condition and in severe pain, Ms. DiNino again requested emergency medical care, but again was told that she would be seen later that day. No care was provided, Ms. DiNino's condition worsened, and she was found unconscious in her cell at around 1 p.m. on June 7th. She died without recovering consciousness and an autopsy determined the cause of death as hypertensive cardiovascular disease and pulmonary edema.

5. The defendants were deliberately indifferent to Ms. DiNino's requests for necessary emergency medical care and the medical personnel who responded to her calls failed to provide necessary and proper medical care in response to the obvious physical signs and symptoms of her medical condition. As a direct result of the defendants' failure to properly operate the medical care system at the jail, their failure to institute and implement proper practices and procedures for providing medical care to inmates at the jail, and their failure to provide proper review and treatment, Ms. DiNino was denied medical care and died as a result of this extraordinary refusal to provide treatment. Plaintiffs seek damages on behalf of the Estate of Eileen DiNino.

Jurisdiction

6. This Court has subject matter jurisdiction over the claims presented pursuant to 28 U.S.C. §§ 1331 and 1343, and the Eighth and Fourteenth Amendments to the United States Constitution. The Court has supplemental jurisdiction to hear state law claims under 28 U.S.C. § 1367(a).

Venue

7. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391, because this is the district in which the plaintiffs' decedent's injuries occurred and such claims arose.

Parties

8. Plaintiffs, Erika Tarnoski and Michael Tobias, are the Administrators of the Estate of Eileen DiNino. The Estate was opened on June 13, 2014 when plaintiffs were appointed the Administrators by Berks County.

9. Defendant County of Berks is a municipal governmental entity in Pennsylvania.

10. Defendant PrimeCare Medical, Inc. is a corporation retained by the County of Berks to provide medical care at the Berks County Jail.

11. Defendants John Doe and Mary Roe, whose identities are not currently known to plaintiffs, were employed by PCM to provide healthcare to inmates at the Jail at the time of the events in this case. These defendants are sued in their individual capacities.

12. At all relevant times, all defendants were acting in concert with each other and under the color of state law.

Factual Averments

13. On June 6, 2014 Eileen DiNino was admitted to the Jail on a 48 hour sentence for failure to pay fines relating to truancy charges regarding her children.

14. Upon entry to the Jail, Ms. DiNino was provided a medical screen and examination that disclosed a medical history of hypertension and very high current blood pressure. As a result, medical personnel ordered periodic blood pressure checks, 5 times per day.

15. Ms. DiNino's unstable blood pressure continued to rise during the evening hours of June 6, 2014, reaching 178/100 at 18:55 hours, followed by a slight decline to 146/92 at 20:35 hours, but no medication or medical testing was prescribed for this condition.

16. At approximately 2 a.m. on June 7, 2014, Ms. DiNino awakened with serious medical problems including acute leg and chest pains, severe shortness of breath, and extreme discomfort. Ms. DiNino sought immediate medical attention, but the correctional officer and nurse

who responded failed to secure any further medical attention or care, and simply informed Ms. DiNino that she was probably suffering from anxiety and that she could seek assistance later in the morning. No further blood pressure readings or any medical review or care was provided at this time.

17. Two hours later, at approximately 4 a.m. on June 7, Ms. DiNino awakened with the same symptoms she had at 2 a.m. and a correctional officer informed the medical department that Ms. DiNino was “freaking out.” Once again, no further medical care was provided and Ms. DiNino was informed only that she could get care later in the morning.

18. Notwithstanding the order for continued blood pressure monitoring, the severe symptoms suffered by Ms. DiNino during the night, and her specific request for immediate medical care, no medical personnel checked on Ms. DiNino at that time or any time in the morning hours of June 7, even as Ms. DiNino became acutely ill and was so weakened by her painful condition that she could not eat or move out of her bed.

19. At approximately 1:15 p.m. on June 7, Ms. DiNino’s cellmate reported that Ms. DiNino was very ill and gasping for breath. Upon the arrival of medical personnel, Ms. DiNino was unconscious and she died without recovering consciousness. The cause of death was hypertensive cardiovascular disease and pulmonary edema caused by cardiac failure.

20. The death of Ms. DiNino was the direct result of the failure of the defendants to provide proper and necessary medical care in circumstances where immediate medical attention and care was necessary to prevent the worsening of a serious medical condition that was known to the defendants, based on their knowledge of Ms. DiNino’s serious and life threatening medical condition on June 6-7, 2014.

