

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) ROBBIE EMERY BURKE, Special
Administratrix of the Estate of Terral Brooks
Ellis, II, deceased,
(2) TERRAL B. ELLIS, SR., and
(3) SHELLY BLISS,

Plaintiffs,

vs.

(1) OTTAWA COUNTY BOARD OF
COUNTY COMMISSIONERS,
(2) JEREMY FLOYD, SHERIFF OF
OTTAWA COUNTY, in his Official Capacity,
(3) TERRY DURBOROW,
(4) THERESA HORN L.P.N.,
(5) JENNIFER GRIMES,
(6) KENT WILLIAMS,
(7) BAPTIST HEALTHCARE OF
OKLAHOMA, LLC d/b/a INTEGRIS MIAMI
EMS,
(8) OFFICER JEFFREY HARDING,
(9) OFFICER BRAY, and
(10) OFFICER CHARLES SHOEMAKER,

Defendants.

Case No.: 17-cv-00325-JED-FHM

**MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS BAPTIST HEALTHCARE
OF OKLAHOMA, LLC D/B/A INTEGRIS MIAMI EMS, KENT WILLIAMS AND
JENNIFER GRIMES**

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2. Miami Fire Department 1st Responder, October 21, 2015
3. Autopsy Terral Ellis, II, selected pages
4. Rule 26 Expert Report of Dr. Todd Wilcox, expert for Plaintiff
5. Deposition Transcript of Dr. Todd Wilcox, selected pages
6. Quapaw EMS, October 22, 2015.
7. Deposition Transcript of Terry Durborow, selected pages
8. Deposition Transcript of Johnny Bray, selected pages
9. Deposition Transcript of Charles Shoemaker, selected pages
10. Deposition Transcript of Jeff Harding, selected pages

Defendants Baptist Healthcare of Oklahoma, LLC, d/b/a Integris Miami EMS, Kent Williams, and Jennifer Grimes (hereinafter “Integris EMS Defendants”), pursuant to Fed R. Civ. P. 56 and move this Court for summary judgment in the medical negligence lawsuit (Second Claim for Relief) on the following grounds: the tortious action(s) of the Ottawa County jail and its employees after Integris EMS left the premises was a supervening/intervening cause of the injuries and death of Terral Ellis, II, and insulates the Integris EMS Defendants from any alleged liability.

INTRODUCTION

This is a two-part lawsuit as alleged in the Complaint: (1) a civil rights lawsuit against the Ottawa County Defendants (First and Third Claims for Relief), and, (2) a medical negligence/wrongful death lawsuit against the Integris EMS Defendants based on Oklahoma law of medical negligence (Second Claim for Relief). Plaintiffs assert supplemental jurisdiction for the state law claims against the Integris EMS Defendants per 28 U.S.C. § 1367. Where a federal court exercises supplemental jurisdiction, the federal court applies the substantive law of the forum state for the state law claims. *Romero v Allstate Insurance Company*, 2018 WL 2325405 at *5 (E.D. Pennsylvania, May 22, 2018). This Motion for Summary Judgment by the Integris EMS Defendants is based on the application of Oklahoma state law regarding medical negligence: under the Oklahoma doctrine of supervening/intervening cause, the unforeseeable tortious conduct of the Ottawa County defendants after the Integris EMS Defendants left the jail on October 21, 2015 broke any causal nexus between the actions of the Integris EMS Defendants and the death of Terral Ellis, II the following day (October 22, 2015). Accordingly, summary judgment for the Integris EMS Defendants should be granted.

