

04-251-CD
MARGARET A. KORMAN, et al. vs. CLEARFIELD COLONIAL COURTY
et al.

2004-251-CD
Margaret Korman et al vs. Colonial Court.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

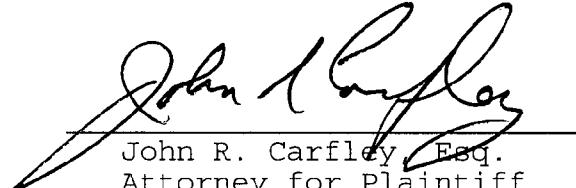
MARGARET A. KORMAN, Guardian :
over the person and Estate of :
BERNETA FONTENOY an alleged :
incapacitated person, :
Plaintiff :
vs. :
:

vs. : No. 2004- 251-CJ
CLEARFIELD COLONIAL COURTYARD :
MOUNTAIN LAUREL NURSING & :
REHAB CENTER, :
Defendants :
:

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY:

Please issue a Writ of Summons against Defendant, Clearfield Colonial Courtyard, whose address is 1300 Leonard Street, Clearfield, Clearfield County, Pennsylvania, 16830, and Mountain Laurel Nursing & Rehab Center, 700 Leonard Street, Clearfield, Pennsylvania, 16830.



John R. Carfley, Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581

Dated: February 2, 2004

FILED

FEB 20 2004

William A. Shaw
Prothonotary

FILED

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FEB 20 2004

William A. Shaw
Prothonotary

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION**

SUMMONS

**Margaret A. Korman, Guardian
over the person and Estate of
Berneta Fontenoy an alleged
incapacitated person,**

Vs.

NO.: 2004-00251-CD

**Clearfield Colonial Courtyard
Mountain Laurel Nursing & Rehab Center**

**TO: CLEARFIELD COLONIAL COURTYARD
MOUNTAIN LAUREL NURSING & REHAB CENTER**

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 02/20/2004

**William A. Shaw
Prothonotary**

Issuing Attorney:

**John R. Carfley
Post Office Box 249
Philipsburg, PA 16866**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

MARGARET A. KORMAN, Guardian
over the person and Estate of BERNETA
FONTENOY, an alleged incapacitated
person,

Plaintiff

v.

CLEARFIELD COLONIAL
COURTYARD and MOUNTAIN
LAUREL NURSING & REHAB
CENTER,

Defendants

CIVIL DIVISION

No. 2004-00251-CD

PRAECIPE FOR APPEARANCE

Filed on behalf of Defendant, Clearfield
Colonial Courtyard

Counsel of Record for this Party:

Robert J. Behling, Esquire
Pa. I.D. #30659

Dapper, Baldasare, Benson, & Kane, P.C.
Three Gateway Center
401 Liberty Avenue, Suite 1375
Pittsburgh, PA 15222
(412) 456-5555
(412) 456-2109 (fax)

FILED

MAR 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

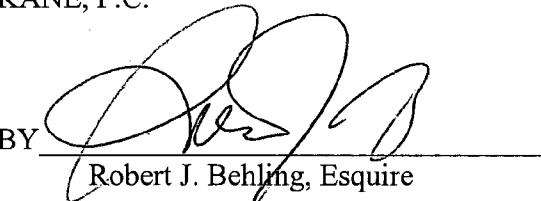
MARGARET A. KORMAN, Guardian) CIVIL DIVISION
over the person and Estate of BERNETA)
FONTENOY, an alleged incapacitated) No. 2004-00251-CD
person,)
)
Plaintiff)
)
)
v.)
)
)
CLEARFIELD COLONIAL)
COURTYARD and MOUNTAIN)
LAUREL NURSING & REHAB)
CENTER,)
)
)
Defendants)

PRAECIPE FOR APPEARANCE

TO THE PROTHONOTARY:

Kindly enter our appearance as counsel of record for the Defendant, Clearfield
Colonial Courtyard, only, in the above-captioned matter.

DAPPER, BALDASARE, BENSON &
KANE, P.C.

