

**IN THE CIRCUIT COURT OF JACKSON COUNTY CIRCUIT COURT
AT INDEPENDENCE**

JOSH BRACKENBURY

AND

JANET BRACKENBURY

Plaintiffs,

vs.

TRUMAN MEDICAL CENTER, INC.

SERVE REGISTERED AGENT:

William H. Colby

2301 Holmes Street

Kansas City, MO 64108

Defendant.

Case No.:

PETITION FOR DAMAGES

ALLEGATIONS COMMON TO EACH COUNT

COME NOW Plaintiffs, by and through counsel, and their Petition against Defendant, states and alleges as follows:

1. Plaintiffs Josh Brackenburg and Janet Brackenburg (FKA Janet Rosson) are a married couple residing in Jackson County, Missouri and have as their principal residence at

[REDACTED]

2. Defendant Truman Medical Center, Inc., is a Missouri corporation in good standing and may be served through its registered agent, William H. Colby, at 2301 Holmes Street, Kansas City, Missouri 64108.

3. That jurisdiction is proper in this Court pursuant to Missouri Constitution, Article V, Section 14(a) and R.S.Mo. §§506.500(1), (2), and (4).

4. Venue is appropriate at Jackson County, Missouri as this action sounds in tort and the injury first occurred in the County of Jackson, State of Missouri.

5. Plaintiff Janet Brackenburg was a patient of the Defendant and received care from

the Defendant at Defendant's Lakewood location at 7900 Lee's Summit Rd, Kansas City, MO 64139.

6. Plaintiffs are the biological parents of a 14-week old fetus ("child") that was delivered on March 22, 2017.

7. Previously on or about March 17, 2017 an ultrasound indicated that the child had no fetal heartbeat.

8. On or about March 20, 2017 Plaintiff Janet Brackenbury expressed her wishes to the Defendant to have genetic testing on the child.

9. On or about March 20, 2017 Plaintiff Janet Brackenbury instructed the Defendant that the child's remains are to be delivered to Speaks Funeral Home in Independence, Missouri ("Speaks").

10. On or about March 22, 2017 Plaintiff Janet Brackenbury was induced and delivered the fetus, and at that time again Plaintiff Janet Brackenbury instructed Defendant to deliver the child's remains to Speaks.

11. On or about March 22, 2017 at 7:45 AM Plaintiff Janet Brackenbury signed an authorization for transfer of the remains from Defendant to Speaks.

12. Plaintiff Janet Brackenbury authorized genetic testing to be performed by Childrens Mercy Hospital and on or about March 22, 2017 samples for said genetic testing were taken from the child and placed in vials to be sent to Children's Mercy Hospital.

13. On or about March 22, 2017, the child's remains were placed in a plastic canister and Defendant promised Plaintiff Janet Brackenbury that the child's body would be picked up immediately by Speaks that same day.

14. On or about March 23, 2017 Speaks contacted the Defendant and the Defendant informed Speaks it could be two days or more before it released the child's remains because

dissection and research was being conducted. The remains were not released until March 27, 2017.

15. Neither Plaintiff ever authorized dissection or research to be conducted on the deceased child and without consent and contrary to Plaintiffs' specific directive for the child's remains to be delivered to Speaks, Defendant instead delivered the fetus's remains to the Defendant's pathology department for dissection or disposal or both.

16. Defendant acted in bad faith or with malice against Plaintiffs whereby Defendant ignored the lack of consent to perform medical procedures on the child and further interfered with the ability of loved ones to bury or cremate their kin, or through a failure to properly train its employees with regard to conducting themselves in the way in which they handle and release fetal remains.

17. Defendant failed to comply with its own procedures by failing to obtain the parent Plaintiffs' permission for the dissection, testing, or disposal of the fetal remains which manifests a reckless indifference to the rights of others, and is without legal justification.

COUNT I

INTERFERENCE WITH A DEAD BODY

18. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Petition.

19. Plaintiffs had the right to possess their deceased child's bodily remains for burial or cremation and are entitled to the disposition of the bodily remains.

20. Defendant interfered with that right by retaining and dissecting or disposing of all or part of the child's bodily remains without lawful authority to do so.

21. Defendant intentionally or recklessly mutilated, dissected, or otherwise performed tests of the child's remains without the consent of the Plaintiff parents.

22. Defendants' conduct was outrageous because of Defendants' evil motive or reckless indifference to the rights of Plaintiff.

23. Plaintiffs, based upon Defendant's evil motive or reckless indifference to the rights of Plaintiffs, are entitled to an award of punitive damages to deter said Defendant and others from such like conduct.

WHEREFORE, Plaintiffs pray for judgment against Defendant in an amount fair and reasonable in the premises and in excess of Twenty Five Thousand Dollars (\$25,000), for an additional amount as punitive damages in such sum as will serve to punish Defendant and to deter Defendant and others from like conduct; for Plaintiffs' costs and expenses herein incurred, and for such other and further relief as the Court deems just and proper.

COUNT II

BREACH OF THE RIGHT OF SEPULCHER AND BURIAL

24. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Petition.

25. Defendant had a duty imposed by the universal feelings of mankind to be discharged by someone towards the dead to abstain and protect Plaintiffs, as next of kin, from violation of the right of sepulcher and burial.