Terral Ellis was a 26-year-old male who was booked into the Ottawa County jail (Miami, Oklahoma) on October 10, 2015 for an outstanding bench warrant (failure to appear in court on a

felony DUI (2nd) and substance abuse charge). Prior medical records reveal Mr. Ellis had a long history of substance abuse since age 14 of prescription and street drugs including K2, and that he had been diagnosed with bipolar disorder. On October 21, 2015, Integris EMS was notified and requested to respond to the Ottawa County jail for possible seizures by Terral Ellis. The first responders (City of Miami Fire Department) arrived at 1638 hours and Integris EMS paramedics (Kent Williams and Jennifer Grimes) entered the jail at 1639 hours with their equipment and patient transport gurney. The paramedics evaluated Terral Ellis in the jail pod at his bunk and took initial vitals which were normal: BP 100/57, P 84, R 20. Lungs were clear and bilateral. He did not appear in respiratory distress. He stated his ribs were hurting but did not complain of pain upon palpation. He reported sweating and dehydration but did not show signs of dehydration. He reported he had been eating and drinking normally. Mr. Ellis was asked to stand and a second set of vitals was taken at 1645 hours, also normal: BP 116/76, P 82, R 20. He showed no signs of orthostatic hypotension. The jail deputy then advised Integris EMS paramedics and the MFD first responders that the jailers would put Terral Ellis in a holding cell in view of the guard desk, that Mr. Ellis would be checked regularly (every 15 minutes) and if anything changed that EMS would be called back immediately; further, that the jail nurse would contact the doctor to look at the inmate in the morning. At that time, Mr. Ellis requested to use a cell phone and was told that he could not call his grandfather. Mr. Ellis became agitated and took off the blood pressure cuff and asked to be taken to the holding cell. Integris Miami EMS advised the Ottawa County jail staff that if there was any change in the condition of the inmate to call EMS back. Integris EMS then loaded up their equipment and (with the Miami FD first responders) departed the jail facility and returned to their home station. The refusal paperwork was not signed as Mr. Ellis was placed in a holding cell. Integris EMS was at the jail with Mr. Ellis for approximately 20 minutes.

After Integris EMS left the jail on October 21, Mr. Ellis remained at the Ottawa County jail in a separate holding cell near the guard desk. The evidence is overwhelming that on October 22, the condition of Mr. Ellis not only changed dramatically for the worse, but that the Ottawa County jail staff and nurse repeatedly ignored these changes and his cries for help; further, the Ottawa County jail staff and nurse mocked Mr. Ellis, laughed at him, stated he was faking it, and specifically told him they were not calling an ambulance. Finally, at approximately 1338 hours on October 22, 2019, the jail nurse was called to the holding cell where Mr. Ellis was noted to be in distress. An ambulance was called, the local Quapaw EMS responded and arrived at the jail at 1358 hours. Mr. Ellis was moved to the ambulance for a secondary assessment, and at that time had an abrupt change in level of responsiveness and became nonresponsive. CPR was initiated. Mr. Ellis was transported via ambulance to the Integris Miami emergency room where resuscitation efforts continued. After approximately 50 minutes of efforts in the emergency room, resuscitation efforts were stopped and Terral Ellis was pronounced dead at 1451 hours. Cause of death on autopsy was determined to be sepsis/septic shock.

SUMMARY OF ARGUMENT

Oklahoma recognizes the doctrine of supervening/intervening cause in a medical negligence case. “The general rule is that the causal connection between an act of negligence and an injury is broken by the intervention of a new, independent and efficient cause which was neither anticipated nor reasonably foreseeable (footnote citation omitted).” *Thompson v Presbyterian Hospital, Inc.*, 652 P.2d 260, 264, 1982 OK 87 (Okla. 1982), where the Oklahoma Supreme Court held as a matter of law that the supervening negligence (improper saddle block) of the anesthesiologist was unforeseeable and therefore dismissal of the operating surgeon (whose alleged negligence was before anesthesia was administered) was appropriate. The Oklahoma

courts have stated the intervening/supervening cause will break the nexus between a defendant's alleged negligence and the later injury/death and will insulate the original tortfeasor from liability. *Thompson* at 264. The intervening/supervening defense must meet a three-part test: the subsequent tortious conduct by other third parties must be "(1) independent of the original act, (2) adequate of itself to bring about the result and (3) one whose occurrence was not reasonably foreseeable (footnote citation omitted)." *Thompson* at 264. Where the evidence is conclusive, "...it is for the court to determine as a matter of law whether intervening factors broke the causal nexus between the original actor's careless behavior and the resulting injury (citations omitted)." *Henry v Merck and Company, Inc.*, 877 F. 2d 1489, 1495 (10th Cir., 1989).