BY 
Robert J. Behling, Esquire

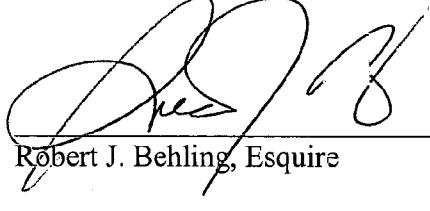
Attorneys for Defendant Clearfield
Colonial Courtyard

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within Praeclipe for Appearance was forwarded by first class mail, postage prepaid, this 11th day of March, 2004, to the following:

John R. Carfley, Esquire
222 Presqueisle Street
P.O. Box 249
Philipsburg, PA 16866
Attorney for Plaintiff

Mountain Laurel Nursing & Rehab Center
700 Leonard Street
Clearfield, PA 16830
Defendant


Robert J. Behling, Esquire

FILED NO. CC

AM 8:50 AM
MAR 15 2004

RECEIVED

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

MARGARET A. KORMAN, Guardian
over the person and Estate of BERNETA
FONTENOY, an alleged incapacitated
person,

Plaintiff

v.

CLEARFIELD COLONIAL
COURTYARD and MOUNTAIN
LAUREL NURSING & REHAB
CENTER,

Defendants

CIVIL DIVISION

No. 2004-00251-CD

PRAECIPE FOR RULE TO FILE A
COMPLAINT

Filed on behalf of Defendant, Clearfield
Colonial Courtyard

Counsel of Record for this Party:

Robert J. Behling, Esquire
Pa. I.D. #30659

Dapper, Baldasare, Benson, & Kane, P.C.
Three Gateway Center
401 Liberty Avenue, Suite 1375
Pittsburgh, PA 15222
(412) 456-5555
(412) 456-2109 (fax)

FILED

MAR 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

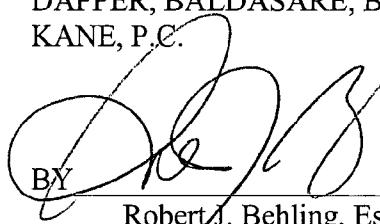
MARGARET A. KORMAN, Guardian) CIVIL DIVISION
over the person and Estate of BERNETA)
FONTENOY, an alleged incapacitated) No. 2004-00251-CD
person,)
)
Plaintiff)
)
v.)
)
CLEARFIELD COLONIAL)
COURTYARD and MOUNTAIN)
LAUREL NURSING & REHAB)
CENTER,)
)
Defendants)

PRAECIPE FOR RULE TO FILE A COMPLAINT

TO THE PROTHONOTARY:

Kindly issue a Rule upon the plaintiff to file a Complaint in the above-captioned matter.

DAPPER, BALDASARE, BENSON &
KANE, P.C.



BY

Robert J. Behling, Esquire

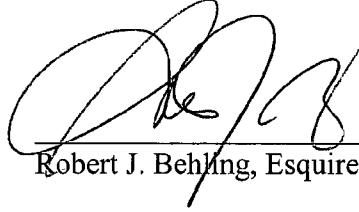
Attorneys for Defendant Clearfield
Colonial Courtyard

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within
Praecipe for Rule to File a Complaint was forwarded by first class mail, postage prepaid,
this 11th day of March, 2004, to the following:

John R. Carfley, Esquire
222 Presqueisle Street
P.O. Box 249
Philipsburg, PA 16866
Attorney for Plaintiff

Mountain Laurel Nursing & Rehab Center
700 Leonard Street
Clearfield, PA 16830
Defendant



Robert J. Behling, Esquire

FILED No
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MAR 15 2004 Rule to Appear
William A. Shaw
Prothonotary/Clerk of Courts
Ergot

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

Margaret A. Korman, Guardian over the
person and Estate of Berneta Fontenoy,
an alleged incapacitated person

Vs.
Clearfield Colonial Courtyard and
Mountain Laurel Nursing & Rehab Center

Case No. 2004-00251-CD

RULE TO FILE COMPLAINT

TO: Margaret A. Korman, Guardian over the person and Estate of Berneta Fontenoy, an alleged
incapacitated person

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within
twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: March 15, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

MARGARET A. KORMAN, Guardian
over the person and Estate of BERNETA
FONTENOY, an alleged incapacitated
person,

Plaintiff

v.

