

20110211

Gary A. Hangsleben, on behalf of the heirs)
at law of Delores M. Hangsleben,)

SUPREME COURT NO. 20110211

(Grand Forks County No.)
09-C-01665))

Plaintiff/Appellant

vs.)

Gail R. Halverson, Russell Halverson,)
Justin Halverson, Matt Halverson, Dr.)
Larry O. Halverson, Dr. Robin T. Hape,)
Valley Eldercare Center, Valley Memorial)
Homes, Good Samaritan Heritage Grove,)
and Altru Health Center,)

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

NOV 25 2011

Defendants/Appellee STATE OF NORTH DAKOTA

APPELLANTS' BRIEF

SUPPORTING APPEAL OF

SUMMARY JUDGMENT

Brief By: Gary A. Hangsleben, Plaintiff/Appellant, Pro Se

P.O. Box 14222
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STATEMENT OF ISSUES FOR REVIEW

1. Did District Court err in granting a Motion for Dismissal of the Defendants; Dr. Larry Halverson, Dr. Robin Hape, Altru Health System, and Valley Eldercare Center - Valley Memorial Homes ?

- A. That the Plaintiff did not produce a affidavit of an expert opinion to support a prima facie case ?
- B. That the Plaintiff did show good cause that he needed a 3 month extension for legal counsel to be replaced for they did not adequately represent him.
- C. That the Plaintiff had asserted that an affidavit of expert opinion was not necessary since the injury was so obvious that a layperson could discern the occurrence was negligent.
- D. That the Plaintiff asserts that an expert opinion affidavit is not needed when there is an "unintentional failure to remove a foreign substance from within the body of a patient" N.D.C.C. 28-01-46.
- E. That the Plaintiff asserts an infected gangrene gallbladder contributed to the death of Delores M. Hangsleben and could be observed by a layperson.
- F. That the Plaintiff did not lack standing to pursue a survival action and a wrongful death action behalf of his deceased mother.

G. That the Plaintiff was a heir at law and the District Court erred when it ruled that Plaintiff was not an heir at law.

2. Did District Court err in granting in Part and Denying in Part Motion to Dismiss of Defendants; Gail R. Halverson, Russell Halverson, Justin Halverson, and Matt Halverson ?

- A. That the Plaintiff maintains that he did not fail to meet the requirements for bringing a survival action.
- B. That the Plaintiff intends to recover on Delores M. Hangsleben's behalf for the Halverson's tortious conduct.
- C. That the Plaintiff maintains the he is a legal heir to the Delores M. Hangsleben Estate, as his son and daughter and their 5 children.
- D. That the Plaintiff maintains that he does not lack standing to bring a survival action if he is not a lawful representative of Delores M. Hangsleben or her estate.
- E. The District Court did rule that Plaintiff has standing to bring a wrongful death action.
- F. That the Plaintiff is just seeking justice on his mothers behalf after years of neglect and abuse at the Halverson family hands. And seeking justice for Plaintiff's son and his 4 small boys and Plaintiff's daughter and her young boy.

3. Did District Court err in granting Defendants, Gail R. Halverson, Russell Halverson, Justin Halverson, and Matt Halverson's Motion for Summary Judgment, and Order Denying Motion to Compel ?

- A. That the Plaintiff did provide a response to the Halverson's motion for Summary Judgment in the form of oral argument at the hearing in District Court, plus submitted several documents of evidence in support of his case against the Defendants.
- B. That the Plaintiff disagrees with District Court, in the Courts ruling that he did not show no genuine issue as to any material fact. Plaintiff clearly showed that there does exist a genuine issue as to a material fact, as he presented in his oral argument and the documents he submitted at the hearing.
- C. That the Plaintiff did provide evidence that raised several questions as to whether the death of Delores M. Hangsleben was a result of natural causes and was negligently caused by the Defendants, the Halversons's.
- D. That the Plaintiff asserts that additional evidence, expert witness testimony, nursing staff notes were to be submitted at the jury trial.
- E. That the Plaintiff should have been allowed and granted his Motion to Compel Discovery in this case. That the guardian of the records (medical) of Delores M. Hangsleben was the Personal Representative of the estate, Gail R. Hangsleben in the estate and probate action.