In the instant case, the Integris EMS Defendants submit that the evidence is without question that all three elements for intervening/supervening cause are met. The supervening tortious conduct by the Ottawa County jail after the Integris EMS Defendants left the jail on October 21, 2015 was independent of the actions by the Integris EMS paramedics, was sufficient by itself to cause the death Mr. Ellis, and was not foreseeable conduct (in fact, the Ottawa County jail specially stated they would contact an ambulance if the condition of Mr. Ellis changed). Thus, summary judgment for the Integris EMS Defendants is appropriate.

MATERIAL UNDISPUTED FACTS

1. Terral Ellis was a 26-year-old placed into the Ottawa County jail on October 10, 2015. Exhibit 1, page 1 and Exhibit 4, page 3.
2. The Miami Fire Department 1st Responders arrived at the Ottawa County jail at 1638 hours on October 21, 2015 to evaluate Terral Ellis. Exhibit 2.
3. The Integris Miami EMS arrived at the Ottawa County jail at 1639 hours on October 21, 2015 to evaluate Terral Ellis, II. Exhibit 1, page 5.
4. Integris Miami EMS took initial vitals of Mr. Ellis that were normal: BP 100/57, P 84, R 20. Exhibit 1, page 6 and 8.

5. Integris Miami EMS listened to the breath sounds of Mr. Ellis and they were clear bilaterally, he did not appear to be in respiratory distress. Exhibit 1, page 6 and 8.
6. Integris Miami EMS did not find any acute signs of dehydration of Mr. Ellis. Exhibit 1, page 6.
7. Integris Miami EMS requested Mr. Ellis to stand and he did, a second set of vitals were taken which were normal: BP 116/76, P 82, R 20. Exhibit 1, page 6 and 8.
8. The Ottawa County jail staff advised Integris Miami EMS the jail nurse wanted Mr. Ellis checked out to see if anything acute was going on, and Integris Miami EMS advised that nothing acute appeared to be happening. Exhibit 1, page 6.
9. Mr. Ellis advised Integris Miami EMS he wanted to call his grandpa. and if he could call his grandpa he then wanted to be left alone at the jail. Exhibit 1, page 8.
10. The Ottawa County jail staff advised Integris Miami EMS they would place Mr. Ellis in a holding cell in view of the guard desk and checked every 15 minutes. Exhibit 1, page 8.
11. The Ottawa County jail staff advised Integris Miami EMS that if the condition of Mr. Ellis changed that EMS would be called back immediately. Exhibit 1, page 8.
12. The Ottawa County jail staff advised Integris Miami EMS that the jail nurse would contact the doctor to come to examine Mr. Ellis in the morning. Exhibit 1, page 8.
13. Mr. Ellis was told by the Ottawa County jail staff that he could not call his grandpa, and Mr. Ellis became agitated, taking off his blood pressure cuff and stated to take him to his holding cell. Exhibit 1, page 8.
14. Mr. Ellis did not sign the refusal for treatment form as he was placed in his holding cell. Exhibit 1, page 6 and 8.
15. Integris Miami EMS advised the staff at Ottawa County jail that if Mr. Ellis had any changes to call EMS back. Exhibit 1, page 6.
16. Integris Miami EMS was on the premises attending to Mr. Ellis for approximately 20 minutes. Exhibit 1, page 5.
17. At 8:28 AM on October 22, 2015, Mr. Ellis is heard moaning out for help in obvious distress, the jail staff making fun of him and stating they were not going to call an ambulance. Exhibit 4, page 6.
18. At 8:59 AM on October 22, 2015, Mr. Ellis asks for water but the jail staff refused, saying "don't let him fool you". Exhibit 4, page 6.