21. The direct and proximate cause of Ms. DiNino’s pain and suffering and death was the defendants’ failure, with deliberate indifference, to adopt and implement procedures and

policies necessary to ensure that inmates at the jail with serious medical conditions, including Ms. DiNino are provided necessary and emergency medical care.

22. Defendants Berks County and PrimeCare Medical, Inc. failed to properly train and supervise their agents and employees to recognize emergency medical situations, including cardiac conditions requiring immediate medical attention, to secure immediate medical care for persons with emergency medical conditions, and to establish a medical referral system that would ensure the delivery of immediate medical care to an inmate with an emergency medical condition.

23. Upon information and belief, the contract between defendants Berks County and PCM for the provision of medical services provided for a fixed annual payment to PCM for provision of all medical services to inmates and PCM was responsible to cover costs for outside medical services, including hospitalization for serious illnesses, diagnostic tests, and treatment.

24. The failure of the defendants to provide proper and necessary medical care to Ms. DiNino was directly caused by policies, practices, and customs at the jail that were implemented, enforced, ratified, or known to the defendants, including:

- a. Failing to ensure that a proper system for medical assistance request was in operation;
- b. Ignoring or not properly responding to requests for medical assistance from inmates with serious medical conditions;
- c. Failing to provide adequate and sufficient medical and nursing staffing to ensure that inmates with serious medical needs are provided necessary medical care;
- d. Failing to properly train, supervise and discipline medical and correctional staff with respect to their obligations to ensure that inmates with serious medical conditions receive timely and proper medical care;
- e. Failing to correct known deficiencies in the medical delivery system at the jail that were likely to cause injury to inmates;
- f. Entering into a contract that had strong financial disincentives for PCM to provide diagnostic testing and hospitalization for seriously ill inmates.

COUNT ONE
PLAINTIFFS vs. All DEFENDANTS

U.S.C. § 1983-Violation of Eighth and Fourteenth Amendments; Cruel and Unusual Punishment and Due Process Violations

25. Plaintiffs incorporate by reference all averments of the preceding paragraphs.

26. The defendants failed, with deliberate indifference, to (a) establish procedures necessary to provide necessary and proper medical care to inmates at the Jail, and (b) provide necessary and proper medical care to Ms. DiNino, thereby causing the violation of her rights under the Eighth and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983.

27. As a direct and proximate result of the defendants' actions, omissions, policies, practices and customs, all committed or adopted with deliberate indifference, Ms. DiNino was denied necessary treatment for her serious and life threatening cardiac condition, thus causing her death, all in violation of her right to be free from cruel and unusual punishment and to due process of law.

28. As a result of the actions and omissions of the defendants, Ms. DiNino suffered extreme physical and emotional pain and suffering and death.

COUNT TWO
PLAINTIFFS vs. PRIMECARE MEDICAL, INC.. JOHN DOE AND MARY ROE

Supplemental State Law Claims - Professional Negligence

29. Plaintiffs incorporate by reference all averments of the preceding paragraphs.

30. Defendants PrimeCare Medical, Inc., John Doe and Mary Roe (referred to as "medical defendants"), are licensed medical professionals in Pennsylvania and each of these defendants had the duty to exercise reasonable skill and diligence in their professional acts, including proper provision and supervision of medical and nursing care at the jail. Plaintiffs asserts a professional liability claim against the medical defendants.

31. At all relevant times, the medical defendants held themselves out as skilled, careful and diligent employees, servants and/or agents, and they had a duty to exercise that degree of care and skill in the medical treatment of Ms. DiNino in accordance with generally accepted medical and nursing standards.

32. The medical defendants breached their duties by failing to exercise reasonable skill, diligence and care ordinarily exercised by members of the medical and nursing professions.

33. The medical defendants were negligent or acted willfully in the following particular respects, all of which were below the applicable standard of care:

- a. Failing to properly recognize Ms. DiNino's need for medical care;
- b. Failing to properly diagnose Ms. DiNino's medical condition;
- c. Failing to timely refer Ms. DiNino to a physician for evaluation and treatment;
- d. Failing to timely consult with a cardiac or other specialist;
- e. Failing to properly monitor Ms. DiNino's condition after becoming aware of her serious illness;
- f. Failing to understand the significance of Ms. DiNino's observable and reported symptoms of serious heart disease;
- g. Failing to establish and maintain a system that provided inmates with adequate access to medical care at the prison;

34. Each of the above acts and omissions constituted negligence or willful misconduct, and each was a proximate cause of the pain and suffering and death suffered by Ms. DiNino.