F. That the District Court erred in not requiring Defendant, Gail R. Halverson to assist in the production and access of medical records of Delores M. Hangsleben as stated in a letter from attorney Gordon W. Myerchin of the Camrud, Maddock, Olson and Larson Ltd. Law Firm of Grand Forks, North Dakota that represents the Valley Memorial Home which keeps the records of their patient Delores M. Hangsleben (letter was dated May 21, 2008).

4. Did the District Court violate Plaintiff's rights, and thus the the U.S. Constitution, North Dakota State Law and/or the North dakota State Constitution by denying the Plaintiff his Motion to Compel Discovery of the Defendants to produce documents and medical records in the Discovery process ?

5. Is the North Dakota law unconstitutional, when it makes a requirement of the Plaintiff to provide expert opinion affidavits to the court and health care professionals only when a legal action (medical malpractice lawsuit) is against health care professionals, such as doctors, hospitals, nursing homes, and medical clinics ?

STATEMENT OF CASE

Plaintiff/Appellant Gary A. Hangsleben is the adult son of Delores M. Hangsleben. Delores and her husband Gust A. Hangsleben lived in East Grand Forks, Minnesota all of their adult lives over 50 years. Gust died in 1990. Delores lived most recently over 30 years at her house on Forest Court in East Grand Forks, Minnesota. Recently Gail R. Halverson and her family moved in with and took over the household and finances against Delores' wishes. Delores enjoyed living alone. Recently Delores was moved to a nursing home in East Grand Forks, Minnesota, the Good Samaritan Heritage Grove in 2007. At the home she received a severe head injury at the hands of her daughter Defendant Gail R. Halverson. Delores was then moved to a Grand Forks nursing home called Valley Eldercare Center - Valley Memorial Homes in September of 2007. Plaintiff alleges that the move out of state (Minnesota) was to escape the jurisdiction of authorities in Minnesota. Gail R. Halverson has been a nurse with various agencies and has had numerous abuse and neglect complaints against her, especially for financial fraud.

On January 21, 2008 Delores was admitted to the Altru Hospital facility next to the Valley Eldercare Center, both facilities are owned by same corporation, because of abdominal pain.

Delores was treated by employees of Altru Hospital, Dr. Larry Halverson, Dr. Robin Hape, and members of Altru's staff. A CT Scan was conducted on Delores, which revealed a "necrotic gangrenous cholecystitis" in laymens terms Delores had a gangrene infected gallbladder which could be treated in several ways as in a report by Doctor Hape and Doctor Halverson. It is reported that Delores was given only morphine for her pain. Delores died only 2 days later on January 23, 2008 in the Altru Hospital Facility, even though her daughter the Defendant made attempts to move her to a house in East Grand Forks, Minnesota against doctors wishes. Plaintiff/Appellant Gary A. Hangsleben son of Delores M. Hangsleben there was abuse, both financial and physical and neglect at the hands of Defeandant Gail R. Hangsleben and her family.

Plaintiff/Appellant Gary A. Hangsleben, on behalf of the heirs at law of Delores, served a Summons and Complaint on the Defendants on September 8, 2009. Plaintiff/Appellant alleges Defendants were negligent and abusive in their care of Delores and their negligence caused the death of Delores. Plaintiff/Appellant alleges that Defendants failed to pay attention to warnings and unsafe conditions, failed to protect Delores, failed to properly train and supervise their employees, failed to implement a recovery plan for Delores, and failed to provide proper medical care for Delores.

Plaintiff/Appellant Gary A. Hangsleben is seeking damages from each Defendant to go to the heirs of Delores M. Hangsleben, the son and daughter of the Plaintiff/Appellant and the 6 grandchildren of Delores M. Hangsleben.