19. At 10:45 AM, the jail nurse berates Ellis and implies he is faking his illness, and she states "...I'm tired of dealing with your dumb ass, you hear me." Exhibit 4, page 7.
20. Nurse Horn finally called EMS later on October 22, 2015, Quapaw EMS responded and arrived at 1358 hours. Exhibit 6, page 29 of 53.
21. Quapaw EMS left the Ottawa County jail at 1420 hours on October 22, 2015 and transported Mr. Ellis to the Integris Miami ER, arriving at 1425 hours. Exhibit 6, page 29 of 53.
22. The Integris Miami ER worked on Mr. Ellis for 50 minutes without success and Mr. Ellis died at 1451 hours on October 22, 2015. Cause of death was sepsis secondary to acute bronchopneumonia. Exhibit 4, page 8, and Exhibit 3.
23. The Plaintiff's sole expert witness is not a paramedic, but nevertheless asserted two (2) deviations from the standard of care by the Integris EMS Defendants: 1. Failure to obtain a pulse oximetry and 2. determining that Mr. Ellis was fine to remain in jail. Exhibit 4, pages 8 and 9.
24. The expert witness for the Plaintiff has opined that the comments and conduct of the jail nurse (Horn) at 10:32 AM on October 22 was shocking and that she fundamentally refused care; that her actions demonstrate deliberate indifference/depraved indifference to the serious medical needs of Mr. Ellis. Exhibit 4, page 9.
25. The expert witness for the Plaintiff found that the conduct by the Ottawa County jail was deliberately indifferent to the serious medical needs of Mr. Ellis. Exhibit 4, page 10.
26. The expert witness for the Plaintiff has given the expert opinion that up to the mid to late morning of October 22, 2015, had Mr. Ellis been appropriately assessed, diagnosed and treated, he likely would have survived. Exhibit 5, page 121, lines 12-17 and page 162, lines 7-20.
27. Johnny Bray, a staff jailer for Ottawa County, stated that no one for Ottawa County notified any paramedics about the changing condition was Mr. Ellis was reporting on October 22, despite the paramedics telling the jail that they (the jail) need to report that. Exhibit 8, page 205, lines 5 to page 207, line 24.
28. Johnny Bray was told by Mr. Ellis on October 22, 2015 that his legs were numb, yet he did not contact the paramedics to come back. Exhibit 8, page 204, lines 5-17.

29. Terry Durborow, Sheriff of Ottawa County in 2015, reviewed the video/audio of October 22, 2015 and found the interaction by nurse Horn and Mr. Ellis very disturbing, he found she refused to even go back and check on Mr. Ellis when he was asking for adequate medical care, she refused to do her job. Exhibit 7, page 107, line 1 to page 108, line 14.
30. Terry Durborow stated that Nurse Horn was responsible for the death of Mr. Ellis and how he died; further the jailers could have listened to him and gotten Mr. Ellis out of there and the jail staff did not follow policy in failing to get Mr. Ellis to an emergency room. Exhibit 7, page 118, line 24 to page 119, line 24.
31. On October 22, 2015 at approximately 8:30 AM, the Ottawa County jail staff (Mr. Charles Shoemaker) contacted the jail nurse and advised that Mr. Ellis was screaming for help, he asked what he should do, and the nurse advised that she would see Mr. Ellis when she got in there. Exhibit 9, page 190, lines 4-23.
32. Mr. Shoemaker stated that from around 10:30 AM until about 1:30 PM on October 22, 2015, when he saw Mr. Ellis that Mr. Ellis looked completely different, that Mr. Ellis looked like he needed medical attention. Exhibit 9, page 190, line 25 to page 191, line 8.
33. Jeff Harding, Ottawa County jail administrator in 2015, stated that from his review of the video on October 22, 2015 in the morning, that what he saw was disturbing, Mr. Ellis was begging for help and sounded sincere, and EMS should have been called. Exhibit 10, page 173, line 6 to page 174, line 25.
34. Jeff Harding stated that from his review of the video of the morning of October 22, 2015, had he been in his office at 10:48 AM, he would certainly have called EMS. Exhibit 10, page 191, line 20 to page 193, line 6.

