

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED
2024 MAR 21 PM 2:50
Cathy
CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT
24-C-381
Bailey

DONNA RING,

Plaintiff,

v.

CIVIL ACTION NO. 24-C-381

JUDGE: Bailey

CHARLESTON AREA MEDICAL CENTER, INC.,
d/b/a CAMC TEAYS VALLEY HOSPITAL and
CAMC ORTHOPEDICS TEAYS VALLEY,

COMPLAINT

COMES NOW Plaintiff, Donna Ring, (hereinafter sometimes referred to as "Plaintiff" or "Ms. Ring"), by counsel, Mark R. Staun, James M. Barber and Hartley Law Group, PLLC and for her Complaint against the Defendant, states as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Donna Ring, is a citizen and resident of Putnam County, West Virginia.
2. Defendant Charleston Area Medical Center, Inc., d/b/a CAMC Teays Valley Hospital and CAMC Orthopedics Teays Valley (hereinafter sometimes referred to as "CAMC") is a non-profit West Virginia corporation with its principal office address located at P.O. Box 1547, Charleston, Kanawha County, West Virginia, 25336.
3. Defendant CAMC, at all times relevant hereto, does business in Charleston, Kanawha County, West Virginia and may be served with process at P.O. Box 3669, Charleston, West Virginia 25326.
4. James B. Cox, D.O. (hereinafter sometimes referred to as "Dr. Cox"), is a citizen and resident of Hurricane, Putnam County, West Virginia. Dr. Cox is a Doctor of Osteopathic Medicine licensed to practice medicine in the State of West Virginia.

5. Dr. Cox practices general orthopedic surgery at CAMC Teays Valley Hospital.

6. CAMC and Dr. Cox were served with a Notice of Claim and Screening Certificate of Merit, *via* Certified Mail Return Receipt Requested. The envelope containing these documents was signed for and accepted.

7. Plaintiff has complied with the Notice of Claim and Screening Certificate of Merit requirements set forth in W.Va. Code §55-7B-6.

8. Jurisdiction and venue are proper in the Circuit Court of Kanawha County, West Virginia as CAMC principal office is located in Kanawha County, West Virginia.

OPERATIVE FACTS

9. Plaintiff incorporates by reference all preceding allegations contained above as if fully stated herein.

10. On December 13, 2022, Ms. Ring underwent a left knee arthroplasty (hereafter referred to as “TKA”) performed by Dr. Cox.

11. Ms. Ring was followed by Dr. Cox and his team in his office with periodic visits.

12. On January 25, 2023, Dr. Cox performed an incision and drainage procedure on her wound in the office with a primary closure.

13. On February 6, 2023, Ms. Ring followed up with Dr. Cox, and the note for that visit indicates there was some drainage from the wound. She was instructed on dry dressing changes. Dr. Cox did not culture the drainage and he did not start her on any antibiotics.

14. On February 15, 2023, Ms. Ring returned to the office and Dr. Cox was concerned that she had an infection and planned for surgery to include an irrigation and debridement of the TKA and possibly a liner component exchange.

15. On February 15, 2023, Dr. Cox did not aspirate the joint nor order cultures, gram stain and cell count, or Synovasure testing of the fluid aspirated. In addition, he failed to order any blood work including CBC, ESR, and CRP.

16. On February 21, 2023, Dr. Cox took Ms. Ring to the operating room for surgical debridement of the TKA. At the time of the surgery, he did not find any fistula or connection between the fluid encountered in the subcutaneous tissue and the joint proper. He did not open the joint proper. Dr. Cox did aspirate the joint and sent the aspirated fluid for culture.

17. On February 25, 2023, the joint culture was positive for the growth of Methicillin Resistant Staph Aureus (MRSA).

18. Ms. Ring followed up in Dr. Cox's office on March 1, 2023, and the culture result was noted in her office notes of that day. She was started on Tetracycline antibiotic.

19. On April 20, 2023, Dr. Cox performed an irrigation and debridement with removal of the patella button and exchange of the tibial polyethylene component.

20. Dr. Cox performed the above procedure rather than taking an aggressive approach to eradicate the infection by performing a two stage reimplantation procedure in the presence of a periprosthetic infection.

