

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

TRAVOR MOORE, as Power of Attorney)
and on behalf of JACQUELYN)
STAFFORD,)
)
Plaintiff,)
)
v.)
)
HAPEVILLE MANOR ASSISTED)
LIVING FACILITY, INC. d/b/a:)
HAPEVILLE MANOR,)
DONOVAN CHRISTIE, M.D., and)
ANWAN WELLNESS, LLC)
)
Defendants.)
_____)

Civil Action File No.: _____

COMPLAINT

COMES NOW Plaintiff and files this Complaint against Defendants Hapeville Manor Assisted Living Facility, Inc. (“Hapeville Manor”), Donovan Christie, M.D. (“Dr. Christie”), and Anwan Wellness, LLC (Anwan Wellness) showing the Court the following:

Parties, Jurisdiction, Venue, and Service of Process

1.

Plaintiff Travor Moore is a resident of Lithonia, Georgia. Plaintiff Travor Moore was lawfully appointed as Power of Attorney for his mother Jacquelyn Stafford and brings this case as the appropriate representative of Jacquelyn Stafford to recover all damages allowed by law.

2.

Defendant Hapeville Manor Assisted Living Facility, Inc. is a domestic for-profit corporation that transacts business in Georgia. Its principal office address is 601 Coleman Street,

Hapeville, GA, 30354. It may be served through its registered agent, Donovan W Christie, 725 North Central Ave. Hapeville, GA 30354. It is subject to the venue and jurisdiction of this Court.

3.

Hapeville Manor Assisted Living Facility is located at 601 Coleman Street, Hapeville, GA 30354. The property is owned by Defendant Anwan Wellness, LLC. Anwan Wellness, LLC is a domestic Limited Liability Company that transacts business in Georgia. Its principal office address is 4514 Chamblee Dunwoody Rd., Suite #328, Atlanta, GA, 30338. It may be served through its registered agent, Donovan W Christie, 660 Forest Hills Dr NE, Atlanta, GA, 30342. It is subject to the venue and jurisdiction of this Court.

4.

Hapeville Manor Assisted Living Facility is operated as an Assisted Living Center under O.C.G.A. § 31-8-130 et seq.; O.C.G.A. § 31-7-12; O.C.G.A. § 31-7-12.2; and the Georgia Department of Community Health, Health Care Facility Regulations, Chapters 111-8-62.01, et seq. and 111-8-63.01 et seq.

5.

Defendant Donovan Christie M.D. is a resident of Fulton County, Georgia. Dr. Christie is the owner and/or operator of Hapeville Manor Assisted Living Facility, Inc pursuant to Ga. Comp. R. & Regs. r. 111-8-63-.03 (ee) because he owns more than 10 percent of the corporation and:

- 1) upon information and belief, Dr. Christie purports to or exercises authority of an owner in the business;
- 2) Donovan Christie applied with the Georgia Secretary of State to operate the business in 2018;

- 3) according to the 2019 Annual Registration Certificate from the Georgia Secretary of State, Donovan Christie maintains the offices of CEO and CEO on the premises of the assisted living community at 601 Coleman Street, Hapeville, USA;
- 4) upon information and belief, Dr. Christie has direct access to persons receiving care at the assisted living community;
- 5) upon information and belief, Dr. Christie is directly involved in hiring or firing of Hapeville Manor Assisted Living staff, making decisions regarding the care, treatment or services provided to residents at Hapeville Manor, and adding, implementing, or enforcing policies and procedures for Hapeville Manor; and
- 6) upon information and belief, Dr. Christie provides direct personal supervision of assisted living community personnel by being immediately available to provide assistance and direction during the time such assisted living community services are being provided.

He may be served at 725 North Central Ave. Hapeville, GA 30354. He is subject to the venue and jurisdiction of this Court.

6.

Defendants are directly liable by virtue of their own conduct for the wrongful acts and omissions detailed herein. Defendants are also vicariously or indirectly liable and responsible for the wrongful acts and omissions detailed herein under one or more of the following alternative legal theories:

- a. Alter Ego: at all material times, Defendants were alter egos of one another.