ARGUMENT

The Integris EMS Defendants contend that they are not liable to the Plaintiffs per the Oklahoma law of supervening/intervening cause; that the tortious conduct by the Ottawa County Defendants after Integris EMS left the Ottawa County jail premises on October 21, 2015 was sufficient conduct to constitute an independent and not foreseeable cause to break any nexus between the care/treatment by Integris EMS and the death Mr. Ellis the following day on October 22, 2015. By this Motion, the Integris EMS Defendants do not in any way concede or admit that the care/treatment by the paramedics for the 20 minutes on October 21 was negligent or below the

standard of care. To the contrary, these Integris EMS Defendants have multiple experts (paramedic experts and a physician expert) that have opined that the care/treatment by the Integris EMS paramedics was not negligent and was within the standard of care expected of a paramedic. Thus this Motion for Summary will not focus on the propriety of the care/treatment of the Integris EMS paramedics as that would be totally irrelevant to the sole issue in this Motion for Summary Judgment: the intervening/supervening conduct of the Ottawa County Defendants and whether such tortious conduct satisfies the three-prong test to insulate the claims of liability against the Integris EMS Defendants.

Oklahoma law recognizes that in a medical negligence action, there must be a causal connection between the actions of a defendant and the alleged injury and that this connection "...is broken by the intervention of a new, independent and efficient cause which was neither anticipated nor reasonably foreseeable (footnote citation omitted)." *Thompson, supra*, at 264. "A remote cause which merely furnished the *occasion* for an injury which results from an intervening efficient cause cannot be the predicate for liability, *even though the injury would not have happened "but for" the earlier incident.*" *Leisure Village Operating LLC v. Professional Clinical Laboratory, Inc.* 781 F. Supp.2d 1205, 1218 (N.D. Okla. 2011), quoting *Graham v Keuchel*, 1993 OK 6, ¶ 19, 847 P. 2d 342 (Okla. 1993) (emphasis in original). A supervening/intervening cause "...is one that interrupts or breaks the connection between a defendant's act, or omission, and a plaintiff's injury." *Leisure Village* at 1217. The Oklahoma Supreme Court has held that for this intervening/supervening to be sufficient to break the causal connection, it must meet a three-prong test: "(1) independent of the original act, (2) adequate of itself to bring about the result and (3) one whose occurrence was not reasonably foreseeable (citation omitted)." *Thompson, supra*, at 264. See also, *Henry v Merck and Company, Inc. supra*, at 1495. While as a general rule the issue

of proximate cause is one of fact, “the question becomes an issue of law when there is no evidence from which a jury could reasonably find the required proximate, causal nexus between the careless act and the resulting injuries (citations omitted).” *Henry* at 1494. See also, *Thompson v Presbyterian Hospital, supra*, where the Oklahoma Supreme Court held “...as a matter of law, that the surgeon could not have reasonably anticipated either the occurrence of the anesthesiologist’s breach of duty nor the ultimate harm to the patient.” *Thompson* at 264. In the instant case, the Integris Defendants contend that there is no issue of fact that would refute the application of the three-prong test of intervening/supervening cause and that any alleged negligence by the Integris EMS Defendants is insulated by the intervening/supervening actions of the Ottawa County Defendants after the Integris EMS left the jail on October 21, 2015. Therefore, the Integris EMS Defendants are not liable to the Plaintiffs for medical negligence and summary judgment should be sustained.

The first prong requires that the subsequent cause be independent of the original act. Certainly, the tortious conduct by the Ottawa County jail was independent of the Integris EMS ambulance conduct at the Ottawa County jail. The Integris EMS paramedics left the jail and had no control over what the Ottawa County Defendants did or did not do with Mr. Ellis after that point. In fact, the jail staff stated that they would call EMS back if the condition of Mr. Ellis changed. The conduct by the Ottawa County Defendants of ignoring the later complaints of Mr. Ellis on October 22, 2015, of specifically telling him they would not call an ambulance back, of mocking Mr. Ellis and making fun of him, of ignoring his complaints and calls for help, that the jail nurse would refuse basic medical care to Mr. Ellis and refuse to do her job, all was conduct completely independent of the prior ambulance run by the Integris EMS Defendants to the Ottawa County jail on October 21, 2015. This factual situation is no different than the actions of the

anesthesiologist in *Thompson, supra*, and the giving of the anesthesia to the patient by the anesthesiologist being independent actions from the operating surgeon and the surgeon's pre-operative orders, whereby the independent tortious actions of the anesthesiologist after the start of surgery thus became an intervening cause to the alleged pre-operative negligence of the surgeon. *Thompson v Presbyterian Hospital, supra*, at 264. Therefore, the Integris EMS Defendants submit the tortious conduct of the Ottawa County Defendants was independent of the actions of the Integris EMS paramedics and the first prong is met.