21. Ms. Ring continued to follow up with Dr. Cox with periodic visits through September 7, 2023.

22. Ms. Ring continued to suffer from an infected total knee replacement and was never offered the chance to resolve the infection with a two-stage revision operation.

23. On September 26, 2023, Ms. Ring sought a second opinion regarding her left knee from orthopedic surgeon Clark D. Adkins, M.D. at WVU Medicine. In his physical examination, Dr. Adkins notes: "She does have a sinus track over the around the inferior pole of the patella we

did probe this as this tracked into the joint and all the way underneath the incision. There is serous drainage from the knee....” (*typos in original*).

24. In the “Plan” section of his record, Dr. Adkins states: “I believe she has a chronically infected total knee arthroplasty of the left knee she is on antibiotics currently and there was a sinus tract that does track into the joint I do not think she is a candidate for suppressed because of her severe pain the surgical option be removal of the component and insertion of an articulated spacer followed by reimplantation at a later date. I did discuss the risks and benefits of the 2 stage reconstruction technique with the patient. The risk of recurrent infection and deep vein thrombosis and pulmonary embolism and death and stiffness and loosening and pain in dislocation and fracture reviewed. I reviewed the usual postoperative course. We will plan to do an excisional debridement and removal of her knee arthroplasty and insertion of an articulated spacer as the 1st stage.” (*typos in original*).

25. On October 18, 2023, Dr. Adkins removed all total left knee components placed by Dr. Cox and performed an excisional debridement and insertion of articulated spacer and antibiotic impregnated beads. Ms. Ring was subsequently seen by Dr. Adkins for post-surgery follow-ups.

26. On November 20, 2023, Dr. Adkins took Ms. Ring back to the operating room for an excisional debridement and partial wound closure and VAC placement. Ms. Ring was admitted until December 1, 2023.

27. Ms. Ring is scheduled for Stage II of her knee reconstruction on April 10, 2024, by WVU Medicine orthopedic surgeon Matthew Stover, D.O.

COUNT I
NEGLIGENCE OF CHARLESTON AREA MEDICAL CENTER, INC.
AS THE EMPLOYER OF JAMES B. COX, D.O.

28. Plaintiff incorporates by reference all preceding allegations contained above as if fully stated herein.

29. Dr. Cox, individually and while acting in the scope of his employment and/or pursuant to an agency relationship with CAMC was negligent in the care and treatment he rendered or failed to render to Ms. Ring.

30. Dr. Cox owed Ms. Ring a duty to use the degree of skill and learning required or expected of a reasonably prudent physician practicing orthopedic surgery under the same or similar circumstances in the treatment and management of her care.

31. The standard of care required Dr. Cox on February 15, 2023, to aspirate the joint and order cultures, gram stain and cell count, or Synovasure testing of the fluid aspirated. In addition, the standard of care required him to order blood work to include CBC, ESR, and CRP. Failure to perform these duties represented a deviation from the standard of care.

32. On February 25, 2023, the standard of care required that Ms. Ring be offered a two-stage revision of the infected total knee replacement.

33. A periprosthetic infection with MRSA bacteria has no chance of resolution without removing the implant and eradicating the infection before reimplantation of another total knee replacement.

34. Dr. Cox breached the standard of care by ordering antibiotics alone without a two-stage revision operation.

35. While under the care of Dr. Cox and his staff with periodic visits through September 7, 2023, Ms. Ring continued to suffer from an infected total knee replacement and was never offered the chance to resolve the infection with a two-stage revision operation.

36. The standard of care required Dr. Cox, in the face of periprosthetic infection in February 2023, to perform a two-stage revision procedure with appropriate antibiotics and proof of an eradication of the infection.

37. Dr. Cox deviated from and breached the standard of care by not performing a two-stage revision procedure with appropriate antibiotics and by not obtaining proof of eradication of the infection in February 2023 or thereafter.

38. The standard of care required Dr. Cox on every visit after February 15, 2023 forward, to take an aggressive approach to eradicate the periprosthetic infection by performing two-stage implantation procedures.