Defendants Hapeville Manor Assisted Living Facility, Inc., d/b/a Hapeville Manor, Anwan Wellness, and Donovan Christie, M.D., owned, operated, controlled and/or

managed Hapeville Manor, as if they were one by commingling the three companies on an interchangeable basis or confusing separate properties, records, or control. Further, Defendant Hapeville Manor Assisted Living Facility, Inc. was a subsidiary, affiliate, and/or alter ego of Defendant Donovan Christie, M.D and Anwan Wellness. Defendant Hapeville Manor Assisted Living Facility, Inc. was merely a conduit through which Dr. Christie and Anwan Wellness did business. The management and operations of Defendant Hapeville Manor was so assimilated within Dr. Christie and Anwan Wellness that Defendant Hapeville Manor was simply a name through which Dr. Christie and Anwan Wellness conducted business. Defendant Dr. Christie so dominated and controlled the operations of Defendant Hapeville Manor and Anwan Wellness, any assertions by Defendant Hapeville Manor Assisted Living Facility, Inc., Anwan Wellness, or Dr. Christie that they were a separate corporate fiction with an independent and separate existence is a sham and part of a scheme to perpetrate fraud, promote injustice and evade existing legal and fiduciary obligations.

- b. Agency: at all material times, Defendants acted as agents for one another and each ratified or authorized the acts or omissions of the other.
- c. Joint Venture/Enterprise: in the alternative, Defendants are each liable for the acts and omissions of the other because they were engaged in a joint venture and enterprise and acted in concert in the establishment, operation, management and control of Defendant Hapeville Manor Assisted Living Facility, Inc. Defendants share a common purpose and combined their property and labor in establishing, operating, managing, and/or controlling Defendant Hapeville Manor Assisted Living Facility, Inc. and combined their property and labor in Defendant Hapeville Manor for the purpose of making a

profit. Defendants each had a right of mutual control over the establishment operation, management, control, supervision, and maintenance of Defendant Hapeville Manor Assisted Living Facility, Inc.

7.

During the period of time that Ms. Stafford was a resident, Defendant Hapeville Manor Assisted Living Facility, was required to comply with all applicable laws and regulations pertaining to Defendant Hapeville Manor Assisted Living Facility, including but not limited to Georgia's Bill of Rights for Personal Care Residents, O.C.G.A. § 31-8-131, et. seq.; Rules of Department of Community Health, 111-8-62.01, et seq.; and Rules of Department of Community Health, 111-8-63.01, et seq.

8.

During the period of time that Mrs. Stafford resided at Defendant Hapeville Manor Assisted Living Facility, which is detailed below, Defendant Hapeville Manor Assisted Living Facility was staffed with nursing and professional and non-professional staff members and/or agents who at all times operated within the course and scope of their employment and/or agency with Defendant. As such, they are all liable for the staff members' wrongful acts and omissions under the doctrine of *Respondeat Superior* and/or other legal theories of vicarious liability applicable under Georgia law.

9.

Whenever in this Complaint it is alleged that Defendants did any act or failed to do any act, it is meant that the officers, agents, or employees of the designated Defendants respectively performed, participated in, or failed to perform such acts while in the course and scope of their employment or agency relationship with Defendants. Acts and omissions of an officer or

employee while acting within the scope of his or her employment or authority constitutes an act or omission of the corporation. Accordingly, Plaintiff invokes the doctrine of *Respondeat Superior*. Therefore, allegations of acts, omissions, or any possession of any requisite level of knowledge by any Defendants include officers, agents, servants, representatives, and/or employees who were: a) under the control of Defendants; and b) acting in the course and scope of the employment relationship with Defendants engaged in the act or omission or who had the requisite level of knowledge.

Facts Common to All Counts

10.