Motions for Dismissal and Summary Judgment have been filed by the Defendants. Plaintiff/Appellant presented at oral argument and evidence to resist Dismissal and Summary Judgment of the action against the Defendants. Plaintiff believes that Defendants should not profit from their financial and physical abuse of Delores M. Hangsleben, in that there is over \$5 million in assets in the estate/probate of Delores M. Hangsleben. Plaintiff/Appellant and son of Delores M. Hangsleben, Gary A. Hangsleben was not made aware of the movement of Delores out of her own home, nor the transfer of the title of her home to her daughter, Defendant Gail R. Halverson nor the title of the lake home at Maple Lake, Minnesota, nor sale of over \$500,000 in farm machinery for \$500 down payment, nor of land that was family farm in Polk County that is now on the edge of the new golf course. Nor was the Plaintiff/Appellant aware of his mother's injuries or latest illness. Plaintiff/Appellant and his family (son, daughter, and 6 grandchildren) were not even aware of the death of Delores M. Hangsleben until it was noticed in the Grand Forks Herald Obituaries pages on January 24, 2008. Funeral services were on January 25, 2008 in East Grand Forks, Minnesota. One can only wonder why Defendant Gail R. Halverson acted in this way.

NATURE OF CASE AND COURSE OF PROCEEDINGS

Gary A. Hangsleben, Plaintiff filed a Complaint on September 2, 2009 against: Gail R. Halverson, Russell Halverson, Justin Halverson, Matt Halverson, Dr. Larry O. Halverson, Dr. Robin T. Hape, Valley Eldercare Center, Valley Memorial Homes, Good Samaritan Heritage Grove, and Altru Health Systems. In his Complaint Hangsleben alleged the Defendants caused the death of Delores M. Hangsleben. For which Hangsleben is seeking \$5 million in damages from each Defendant.

Defendants Dr. Halverson, Dr. Hape, and Altru Health Systems filed a Motion for Dimissal on December 30, 2009. Their Motion was granted by District Court on April 6, 2010.

An Order Granting in Part and Denying in Part Motion to Dismiss of Defendants: Gail R. Halverson, Russell Halverson, Justin Halverson, and Matt Halverson was granted by the District Court on October 7, 2010.

Defendants: Gail R. Halverson, Russell Halverson, Justin Halverson, and Matt Halverson filed a Motion for Summary Judgment of Dismissal and Notice of Motion (Amended) on March 16, 2011. Their Motion for Summary Judgment and Order Denying Motion to Compel was granted by the District Court on May 17, 2011.

On July 20, 2011 Hangsleben filed Notice of Appeal to this Court.

LAW AND ARGUMENT

1. The District Court erred in granting a Motion for Dismissal of the Defendants; Dr. Larry Halverson, Dr. Robin Hape, Altru Health System, and Valley Eldercare Center - Valley Memorial Homes. The Plaintiff did not need to produce a affidavit of an expert opinion to support his case. The Plaintiff did show good cause that he needed a 3 month extension for legal counsel to be replaced, for they did not adequately represent him and the heirs. Thus the District Court erred in its decision again in this matter. The Plaintiff has asserted that an affidavit of expert opinion was not necessary, since the injury to Delores M. Hangsleben was so obvious, that a layperson could discern the occurrence was negligent. In addition Plaintiff asserts that an expert opinion is not needed when there is an "unintentional failure to remove a foreign substance from within the body of a patient" which is from N.D.C.C. 28-01-46. The Plaintiff asserts that an infected gangrene gallbladder contributed to the death of Delores M. Hangsleben and could be observed by a layperson. The Plaintiff maintains he has standing to pursue a survival action and a wrongful death action on behalf of his deceased mother, Delores M. Hangsleben and her heirs at law. The Plaintiff is an heir at law and the District Court erred when it ruled against Plaintiff.

2. The District Court erred in Granting in Part and Denying in Part Motion to Dismiss of Defendants; Gail R. Halverson, Russell Halverson, Justin Halverson, and Matt Halverson. The Plaintiff maintains that he has met the requirements for bringing a survival action. The Plaintiff's intent is to recover on Delores M. Hangsleben's behalf and for heirs at law for the Halverson's tortious conduct. The Plaintiff maintains that he is a legal heir to the Delores M. Hangsleben Estate, as is his son and his daughter, and their 5 children. The Plaintiff maintains that he does not lack standing to bring a survival action if he is not the lawful representative of Delores M. Hangsleben or her estate. The District Court was correct in its ruling that the Plaintiff has standing to bring a wrongful death action in this matter concerning the death of Delores M. Hangsleben. The Plaintiff is just seeking justice on his mothers behalf after years and years of neglect and abuse at the hands of the Halverson Family (Gail R. Halverson, Russell Halverson, Justin Halverson, and Matt Halverson). And seeking justice for Plaintiff's son and his 4 small boys and the Plaintiff's daughter and her young boy.