39. Dr. Cox deviated from and breached the standard of care by not taking an aggressive approach to eradicate the periprosthetic infection by scheduling or performing two-stage implantation procedures.

40. As a direct and proximate result of Dr. Cox' failure to act within the standard of care, negligence, gross negligence, careless, and reckless conduct as hereinabove described while acting within the scope of his employment with CAMC, Plaintiff Donna Ring suffered, continues to suffer and will continue to suffer in the future physical and mental injuries, suffering, pain, disfigurement, physical limitations, mental anguish, insult, indignity, humiliation, diminished capacity to enjoy life, annoyance and inconvenience.

41. As a direct and proximate result of Dr. Cox's failures to act within the standard of care, negligence, gross negligence, careless and reckless conduct as hereinabove described

while acting within the scope of his employment with CAMC, reasonable and necessary medical expenses and other expenses have been incurred, and it is reasonably certain and expected that future health care, with associated expenses, and other pecuniary losses will be experienced.

42. As a direct and proximate result of Dr. Cox's failures to act within the standard of care, negligence, gross negligence, careless and reckless conduct as hereinabove described while acting within the scope of his employment with CAMC, Plaintiff suffered special damages in the form of past, present and future loss of household services.

43. Dr. Cox's failures to follow the accepted standard of care while acting within the scope of his employment and/or agency with CAMC deprived Ms. Ring an earlier chance of recovery and his negligent and reckless conduct has increased the risk of harm to her.

44. The standard of care clearly required a two stage reimplantation procedure. Rather than performing a two stage reimplantation procedure to eradicate the TKA infection despite the multiple opportunities to do so, Dr. Cox performed unnecessary procedures and treatment that he knew, or should have known, had no chance of success. As such, Dr. Cox's actions and inactions as alleged herein while acting within the scope of his employment with CAMC were committed with a conscious, reckless, and outrageous indifference to the health, safety, and welfare of Ms. Ring entitling her to an award of punitive damages to punish and deter Dr. Cox, CAMC and other healthcare providers from engaging in similar conduct in the future.

45. Furthermore, CAMC, prior to Dr. Cox's treatment of Ms. Ring, had actual knowledge that Dr. Cox repeatedly fell below the standard of care when dealing with patients who developed knee infections.

46. CAMC had actual knowledge of Dr. Cox's failure to timely diagnose and appropriately treat the knee infection of Joseph Ramirez which led to a leg amputation which resulted in CAMC making a confidential settlement. (Kanawha County, West Virginia - Civil Action No. 22-C-304. Hon. Joanna Tabit).

47. CAMC had actual knowledge of Dr. Cox's failure to timely diagnose and appropriately treat the knee infection of Kathrine O'Bryan which led to a leg amputation which resulted in CAMC making a confidential settlement. (Kanawha County, West Virginia - Civil Action No. 21-C-231. Hon. Tera Salango).

48. CAMC had actual knowledge of Dr. Cox's failure to timely diagnose and appropriately treat the knee infection of Tammy Harper which resulted in CAMC making a confidential settlement. (Kanawha County, West Virginia - Civil Action No. 21-C-957. Hon. Jennifer Bailey).

49. CAMC, despite its actual knowledge of Dr. Cox's repeated deviations from the standard of care, has continued to permit him to operate and treat patients like Donna Ring and continue to practice below the standard of care unabated such that punitive damages are appropriate against it to punish and deter it from permitting Dr. Cox's conduct in the future.

WHEREFORE, Plaintiff, Donna Ring demands judgment over and against Defendant CAMC for an amount within the jurisdiction of this Court, as well as compensatory damages, general damages, as well as punitive damages, for costs incurred in pursuit of this action and for such other relief as this Court deems proper including, but not limited to all reasonable attorney fees, expenses and costs incurred in the pursuit of this claim, as well as pre-judgment and post-judgment interest on all amounts until such monies are fully paid.

Plaintiff hereby demands a trial by jury as to all issues raised herein.

DATED: March 21, 2024

DONNA RING,

Plaintiff,



Mark R. Staun (WV Bar #5728)

James M. Barber (WV Bar #230)

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