Ms. Stafford's resident records and documents from Defendant Hapeville Manor Assisted Living Facility include the following relevant information: Ms. Stafford stayed at Defendant Hapeville Manor Assisted Living Facility, an assisted living facility in Hapeville, Georgia, for respite care multiple times in October 2018 without incident. Prior to her first admission in October 2018, Mr. Moore filled out forms in which he gave Hapeville Manor Assisted Living Facility information about Ms. Stafford and Mr. Moore's contact information, so they could reach him if needed. On December 27, 2018, she was checked into Hapeville Manor Assisted Living Facility for respite care. Ms. Stafford was to stay in the care of Hapeville Manor Assisted Living Facility until January 2, 2019, so Mr. Moore, her son and primary caretaker, could go out of town. At that time, she was 66 years old. Her medical history included early onset Alzheimer's Dementia and left hip replacement.

11.

Before admission to Hapeville Manor Assisted Living Facility in December 2018, Ms. Stafford weighed 115 lbs. and had no history of skin breakdown and wounds, urinary tract infections or dehydration.

12.

Ms. Stafford's Alzheimer's Dementia causes her to suffer from memory loss, but she is otherwise described as alert, pleasant, and cooperative with assistance needed for all activities of daily living to include toileting due to urinary and bowel incontinence. She feeds herself and had a good appetite but required cues to finish her meals as her concentration tended to wane.

13.

An incident report from Hapeville Manor Assisted Living Facility dated January 1, 2019 at 8:00 a.m. described that Ms. Stafford was observed laying on her side with her eyeglasses on upon waking up. It noted wounds to her right upper cheek area and right shoulder from the frame of the glasses. The incident report was created by Whitley Brown.

14.

Britney Thomas was assigned to care for Ms. Stafford during Thomas' overnight shift on December 31, 2018 to January 1, 2019. During this shift, Thomas burned Ms. Stafford by placing the lit end of a cigarette onto multiple places on Ms. Stafford's body.

15.

On January 2, 2019 at approximately 4:52 p.m., Plaintiff Trevor Moore called Hapeville Manor Assisted Living Facility to inform them that he was on the way to pick up Ms. Stafford to take her home. While on the phone, Chey Higgins, the administrator of Hapeville Manor

Assisted Living Facility, informed Mr. Moore that his mother had a wound on her right cheek that Ms. Higgins described as a “carpet burn.” During the conversation with Ms. Higgins, she informed Mr. Moore that Ms. Stafford hasn’t been “acting” her normal self and that the facility didn’t have any of Mr. Moore’s contact information, so they could not contact him about the situation.

16.

When Plaintiff arrived at Hapeville Manor Assisted Living Facility, he asked one of the employees on duty, who was feeding Ms. Stafford her dinner, how did the “carpet burn” scar get on her cheek. The employee’s response was that Ms. Stafford’s glasses scratched against her skin as she was sleeping.

17.

Plaintiff took Ms. Stafford home on January 2, 2019, where he immediately put her to bed in the same clothes she was wearing, as she was extremely tired.

18.

On January 3, 2019, Plaintiff was preparing to give Ms. Stafford a bath when he discovered that not only did Ms. Stafford have the “carpet burn” wound on her cheek that the administrator told him about, but she also had a burn wound on her right shoulder, a smaller burn wound on her left shoulder, a burn wound on her left knuckle, and a burn wound on her inner left knee/thigh.

19.

Plaintiff contacted Ms. Higgins that same day, on January 3, 2019, and told Ms. Higgins about discovering the wounds that were hidden under Ms. Stafford’s clothes.

20.

Later that day, January 3, 2019, Ms. Higgins told Plaintiff that the wounds on Ms. Stafford were burn marks from a lit cigarette after viewing photos of the wounds.

21.

The next day, January 4, 2019, Plaintiff spoke with the head of resident care at Hapeville Manor Assisted Living Facility, Mr. Xzavion, who told him that a Certified Nurse Assistant named Britney Thomas was fired for burning Ms. Stafford with lit cigarettes while she was entrusted to care for her. Plaintiff was informed that an employee named Whitley Brown, who worked the shift after Thomas, was also fired.

22.

Mr. Xzavion told Plaintiff that Thomas became defensive when questioned about the burns on Ms. Stafford. She described Ms. Stafford as being a “vegetable” and “being too much for her.”

23.

