

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

LUMUMBA EARLE, individually and
as the Personal Representative of the
ESTATE of ANNIE EARLE, deceased,

Civil Action: 3:14-29536

Plaintiff,

v.

CITY OF HUNTINGTON, d/b/a CITY OF
HUNTINGTON POLICE DEPARTMENT,
a municipal corporation; JOSH NIELD,
individually and in his official capacity;
ST. MARY'S MEDICAL CENTER, INC., d/b/a
ST. MARY'S MEDICAL CENTER,

Defendants.

**PLAINTIFF'S RESPONSE TO DEFENDANT, ST. MARY'S MEDICAL
CENTER, INC. D/B/A ST. MARY'S MEDICAL CENTER'S
MOTION TO DISMISS WRONGFUL DEATH CLAIM**

Now comes the plaintiff, Lumumba Earle, individually and as the Personal Representative of the Estate of Annie Earle, deceased, by and through counsel, Richard Weston, and files this response to the Defendant St. Mary's Medical Center, Inc. D/B/A/ St. Mary's Medical Center's Motion to Dismiss Wrongful Death Claim. In support thereof, the Plaintiff states as follows:

FACTS

Annie Earle ("Ms. Earle") presented at St. Mary's Medical Center ("SMMC") Emergency Room on January 10, 2014 for a facial laceration, sustained at the home of her daughter. *Amended Complaint*, ¶17. While being treated for her injury, the staff at

SMMC began a Mental Hygiene Petition to detain Ms. Earle, which was denied. *Id.* at ¶18. After sitting in the SMMC Emergency Room for 18 hours, Ms. Earle left the hospital and returned to her home driven by her therapist Donna White. *Id.* at ¶19. Ms. White then left Ms. Earle at her home and went to get Ms. Earle something to eat. Upon returning within the hour, Ms. White found Ms. Earle was no longer at home. *Id.* After Ms. Earle left SMMC and unbeknownst to Ms. Earle, employees of SMMC called the police in order to have them find Ms. Earle and return her to the SMMC. *Id.* at ¶21. SMMC made this request even though it knew or reasonably should have known the Mental Hygiene Petition had been denied. Ms. Earle was eventually found by Officer Nield of the Huntington Police Department and returned to SMMC's Emergency Room. *Id.* at ¶20. Eventually, SMMC informed Officer Nield the Mental Hygiene Petition was denied. *Id.* at ¶22. Realizing there was no authority to detain Ms. Earle, she was allowed to leave SMMC. *Id.* Upon her release, a verbal altercation arose between an unarmed Ms. Earle and Officer Nield, during which, Officer Nield slammed Annie Earle to the floor, fracturing her ribs and compressing her thorax resulting in a punctured heart and her death. *Id.* at ¶¶24-25.

As a result of Ms. Earle's unlawful detention, claims were asserted against SMMC for *False Imprisonment* and *Negligence* alleging that SMMC knew or reasonably should have known the Mental Hygiene Petition had been denied and, therefore, it had no authority to order or request law enforcement to seize Ms. Earle and return her to SMMC and it had no authority to detain Ms. Earle at SMMC once she was returned. *Id.* at ¶¶ 64-75. These claims are based on SMMC lack of authority to seize, transport and detain Ms. Earle after the Mental Hygiene Petition was denied. Ms. Earle's Amended Complaint

specifically states that Defendants “acted in concert with each of said other Defendants.” ¶12.

STANDARD OF CARE

“To survive a Rule 12(b)(6) motion to dismiss, the facts alleged must be enough to raise a right to relief above the speculative level and must provide enough facts to state a claim to relief that is plausible on its face.” *Robinson v. Am. Honda Motor Co., Inc.*, 551 F.3d 218, 222 (4th Cir. 2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) (internal quotations omitted). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (internal citations omitted); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009) (stating that “the rule does call for sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”).

A complaint fails to state a viable claim when, viewing the well-pleaded factual allegations as true and in light most favorable to the plaintiff, the complaint does not contain “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570; *see also Iqbal*, 556 U.S. at 662 (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). “Where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint

has alleged – but it has not ‘show[n]’ – that the pleader is entitled to relief.’” *Iqbal*, 556 U.S. at 679.

