

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

20110211

Gary A. Hagsleben, on behalf of the heirs)
at law of Dolores M. Hagsleben,)

SUPREME COURT NO. 20110211

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

Plaintiffs,
- appellant

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,)

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

JAN 31 2012

STATE OF NORTH DAKOTA

Defendants,
- appellee

REPLY BRIEF OF APPELLANT

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

P.O. Box 14222
Grand Forks, ND 58208
701-741-4471

(1)

TABLE OF CONTENTS

Cover	1
Table of Contents	2
Statement of Case	3-7
Conclusions and Relief Sought	8

REPLY BRIEF FOR THE APPELLANT

This brief is directed to certain points raised in the Appellee's answering brief which require comment. In all other respects, the Appellant believes that his principal brief answers the the arguments raised and those arguments will not be repeated here.

Mr. Leonard, attorney for Gail R. Halverson, Russell Halverson, Justin Halverson, and Matt Halverson makes several serious errors in his Brief of Appellees Halverson which was submitted to this Court.

"Mr. Hangsleben, in his complaint, also alleges that Gail R. Halverson, Russell Halverson, Justin Halverson, and Matt Halverson physically and financially abused Delores M. Hangsleben over a course of several years, and that her death was caused by injuries sustained from a push in 2007 from Gail R. Halverson and coercion by the Halversons causing Delores M. Hangsleben to refuse treatment when she was admitted to Altru Hospital." (Appellee's Brief, p. 2).

Appellant contends he did present evidence to support his allegations against the Defendants Halverson. Mr. Leonard admits that "He did present an oral argument which essentially repeated the allegations in his compliant. (Appellee's Brief, p. 3)

Appellant did make a "Motion to Compel" for Defendant, Gail R. Halverson to produce records of the physicians, the

hospital and the nursing homes. (Appellee's Brief, p. 4). This was after several months of phone calls and letters requesting Mr. Leonard's clients to cooperate in the Discovery Process, where Mr. Leonard and his clients did not cooperate with the Discovery Process. At any time cooperation could have been completed by the Appellee's Halverson, since Defendant Gail R. Halverson was the Personal Representative in the estate/probate case of Delores M. Hangsleben. Appellant briefly reviewed some of the nursing home records and was dismayed by the nursing notes of the comments of Delores M. Hangsleben, saying that the reason for Appellant not visiting her in the nursing home was "Gary was in prison for last 10 years" as told to her by her daughter/Appellee, Gail R. Halverson. This was a complete lie by the Appellee, as the Appellant has lived in a condo complex 1 block from the nursing home and hospital for the past 14 years, since 1998 ! Appellant, briefly reviewed these nursing home notes after his mother's funeral. In addition Appellant was not notified of his mother's illness, nor of her being placed in a nursing home, nor being admitted to Altru Hospital, NOR EVEN OF HER DEATH ! Appellant and family members seen the obituary notice in the Grand Forks Herald ! It is all quite evident to the Appellant that the Appellee's Halverson were trying to hide their crimes against Delores May Hangsleben, our mother.

Mr. Leonard is clearly in error when he states "this action was not commenced until September 9, 2009, and is thus beyond the limitation for the abuse claims contained in Mr. Hangsleben's

compliant in this action. (Appellee's Brief, p. 6). These claims of abuse are true as evidence of the private investigator show in their interviewing of the neighbors of Delores M. Hangsleben.

Mr. Leonard is again in error when he states "the only matters remaining for determination in this action as pertains to the Defendants Halverson, are the allegations that they caused or contributed to the death of Delores Hangsleben. (Appellee's Brief, p. 7).

A further error by Mr. Leonard was in his statement, "Instead of providing the required admissible evidence, Mr. Hangsleben sought to have Gail R. Halverson compelled to produce records of the physicians, the Valley Eldercare, Valley Memorial Home, Good Samaritan Heritage Grove and Altru Health Center, which records clearly were not possessed or controlled by Gail R. Halverson." (Appellee's Brief, p. 8). This is another fabrication by Mr. Leonard, as his client was the Personal Representative in the estate/probate of Delores M. Hangsleben and thus she had control of the nursing home records, the hospital records, and the doctor's reports. This was clearly stated by the attorney for the nursing home, Gordon W. Myerchin, in his letter dated May, 21, 2008 to the Appellant. (Appellants Appendix, p. 107).

Another error of Mr. Leonard was in his statement, "a demand that a party produce and permit copying of designated documents is limited to documents that are in the possession, custody or control of the party upon whom the request is served. *Bachmeir v. Wallwork Truck Centers*, 507 N.W.2d 527 (ND 1993). Gail R. Halverson did not have possession, custody or control of the records which Plaintiff/Appellant Hangsleben." (Appellee's Brief, p. 9). Once again Appellant showed that Appellee, Gail R. Halverson, did have possession, custody, and control of the nursing home, hospital, and doctor records since she was the Personal Representative of Delores M. Hangsleben in her estate/probate matters.

Another mis-statement by Mr. Leonard is his statement, "He is not competent to interpret the medical records which he sought." (Appellee's Brief, p. 10). Once again Mr. Leonard is dead wrong in his statement. Appellant has a degree in Social Work from the University of North Dakota and can read nursing reports, doctor reports, and hospital reports and have the same documents reviewed by Appellants family doctor.

Again Mr. Leonard is wrong in his statement about nursing home staff notes. These are the documents Appellant viewed briefly the day of his mother's funeral. The reports of neighbors interviews by a private investigator show a pattern of elder abuse by the Appellee's Halverson. Appellant was seeking nursing notes from the nursing home, not from a private invest-

gator. The neighbors interviewed will testify in person in court, so this is not hearsay, as attorney Mr. Leonard very well knows!

CONCLUSION

Appellant, Gary A. Hangsleben, 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 Appellant is entitled to the right to do reasonable discovery and the Motion to Compel for Discovery should be granted to the Appellant.

Delores M. Hangsleben died on January 23, 2008 at the Altru Hospital in Grand Forks, North Dakota, without her son by her side, a fact that the Defendants cannot deny. The only facts in dispute are the Defendants role in her death. The physical and financial abuse of Delores M. Hangsleben at the hands of the Halverson Family will be shown at trial. A jury of our peers should determine the case at hand.

Respectfully submitted this 27th day of January, 2012.



Gary A. Hangsleben
Appellant
P.O. Box 14222
Grand Forks, ND 58208
701-741-4471