The Hapeville Police Department was called to Hapeville Manor Assisted Living Facility to investigate the situation. They agreed that the wounds appeared to be cigarette burns.

24.

After leaving Hapeville Manor Assisted Living Facility on January 4, 2019, Plaintiff took Ms. Stafford to Emory at Hillandale Hospital. At the Emergency Room, Ms. Stafford weighed only 107 lbs. and found to have high levels of sodium in her blood, a sign of dehydration, and a urinary tract infection.

25.

Upon information and belief, at the time Britney Thomas was hired by Hapeville Manor, she had an extensive criminal history which included prior convictions for aggravated assault

(family violence), possession of a knife during commission of a felony, terroristic threats, cruelty to children, and a felony drug charge.

26.

Upon information and belief, Hapeville Manor failed to conduct a background check on Britney Thomas before she was hired to provide care to residents at Hapeville Manor.

27.

Britney Thomas was fired for misconduct and neglecting patients by leaving patients alone at night by Hapeville Manor Assisted Living Facility prior to her abusing Ms. Stafford during Thomas' overnight shift on December 31, 2018 to January 1, 2019.

28.

Britney Thomas was rehired after being fired for misconduct by Hapeville Manor Assisted Living Facility prior to her abusing Ms. Stafford during Thomas' overnight shift on December 31, 2018 to January 1, 2019.

29.

During her short respite care stay at Hapeville Manor Assisted Living Facility, Ms. Stafford lost 8 pounds and became dehydrated and malnourished. She also developed a urinary tract infection (UTI).

30.

During her short respite care stay at Hapeville Manor Assisted Living Facility, Ms. Stafford developed wounds on her face and body.

31.

Other Hapeville Manor Assisted Living Facility employees would have seen these wounds on Ms. Stafford while assisting her with activities of daily life like helping her use the bathroom or changing her clothes.

32.

Former Hapeville Manor Assisted Living Facility employee Whitley Brown would have seen the burn marks left on Ms. Stafford as she was assigned to care for Ms. Stafford in a subsequent shift.

33.

Not one of the Hapeville Manor Assisted Living Facility employees, including Whitley Brown, reported the burn marks the employees would have found on Ms. Stafford while assisting her with daily tasks.

COUNT I
Claim for Professional Negligence

34.

Plaintiff incorporates by reference the allegations from Paragraphs 1- 33 as if set forth herein.

35.

At all times relevant hereto, the nursing staff, professional and non-professional staff at Defendant Hapeville Manor Assisted Living Facility, Inc., d/b/a Hapeville Manor Assisted Living Facility owed a duty of care to Jacquelyn Stafford, in accordance with the standard of care ordinarily exercised by skilled nursing facilities/long term care facilities and/or nursing homes generally under like conditions and similar surrounding circumstances.

36.

The nursing staff, professional staff, and non-professional staff at Defendant Hapeville Manor Assisted Living Facility were negligent and breached this duty to Jacquelyn Stafford. More specifically, the nursing staff, professional staff, non-professional staff, and other healthcare providers, including Hapeville Manor Assisted Living Facility agents deviated from the standard of care by allowing Jacquelyn Stafford to be burned by their employee, Britney Thomas with lit cigarettes during her respite stay at Hapeville Manor, allowing her to become dehydrated and lose weight, allowing her to contract a urinary tract infection, allowing her to develop wounds on her face and legs, and negligently hiring and/or retaining its employees.

37.

Attached hereto as Exhibit "A" is the Affidavit of Margo Kunze, RN, which satisfies the requirements of O.C.G.A. §§ 9-11-9.1 and 24-7-702.

38.

Ms. Stafford experienced bodily injury, severe pain, and suffering, and emotional distress as a direct and proximate result of the negligence and intentional abuse by the nursing staff and other professional and non-professional staff at Defendant Hapeville Manor Assisted Living Facility.

39.

As alleged above, Defendants are vicariously liable for the negligent acts and omissions of the nursing and other professional and nonprofessional staff members at Defendants under the Doctrine of *Respondeat Superior* and other applicable laws.

40.