26. Defendant intentionally or recklessly breached that duty where they have refused and continued to refuse to release the child's remains for five (5) days despite Plaintiffs' demands for immediate release, thereby preventing a proper and decent burial or cremation.

27. The breach of the right of sepulcher and burial of the child directly and proximately caused mental anguish to Plaintiffs.

28. Defendant, through an express or implied policy or custom of interfering with the release of human remains without consent, or through failure to properly train its

employees with regard to conducting themselves regarding the release of human remains, violated Plaintiffs' right of sepulcher.

29. As a direct and proximate result of Defendant abhorrent conduct in interfering with the ceremonial funeral services of Plaintiffs' child, Plaintiffs suffered damages.

WHEREFORE, Plaintiffs pray for judgment against Defendant in an amount fair and reasonable in the premises and in excess of Twenty Five Thousand Dollars (\$25,000), for an additional amount as punitive damages in such sum as will serve to punish Defendant and to deter Defendant and others from like conduct; for Plaintiffs' costs and expenses herein incurred, and for such other and further relief as the Court deems just and proper.

COUNT III

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

30. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Petition.

31. Defendant's conduct was extreme and outrageous going beyond all possible bounds of decency, was atrocious, and utterly intolerable in a civilized community as herein described above.

32. Defendant acted intentionally or recklessly to cause emotional distress.

33. Defendant's conduct caused extreme emotional distress resulting in bodily harm including, but not limited to, severe depression, nightmares, and despair.

34. As a direct and proximate result of the intentional or reckless conduct of Defendant as aforesaid Plaintiff has suffered damages.

WHEREFORE, Plaintiffs pray for judgment against Defendant, in an amount fair and reasonable in the premises and in excess of Twenty Five Thousand Dollars (\$25,000), for

Plaintiffs' costs and expenses herein incurred, and for such other and further relief as the Court deems just and proper.

COUNT VI

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

35. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Petition.

36. Defendant owed Plaintiffs a duty.

37. Defendant breached that duty owed to Plaintiffs by including but not limited to the following actions: preventing Plaintiffs from properly burying or cremating their deceased child; performing dissection or otherwise testing or research on the bodily remains of the child without the consent of the parents.

38. That from the fact of such occurrence and the reasonable inferences therefrom, such occurrence was directly caused by Defendant's negligence.

39. Defendant's negligent acts involved an unreasonable risk of causing emotional distress.

40. Defendant knew or by using ordinary care could have known of such risk.

41. As a direct result of such negligence, Plaintiffs sustained medically diagnosable and significant emotional distress.

42. Defendant showed a complete indifference to or conscious disregard for the safety of others.

43. That as a direct and proximate result of said Defendant's conduct as aforesaid, Plaintiff has suffered damages.

WHEREFORE, Plaintiff prays for judgment against Defendant, in an amount fair and reasonable in the premises and in excess of Twenty Five Thousand Dollars (\$25,000), for

Plaintiffs' costs and expenses herein incurred, and for such other and further relief as the Court deems just and proper.

COUNT V

PRIMA FACIA TORT

44. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Petition.

45. That an intentional lawful act was committed by the Defendant in that Plaintiffs were prevented from properly burying or cremating their deceased child and Defendant allowed dissection or otherwise testing or research on the body of the child without the consent of the parents.

46. That Defendant had an intent to cause injury to the Plaintiffs by doing the act, evidenced by ignoring the specific instructions of Plaintiff Janet Brackenbury to deliver the child's remains to Speaks.

47. That injury to the Plaintiffs was caused by the act of Defendant.

48. That Defendant had no justification, or only a patently insufficient justification, for the Defendant's act whereby Defendant continued to keep Plaintiffs' child from being delivered in a timely matter for a funeral for five (5) days despite Plaintiffs' demands for immediate release, and allowed dissection or otherwise testing or research on the body of the child without the consent of the parents.

WHEREFORE, Plaintiff prays for judgment against Defendant, in an amount fair and reasonable in the premises and in excess of Twenty Five Thousand Dollars (\$25,000), for an additional amount as punitive damages in such sum as will serve to punish Defendants and to deter Defendant and others from like conduct; for Plaintiffs' costs and expenses herein incurred, and for such other and further relief as the Court deems just and proper.

COUNT VI

NEGLIGENT SUPERVISION

49. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Petition.

50. Defendant had a legal duty to use ordinary care to protect the Plaintiffs against unreasonable risks of harm.

51. Defendant breached that duty by failing to properly supervise its employees whereby a reasonable person could have foreseen the injuries of the type suffered would likely occur under the circumstances.

52. Defendant's employees failed to verify and ensure proper consent was given to deliver the child's bodily remains to pathology and further, for pathology to perform procedures upon the bodily remains without also verifying consent.

53. Said breach proximately caused the resulting injury, damage and harm to Plaintiffs.

54. The Plaintiffs were thereby damaged.

WHEREFORE, Plaintiff prays for judgment against Defendant, in an amount fair and reasonable in the premises and in excess of Twenty Five Thousand Dollars (\$25,000), for Plaintiffs' costs and expenses herein incurred, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

LAW OFFICE OF KIRBY L. MINOR, LLC

/s/Kirby L. Minor

By: Kirby L. Minor, MO Bar #58838

221 W. Lexington Ave., Ste. 103

Independence, Missouri 64050

(816) 252-9400

(816) 252-9402 fax

attorney@kirbyminor.com

ATTORNEYS FOR PLAINTIFFS