3. The District Court did err in Granting Defendants, Gail R. Halverson, Russell Halverson, Justin Halverson, and Matt Halverson's Motion for Summary Judgment, and Order Denying Motion to Compel. The Plaintiff maintains he did provide a response to the Halverson's Motion for Summary Judgment in the form of an oral argument at the Hearing in District Court, plus he submitted several documents of evidence in support of his case against the Defendants Halverson's. The Plaintiff maintains he did indeed show genuine issue as to material fact in this case. And that the Affidavits and Documents in the Court file must be considered true. The Plaintiff provided evidence at the Hearing that raised several questions as to whether the death of Delores M. Hangsleben was a result of natural causes or was negligently caused by the Defendants, the Halverson's. The Plaintiff asserts that additional evidence, expert witness testimony, nursing staff notes, and reports from a private investigation team will be presented at the jury trial. The Plaintiff should be able to try the whole case before a jury and let them decide the merits of the case. The District Court erred in not Granting the Plaintiff's Motion to Compel Discovery in this case. The guardian of the records (medical) of Delores M. Hangsleben was the Personal representative of the estate, Gail R. Halverson, the Defendant in this case. The District Court erred in not requiring Defendant, Gail R. Halverson to assist in the production and access of the medical records of Delores M. Hangsleben as stated in a letter from attorney Gordon W.

Mycechin of the Camrud, Maddock, Olson, and Larson Ltd. Law Firm of Grand Forks, North Dakota that represents the Valley Memorial Home - Valley Eldercare Center which keeps the records of their patient, Delores M. Hangsleben (letter was dated May 21, 2008) and is in the Appendix.

4. The Plaintiff believes his civil rights were violated by the District Court, thus violating the U.S. Constitution, North Dakota State Law, and the North Dakota State Constitution by denying the Plaintiff his motion to Compel Discovery of the Defendants to produce documents and medical records in the Discovery Process of this case.

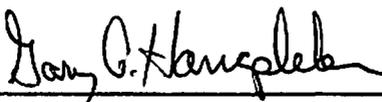
5. The Plaintiff asks this Court if this law is unconstitutional N.D.C.C. 28-01-46. Expert opinion required to maintain an action based upon alleged medical negligence except in obvious cases. Why should a Plaintiff be required to provide a expert opinion affidavit to the Court and health care professionals ONLY when a legal action (medical malpractice lawsuit) is against health care professionals, such as doctors, hospitals, nursing homes, and medical clinics ? Is this a case of discrimination ? I am asking the Court if it can address this issue!

CONCLUSIONS

Gary A. Hangsleben, Plaintiff/Appellant asks that the District Court Summary Judgment finding be reversed and that the case be remanded for trial in that Court. The Defendants have not acted in good faith and there are several factual disputes that need to be settled in a jury trial and thus the Defendants are not entitled to Summary Judgment or Dismissal. And that Hangsleben is entitled to the right to do reasonable discovery and the Motion to Compel for Discovery should be granted to Hangsleben.

Delores M. Hangsleben died on January 23, 2008 at the Altru Hospital in Grand Forks, North Dakota, a fact the Defendants cannot deny. The only facts in dispute are the Defendants role in her death. A jury of our peers should determine the case at hand.

Dated: November, 23, 2001

By: 
Gary A. Hangsleben, Pro Se
P.O. Box 14222
Grand Forks, ND 58208
701-741-4471

Gary A. Hangsleben, on behalf of the heirs)
at law of Delores M. Hangsleben,)
)
)
 Plaintiffs,)

SUPREME COURT NO. 20110211
(Grand Forks County No.
09-C-01665)

vs.)
)
)

Gail R. Halverson, Russell Halverson,)
Justin Halverson, Matt Halverson, Dr.)
Larry O. Halvorson, Dr. Robin T. Hape,)
Valley Eldercare Center, Valley Memorial)
Homes, Good Samaritan Heritage Grove,)
and Altru Health Center,)
)
)
 Defendants.)