If any of the acts or omissions alleged in Paragraphs 1 through 37 are deemed by the Court to involve ordinary negligence rather than professional negligence, it is alternatively incorporated and averred as part of Count II of this Complaint.

COUNT II
Ordinary Negligence

41.

Plaintiff restates and incorporates by reference the allegations set forth in Paragraphs 1-40 above.

42.

Defendants had a duty to exercise ordinary and reasonable care to protect Ms. Stafford from injury on or about December 27, 2018 through and including January 2, 2019. This duty included, but was not limited to:

- a. ensuring that Defendant Hapeville Manor Assisted Living Facility was adequately staffed with nursing and other professional and nonprofessional staff members who could supervise and assist Ms. Stafford in her activities of daily living;
- b. ensuring that residents such as Ms. Stafford were safe from abuse like that inflicted upon her by Britney Thomas and perhaps others;
- c. ensuring that Defendant Hapeville Manor Assisted Living Facility's nursing and other professional and nonprofessional staff were adequately trained in how to supervise, assist residents such as Ms. Stafford, and prevent them from being injured; and

d. ensuring that Defendant Hapeville Manor Assisted Living Facility's nursing and other professional and nonprofessional staff would not harm the residents they were entrusted with providing care.

43.

Defendants breached their duty to exercise ordinary and reasonable care to protect Ms. Stafford from being injured throughout her stay at Defendant Hapeville Manor Assisted Living Facility.

44.

The nursing and other professional and nonprofessional staff members at Defendant Hapeville Manor Assisted Living Facility had a duty to exercise ordinary and reasonable care to protect Ms. Stafford from injury on or about December 27, 2018 to January 2, 2019.

45.

The nursing and other professional and nonprofessional staff at Defendant Hapeville Manor Assisted Living Facility breached their duty to exercise ordinary and reasonable care to protect Ms. Stafford from injury on or about December 27, 2018 to January 2, 2019.

46.

As alleged above, Defendants are vicariously liable for the negligent acts and omissions of the nonprofessional staff members at Defendant Hapeville Manor Assisted Living Facility under the Doctrine of *Respondeat Superior* and other applicable laws.

47.

If any of the acts or omissions alleged in Paragraphs 1 through 46 are deemed by the Court to involve professional negligence rather than ordinary negligence, they are alternatively incorporated and averred as part of Count I of this Complaint.

COUNT III

**Violation of Georgia's Remedies for Residents of Personal Care Homes,
O.C.G.A. § 31-8-130, et. seq., and the Department of Community Health's Rules and
Regulations for Assisted Living Communities**
(Negligence per se)

48.

Plaintiff incorporates by reference the allegations from Paragraphs 1-47 as if set forth fully herein.

49.

As a resident of Hapeville Manor Assisted Living Facility, an assisted living/personal care facility, Ms. Stafford was entitled to the rights afforded her under Georgia's Remedies for Residents of Personal Care Homes, O.C.G.A. § 31-8-130, et. seq. These rights included, but are not limited to, reasonable care and skill, care and services that are appropriate, adequate staffing based on resident needs, freedom from mental, verbal, sexual and physical abuse, neglect and exploitation, and compliance with applicable laws and regulations. O.C.G.A. § 31-8-133; the Department of Community Health's (the "DCH's") Rules and Regulations for Personal Care Homes, Chapter 111-8-62; DCH Rules and Regulations for Assisted Living Communities, Chapter 111-8-63.

50.

Georgia's Remedies for Residents of Personal Care Homes was created to protect residents such as Ms. Stafford from neglect and abuse, and to create a safe environment for personal care home and/or Assisted Living Community residents. O.C.G.A. § 31-8-131; DCH Rules and Regulations, Chapters 111-8-62 and 111-8-63.

51.

Resident rights are enumerated in the DCH's Rules and Regulations for Personal Care Homes chapter 111-8-62 and Assisted Living Communities chapter 111-8-63. See also, O.C.G.A. § 31-2-1 et. seq., which gives the DCH rule making authority to issue regulations.

52.