COUNT THREE
PLAINTIFFS vs. PRIMECARE MEDICAL, INC.. JOHN DOE AND MARY ROE

Supplemental State Law Claims - Wrongful Death

35. Plaintiffs incorporate by reference all averments of the preceding paragraphs.

36. Ms. DiNino did not bring an action against defendants for damages for the injuries causing her death during her lifetime.

37. Ms. DiNino's heirs have, by reason of her death, suffered pecuniary loss, and have incurred expenses for funeral costs and the costs of administering Ms. DiNino's estate.

38. Ms. DiNino's heirs have, by reason of her death, suffered further pecuniary loss including expected contributions and financial support from Ms. DiNino.

39. As the sole, direct, legal and proximate result of the intentional, willful and/or wanton, and/or reckless and/or negligent conduct of the defendants, jointly and severally, individually and through their respective agents, servants, workmen and/or employees, which contributed to and/or substantially increased the risk of, and caused the death of plaintiffs' decedent, plaintiffs herein, Administrators of the Estate of Eileen DiNino deceased, are entitled by law to recover losses under the above referenced Pennsylvania Wrongful Death Act and has sustained the following damages, relevant to plaintiffs' decedent:

- a. Expenses attendant to the death of plaintiffs' decedent;
- b. Funeral and burial for plaintiffs' decedent;
- c. Expenses of Administration of the Estate of Eileen DiNino
- d. The loss of benefit of the services, assistance, guidance, counseling and companionship of the plaintiffs' decedent;
- e. Decedent's loss of earning capacity from the time of her death until the date of the trial of this action;
- f. The loss of pecuniary benefits to the end of decedent's life expectancy;
and
- h. All other expenses allowable by law incurred by reason of the untimely death of plaintiffs' decedent.

COUNT FOUR
PLAINTIFFS vs. PRIMECARE MEDICAL, INC.. JOHN DOE AND MARY ROE

Supplemental State Law Claims - Survival Action

40. Plaintiffs incorporate by reference all averments of the preceding paragraphs.

41. Plaintiffs also bring this action on behalf of the Estate of Eileen DiNino under the Pennsylvania Survival Statute, 42 Pa. C.S. § 8302, under which all claims Ms. DiNino would have been able to bring had she survived, may be brought by her estate.

42. The Estate has, by reason of Ms. DiNino's death, suffered pecuniary loss, including funeral costs, and the cost of administering the estate.

43. As a direct and proximate result of the conduct of all defendants, Ms. DiNino experienced extraordinary physical and emotional pain and suffering before her death, and, as a result of her death, suffered complete loss of earning capacity.

44. Plaintiffs by this survival action, seeks damages for the harms caused to Ms. DiNino.

45. Plaintiffs further seek damages and pecuniary loss suffered by plaintiffs' decedent's Estate and by her survivors for the value of the loss of services which decedent's minor children might reasonably have expected to receive from the decedent during her life expectancy as well as the value of the care, counsel, training, education and tutelage which decedent's two minor children might reasonably have expected to receive from their mother before reaching the age of majority.

46. As the sole, direct, legal and proximate result of the above described, willful, intentional and/or wanton and/or reckless, and/or negligent conduct of the defendants, jointly and severally, individually and/or through their respective agents, servants, workmen and/or

employees, which conduct and/or negligence contributed to and/or substantially increased the risk of and/or caused the death of plaintiffs' decedent, plaintiffs have sustained the following damages:

- a. Pain and suffering by plaintiffs' decedent;
- b. Plaintiffs' decedent's loss of earning capacity from the time of death until the date of the trial of this action;
- c. The loss of the projected earning capacity of plaintiffs' decedent's through life expectancy;
- d. All other losses and damages permitted by law.

Relief

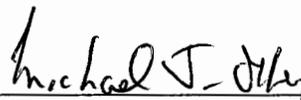
WHEREFORE, plaintiffs respectfully request:

- A. Compensatory damages as to all defendants;
- B. Punitive damages as to defendants PrimeCare Medical, Inc. and Doe and Roe;
- C. Reasonable attorney's fees and costs;
- D. Such other and further relief as may appear just and appropriate.

Plaintiffs hereby demand a trial by jury.



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