ARGUMENT

I. Ms. Earle’s Amended Complaint sufficiently sets forth a valid and plausible claim against SMMC for proximately causing a course of conduct that foreseeably led to the homicide of Ms. Earle at the hands of Officer Nield.

Ms. Earle would be alive today, but for the false imprisonment and negligence of SMMC and Officer Nield, both of whom were alleged to be acting in concert on the night of Ms. Earle’s death. ¶12. SMMC alleges that Ms. Earle’s Amended Complaint is devoid of any factual allegations as to how SMMC proximately caused Ms. Earle’s death. This argument ignores the following facts and inferences as alleged in the Amended Complaint:

At the time Ms. Earle walked out of SMMC emergency room and returned to her home, she was as free as any other citizen. This is so regardless of whether Ms. Earle may have left against medical advice or not, it was her prerogative to do so. In spite of this, SMMC contacted law enforcement requesting that she be seized and returned to SMMC. ¶21. This was done even though the previously filed Mental Hygiene Petition was not accepted and there was no Order to detain Ms. Earle by anyone with authority to enter such and Order. ¶21. By placing its call into 911 and requesting Ms. Earle’s return, SMMC set forth a course of events that foreseeably escalated an otherwise routine hospital visit into unfortunate deadly situation. SMMC cannot divorce itself from the actions of Officer Nield when it was SMMC’s unlawful request that brought Officer Nield into contact with Ms. Earle in the first place. When Ms. Earle was returned to

SMMC it was recognized that she was being detained by SMMC and Officer Nield without the proper authority. ¶22-23. It is clearly alleged in the Amended Complaint that Ms. Earle's unlawful detention, by the directive of SMMC and hands of Officer Nield, agitated Ms. Earle which led to a confrontation with Officer Nield. ¶73. This confrontation led to Ms. Earle's death. It is also clearly alleged that Officer Nield was believed to be working as an employee of SMMC on the night in question. ¶8. Again, none of these events occur if SMMC does not negligently call 911.

The facts as described above are both listed within Ms. Earle's Amended Complaint and are reasonable inferences taken therefrom which support Ms. Earle's allegations that SMMC caused her death. Therefore, Ms. Earle has met its burden with regard pleading its false imprisonment claim and negligent claims against SMMC.

II. SMMC's assertion Officer's Nield's conduct was an intervening cause is a legal defense and not a pleading issue.

SMMC asserts that Officer Nield's conduct and confrontation with Ms. Earle was an intervening cause which relieves it from liability. However, an intervening cause is a legal defense and not a pleading issue for the Plaintiff. The West Virginia Supreme Court has stated that an intervening cause "can be established *only* through the introduction of evidence by a defendant that shows the negligence of another party or nonparty." *See Sydenstricker v. Mohan*, 217 W.Va. 552, 618 S.E.2d 561 (2005) (emphasis added).. In *Landis v. Hearthmark, LLC.*, West Virginia Supreme Court No.: 13-0159 (W.Va. 2013), the West Virginia Supreme Court refers to an intervening cause as a "defense." Therefore, SMMC's attempt to argue intervening cause at this stage of the case is extremely premature.

CONCLUSION

Wherefore, Plaintiffs' respectfully request the Court to deny Defendant, St. Mary's Medical Center, Inc. D/B/A St. Mary's Medical Center's Motion to Dismiss Wrongful Death Claim and for such other relief as this Court deems appropriate and necessary.

LUMUMBA EARLE,
An Individual,

By Counsel: /s/Richard W. Weston
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CERTIFICATE OF SERVICE

I, Richard W. Weston, do hereby certify that on this 6th day of February 2015, I electronically filed the foregoing "**PLAINTIFF'S RESPONSE TO DEFENDANT, ST. MARY'S MEDICAL CENTER, INC. D/B/A ST. MARY'S MEDICAL CENTER'S MOTION TO DISMISS WRONGFUL DEATH CLAIM,**" with the court using the CM/ECF system which will send notification of such filing to the below counsel of record:

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