Defendants' employees and/or agents at Hapeville Manor Assisted Living Facility wrongfully and negligently cared for Ms. Stafford by failing to provide her with dignity, appropriate care services, and appropriate staffing based on her needs and the needs of the other residents. O.C.G.A. §31-8-133; DCH Rules and Regulations, Chapters 111-8-62-.12; 111-8-62-.25; 111-8-62-.26; 111-8-63-.25.

53.

Defendants' professional and/or non-professional staff, agents and employees, among other negligent acts and omissions, failed to provide Ms. Stafford with reasonable care and skill and in compliance with applicable laws and regulations which proximately caused her abuse and resultant injuries on December 27, 2018 through and including January 2, 2019. These negligent acts and omissions constitute a violation of O.C.G.A. § 31-8-133; DCH Rules, Chapters 111-8-62-.12; 111-8-62-.25; 111-8-62-.26; and 111-8-63-.25. For instance, among other violations, Ms. Stafford did not receive quality of care; care that respected her dignity; care that upheld her right to be free from mental, verbal, sexual and physical abuse, neglect and exploitation; and care, treatment and services that used reasonable level of skill when Defendants' personal care staff and other non-professional staff failed to prevent her from being abused by Britney Thomas, reporting the signs of abuse, and/or becoming injured during her residency.

54.

Defendants violated DCH Rules and Regulations for Assisted Living Communities, Chapter 111-8-62-.10, which requires assisted living facilities and its' owner/operator to perform background checks for all employees including Britney Thomas.

55.

If Defendants would have followed the law and conducted a background check on Britney Thomas, her extensive violent criminal history would have been discovered, she would have been barred from employment at Hapeville Manor, and would not have been able to abuse Ms. Stafford on December 31, 2018 to January 1, 2019.

56.

These failures, violations, and omissions caused, pain, suffering, injury and emotional distress. DCH Rules and Regulations for Assisted Living Communities, Chapter 111-8-63.03.

57.

These violations of Georgia's Remedies for Residents of Personal Care Homes further constitute negligence *per se* as defined by Georgia law and each and every violation constitutes a separate cause of action against Defendant, their agents and employees, for damages and such other relief as this Court deems appropriate. O.C.G.A. § 31-8-136(6)(d); Thurman v. Pruitt Corp., 212 Ga. App. 766, 422 S.E. 2d. 844 (1994); O.C.G.A. § 31-2-1 et. seq.

58.

As a direct and proximate result of all of the Defendants' violations of Georgia's Remedies for Residents of Personal Care Homes and the DCH's Rules and Regulations for Personal Care Homes and/or Assisted Living Facilities, Ms. Stafford suffered injuries and experienced severe pain and anguish.

59.

Defendants' agents and employees are jointly and severally responsible for any and all violations pursuant to O.C.G.A. § 31-8-100(a), et. seq., for damages from those violations as defined by this act.

60.

Defendants are vicariously liable for all of the wrongful acts, negligent acts and/or omissions described herein of its agents or employees.

61.

Plaintiff is entitled to recover all allowable damages for violations of these rights including, but not limited to, pain and suffering and medical expenses pursuant to O.C.G.A. §§ 31-8-131, et. seq.; and 31-8-136.

COUNT IV
Breach of Contract

62.

Plaintiff incorporates by reference the allegations from Paragraphs 1-61 as if set forth fully herein.

63.

To the extent that the Lease and Residency Agreement that Ms. Stafford and Plaintiff, as Power of Attorney, entered into with Defendants is a valid and enforceable contract, breached the contract by failing to provide Ms. Stafford with basic assisted living services, assistance in activities of daily living, and by failing to uphold her resident rights.

64.

Ms. Stafford suffered injuries including wounds, cigarette burns, dehydration, malnutrition, medical expenses, physical pain and suffering, and mental and emotional pain and suffering as a result of Defendants' breach of the Lease and Residency Agreement.

COUNT V
Battery

65.

Plaintiff incorporates by reference the allegations from Paragraphs 1-64 as if set forth fully herein.

66.