The second prong requires that the tortious conduct by the Ottawa County Defendants be adequate by itself to bring about the result, i.e., the death of Mr. Ellis. There is no question this second prong is also met. The Plaintiff's expert testified that within reasonable medical certainty that if Mr. Ellis had received proper care by the mid to late morning of October 22, 2015 (the day after the Integris EMS paramedics saw Mr. Ellis), that Mr. Ellis would have survived. Further, the Sheriff of Ottawa County, Terry Durborow testified that in his opinion the jail nurse was responsible for the death of Mr. Ellis and how he died. Clearly, the second prong that the tortious conduct of the Ottawa County Defendants was sufficient by itself to cause of death of Mr. Ellis is met in this case.

Finally, the third prong of the test, that the tortious actions of the Ottawa County Defendants were not foreseeable, is also established by the evidence. There is no evidence that the Integris EMS paramedics could anticipate that the Ottawa County Defendants would ignore Mr. Ellis and his complaints the following day (October 22), nor could the Integris EMS paramedics foresee that the Ottawa County Defendants would mock and make fun of Mr. Ellis, nor that the jail nurse would ignore the symptoms of Mr. Ellis and state Mr. Ellis was faking his symptoms just a few hours before his death. Such conduct by the Ottawa County Defendants was

just as non-foreseeable as was the breach of duty by the anesthesiologist in *Thompson v Presbyterian Hospital, supra* where the Oklahoma Supreme Court found “The surgeon simply could not foresee neither that the anesthesiologist would give an improper saddle block nor that he would then fail properly to monitor the patient during surgery.” *Thompson* at 264.

The three-prong test for the Oklahoma law of supervening/intervening cause is supported by the undisputed evidence in this case. Accordingly, there is no liability of the Integris EMS Defendants to the Plaintiffs and summary judgment should be sustained.

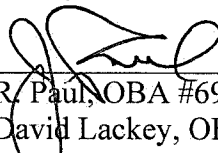
CONCLUSION

The Integris EMS Defendants (and the Miami Fire Department 1st Responders) responded to a call on October 21, 2015 from the Ottawa County jail to provide ambulance care to the inmate Terral Ellis. After being on-site for 20 minutes, the Ottawa County Defendants advised that Mr. Ellis would be placed in a holding cell near the guard desk to be checked every 15 minutes and that an ambulance would be called back if the condition of Mr. Ellis changed. The Integris EMS Defendants had no further contact from the Ottawa County Defendants regarding Mr. Ellis and had no control over Mr. Ellis or what the Ottawa County Defendants would or would not do with Mr. Ellis. It was not foreseeable that after the Integris EMS Defendants and the 1st Responders left the premises, that the Ottawa County Defendants would ignore the complaints and cry for help of Mr. Ellis, would mock and make fun of Mr. Ellis, would not provide further medical care or evaluation of Mr. Ellis, and would tell Mr. Ellis that an ambulance would not be called for him. Under Oklahoma law, such conduct by the Ottawa County Defendants constitutes a supervening/intervening cause such that there is no causal nexus between the ambulance run by the Integris EMS Defendants on October 21, 2015 and the death of Mr. Ellis on October 22, 2015.

Accordingly, summary judgment for the Integris EMS Defendants should be granted and they be dismissed from this case.

WHEREFORE, premises considered, the Integris EMS Defendants request that this Motion for Summary Judgment be sustained; for such other relief as the Court deems just and reasonable.

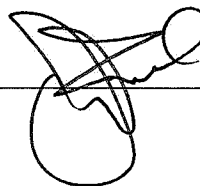
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of December, 2019, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and the transmittal of a Notice of Electronic Filing to all counsel who have entered and appearance in this case.



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