Affidavit of Service

I, _____, being sworn, state that I am a citizen of the United States of America over the age of 18 and that I am not a party to the above-entitled matter. That on this _____ day of November, 2011, this Affiant deposited in the mailing department of the United States Post Office at Grand Forks, North Dakota, true and correct copies of the following documents in the above captioned action.

APPELLANT'S BRIEF AND APPENDIX

That copies of the above documents were securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

Donald H. Leonard
Masse & Leonard, Ltd.
308 DeMers Ave NW
East Grand Forks, Mn 56721

Attorney for Gail, Russell,
Justin, and Matt Halverson

To the best of his Affiant's knowledge, information and belief, such addresses as given above are the actual post office addresses of the parties intended to be served. The above documents were mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

Affiant's Signature: _____

The above Person I have personally identified and has subscribed and sworn to before me this _____ day of November, 2011.

Notary Public, State of North Dakota

Gary A. Hangsleben, on behalf of the heirs)
at law of Delores M. Hangsleben,)

Plaintiffs,)

vs.)

Gail R. Halverson, Russell Halverson,)
Justin Halverson, Matt Halverson, Dr.)
Larry O. Halvorson, Dr. Robin T. Hape,)
Valley Eldercare Center, Valley Memorial)
Homes, Good Samaritan Heritage Grove,)
and Altru Health Center,)

Defendants.)

SUPREME COURT NO. 20110211

(Grand Forks County No.
09-C-01665)

Affidavit of Service

I, _____, being sworn, state that I am a citizen of the United States of America over the age of 18 and that I am not a party to the above-entitled matter. That on this _____ day of November, 2011, this Affiant deposited in the mailing department of the United States Post Office at Grand Forks, North Dakota, true and correct copies of the following documents in the above captioned action.

APPELLANT'S BRIEF AND APPENDIX

That copies of the above documents were securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

Leslie Bakken Oliver
Vogel Law Firm
P.O. Box 2097
Bismarck, ND 58502-2097

To the best of his Affiant's knowledge, information and belief, such addresses as given above are the actual post office addresses of the parties intended to be served. The above documents were mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

Affiant's Signature: _____

The above person I have personally identified and has subscribed and sworn to before me this _____ day of November, 2011.

Notary Public, State of North Dakota

Gary A. Hangsleben, on behalf of the heirs)
at law of Delores M. Hangsleben,)
)
Plaintiffs,)

SUPREME COURT NO. 20110211
(Grand Forks County No.
09-C-01665)

vs.)

Gail R. Halverson, Russell Halverson,)
Justin Halverson, Matt Halverson, Dr.)
Larry O. Halvorson, Dr. Robin T. Hape,)
Valley Eldercare Center, Valley Memorial)
Homes, Good Samaritan Heritage Grove,)
and Altru Health Center,)
)
Defendants.)

Affidavit of Service

I, Matthew Hippen, being sworn, state that I am a citizen of the United States of America over the age of 18 and that I am not a party to the above-entitled matter. That on this 25 day of November, 2011, this Affiant deposited in the mailing department of the United States Post Office at Grand Forks, North Dakota, true and correct copies of the following documents in the above captioned action.

APPELLANT'S BRIEF AND APPENDIX

That copies of the above documents were securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

Robert J. Udland
Vogel Law Firm
P.O. Box 1389
Fargo, ND 58107-1389

To the best of his Affiant's knowledge, information and belief, such addresses as given above are the actual post office addresses of the parties intended to be served. The above documents were mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

Affiant's Signature: Matthew Hippen

The above Person I have personally identified and has subscribed and sworn to before me this 25 day of November, 2011.

ROLAND RIEMERS
Notary Public, State of North Dakota
My Commission Expires March 1, 2012

Roland Riemers
Notary Public, State of North Dakota
County of Grand Forks (24)

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