As an agent and employee of Defendant Hapeville Manor, Britney Thomas made repeated intentional contact with Ms. Stafford using the lit end of a cigarette to burn her on multiple places on her body.

67.

Ms. Stafford was harmed physically by the ember's contact with her skin.

68.

Ms. Stafford did not authorize Britney Thomas to burn her repeatedly with the lit end of the cigarette.

69.

Defendants' employee and agent Britney Thomas, wielding the lit cigarette, caused mental and physical damage, including second degree burns, to Ms. Stafford.

70.

As a direct and proximate result of this wrongful, unlawful, reckless misconduct by Britney Thomas, Jacquelyn Stafford experienced emotional distress, pain, suffering and other damages as allowed by Georgia law.

71.

Defendants ratified this conduct by not reporting it in a timely fashion and attempting to cover it up, and is therefore vicariously liable for all of the wrongful acts, negligent acts and/or omissions described herein of its agents or employees, including Britney Thomas.

Negligent Hiring and Retention

72.

Plaintiff incorporates by reference the allegations from Paragraphs 1-71 as if set forth fully herein.

73.

Defendant Hapeville Manor Assisted Living Facility had a duty to exercise ordinary care in the selection of employees and not to retain them after knowledge of incompetency. O.C.G.A. § 34-7-20. See also DCH Policies and Regulations, Chapter 111-8-62-.10 (personnel)(9).

74.

Defendant Hapeville Manor Assisted Living Facility breached that duty to exercise ordinary care in the selection of employees by hiring Britney Thomas without performing a background check on her. O.C.G.A. § 34-7-20.

75.

If Defendants in fact performed a background check on Britney Thomas and discovered her criminal history then hired her anyway, it breached the duty to exercise ordinary care in the selection of employees not to retain them after knowledge of incompetency. O.C.G.A. § 34-7-20.

76.

Defendants breached their duty to exercise ordinary care in the selection of employees not to retain them after knowledge of incompetency by rehiring Britney Thomas after she was fired for misconduct and neglecting patients by leaving them alone at night.

77.

Britney Thomas' violent criminal record and history of neglecting patients and misconduct is sufficient evidence that Defendants knew or in the course of ordinary care should have known that Britney Thomas was not suited for employment at Defendants' assisted living facility.

78.

Britney Thomas' violent criminal record which includes assault (family violence) and cruelty to children, and history of neglecting residents at Hapeville Manor, workplace misconduct, and having been previously terminated for leaving residents alone at Hapeville Manor, are sufficient evidence of Thomas' tendencies to engage in abusive and neglectful behavior towards members of vulnerable groups including children and elderly individuals, her own family, and other residents at Hapeville Manor such that it is reasonably foreseeable to Defendants that Thomas could cause the type of harm sustained by Ms. Stafford. *See* Restatement (Second) of Agency § 213, comment (d). *See also* Allen v. Zion Baptist Church, 328 Ga. App. 208, 213-214

(1) (b) (761 SE2d 605) (2014), quoting Munroe v. Universal Health Svcs., Inc., 277 Ga. 861, 863 (596 SE2d 604) (2004).

79.

Because of Defendants breach and their duty to use ordinary care in the selection and retention of employees, Ms. Stafford suffered injuries including wounds, cigarette burns, dehydration, medical expenses, physical pain and suffering, and mental and emotional pain and suffering at the hands of Britney Thomas.

COUNT VII
Violations of Protection of Disabled Adults and
Elder Persons Protection Act
(Negligence per se)

80.

Plaintiff incorporates by reference the allegations from Paragraphs 1-80 as if set forth fully herein.

81.

O.C.G.A. § 30-5-1 et. seq. was enacted by the Georgia State Legislature to protect disabled adults and/or elderly persons. O.C.G.A. § 30-5-2.

82.

Jacquelyn Stafford was in a class of persons protected by this act because she was elderly, and disabled. At the time of admission to Defendant Hapeville Manor, she was 66 years old and had been diagnosed with dementia and Alzheimer's. O.C.G.A. § 30-5-3.

83.

Under this Act, the neglect of a disabled adult or elder person by a care taker or other person supervising the welfare or having immediate charge or custody of severely disabled adult or elder person shall be violation of O.C.G.A. § 30-5-8.

84.

Defendants and their agents and employees, including professional and nonprofessional staff are defined as “caretakers” under this act. O.C.G.A. § 30-5-3.

85.

Defendants and their agents and employees, were required to provide essential services for disabled and elderly adults such as Jacquelyn Stafford.

86.

“Essential Services” means social, medical, psychiatric, or legal services necessary to safeguard Jacquelyn Stafford’s rights and resources and to maintain the physical and well-being of such person. O.C.G.A. § 30-5-3.

87.

As care takers, Defendants violated this act by failing to provide appropriate care to Jacquelyn Stafford as defined by this act from December 27, 2018 through and including January 2, 2019. O.C.G.A. § 30-5-3.

88.

As care takers, with the responsibility to take care of Jacquelyn Stafford, Defendants, the professional and non-professional staff, agents and employees, also violated this act by negligently taking care of and abusing Jacquelyn Stafford. O.C.G.A. § 30-5-3.

89.

Defendants, their professional and non-professional staff, agents and employees, failed to provide Jacquelyn Stafford with essential services such as care planning, nursing, and activities of daily living to the degree that it harmed her physical and/or emotional health. O.C.G.A. § 30-8-3.

90.

As a direct and proximate result of this negligence by the nursing staff, professional and/or non-professional and other healthcare staff at Defendant Hapeville Manor, Jacquelyn Stafford experienced severe pain and disorientation, incurred medical expenses, suffered injuries, and an untimely and wrongful death.

91.

At all relevant times, employees and agents of Defendants, are therefore jointly and severally responsible under the Doctrine of *Respondeat Superior* for all wrongful acts and negligent acts or omissions of their agents and/or employees who were working at Hapeville Manor for all damages for the breaches of the standard of care.

92.

Defendants are vicariously liable for all of the wrongful acts, negligent acts and/or omissions described herein of its agents or employees, Britney Thomas and Whitley Brown.

COUNT VIII
Punitive Damages

93.

Plaintiff incorporates by reference the allegations from Paragraphs 1- 92 as if fully set forth herein.

94.

The wrongful acts, negligent acts and omissions, violations of Georgia Remedies for Residents of Personal Care Homes, aforementioned Rules of the Department of Community Health Rules and Regulations, and breaches of standards of care by Defendants, by and through their agents and/or employees, evince wantonness and are such gross deviations from the appropriate standards of care that they justify the inference of a conscious indifference to the consequences as defined by O.C.G.A. § 51-12-5.1, and which justify an award of punitive and exemplary damages against Defendants to punish, penalize, and deter these Defendants and others similarly situated from repeating such egregious conduct in the future.

COUNT IX
Expenses of Litigation

95.

Plaintiff incorporates by reference the allegations from Paragraphs 1- 94 as if fully set forth herein.

96.

Plaintiff hereby adds a claim under O.C.G.A §13-6-11, Expenses of Litigation. Plaintiff anticipates that these Defendants may act in bad faith and therefore be stubbornly litigious and will cause Plaintiff unnecessary trouble and expense. Therefore, Plaintiff is entitled to expenses of litigation generally.

WHEREFORE, Plaintiff requests the following:

1. That Defendants be served with process;

2. That Plaintiff Travor Moore as Power of Attorney and on behalf of Jacquelyn Stafford, recover from Defendant for Jacquelyn Stafford's pain and suffering, medical expenses, punitive damages, attorney's fees and litigation expenses, and any other amount as determined by a fair and impartial jury in an amount in excess of Ten Thousand Dollars (\$10,000.00);
3. That Plaintiff has a trial by a jury of twelve on all issues on this action;
4. That Plaintiff has such further relief to which he may be entitled.

This 30th day of July, 2019.

BLASINGAME, BURCH,
GARRARD & ASHLEY, P.C.

/s/ Evan W. Jones

Evan W. Jones
Georgia Bar No. 400115
Lee S. Atkinson
Georgia Bar No. 255445

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