CLEARFIELD COLONIAL
COURTYARD and MOUNTAIN
LAUREL NURSING & REHAB
CENTER,

Defendants

CIVIL DIVISION

No. 2004-00251-CD

AFFIDAVIT OF SERVICE OF RULE
TO FILE A COMPLAINT

Filed on behalf of Defendant, Clearfield
Colonial Courtyard

Counsel of Record for this Party:

Robert J. Behling, Esquire
Pa. I.D. #30659

Dapper, Baldasare, Benson, & Kane, P.C.
Three Gateway Center
401 Liberty Avenue, Suite 1375
Pittsburgh, PA 15222
(412) 456-5555
(412) 456-2109 (fax)

FILED

MAR 24 2004
10:30 AM 2004
William A. Shaw
Prothonotary/Clerk of Courts
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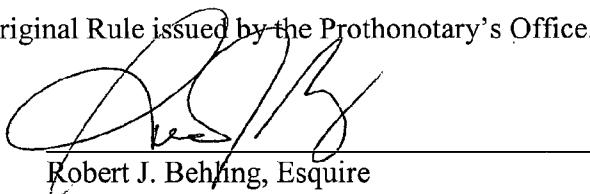
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

MARGARET A. KORMAN, Guardian) CIVIL DIVISION
over the person and Estate of BERNETA)
FONTENOY, an alleged incapacitated) No. 2004-00251-CD
person,)
Plaintiff)
v.)
CLEARFIELD COLONIAL)
COURTYARD and MOUNTAIN)
LAUREL NURSING & REHAB)
CENTER,)
Defendants)

AFFIDAVIT OF SERVICE OF RULE TO FILE A COMPLAINT

STATE OF PENNSYLVANIA :
: ss:
COUNTY OF ALLEGHENY :
:

BEFORE ME, the undersigned authority, personally appeared, ROBERT J. BEHLING, ESQUIRE, who, being duly sworn according to law deposes and says that he served a true and correct copy of the Rule to file a Complaint upon counsel for the plaintiff, John R. Carfley, Esquire by certified mail, return receipt requested, by correspondence dated March 17, 2004. The original green receipt of the U.S. Postal Service evidencing receipt of said Rule on March 19, 2004 is attached hereto and made a part hereof. Also attached hereto is the original Rule issued by the Prothonotary's Office.



Robert J. Behling, Esquire

Attorneys for Defendant Clearfield
Colonial Courtyard

Sworn to and subscribed before me this 22nd day of March, 2004.



Jean M. Zappa, Notary Public

Notarial Seal
Jean M. Zappa, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Apr. 8, 2004

Member, Pennsylvania Association of Notaries

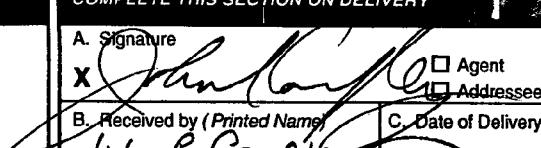
SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

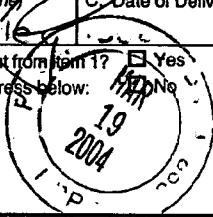
John R. Carfley, Esquire
222 Presqueisle St.
P.O. Box 249
Philipsburg, PA 16866

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

 Agent
 Addressee

B. Received by (Printed Name)

John R. Carfley

C. Date of Delivery**D. Is delivery address different from Item 1? Yes**

If YES, enter delivery address below:

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number

(Transfer from service label)

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

Margaret A. Korman, Guardian over the
person and Estate of Berneta Fontenoy,
an alleged incapacitated person

Vs.
Clearfield Colonial Courtyard and
Mountain Laurel Nursing & Rehab Center

Case No. 2004-00251-CD

RULE TO FILE COMPLAINT

TO: Margaret A. Korman, Guardian over the person and Estate of Berneta Fontenoy, an alleged
incapacitated person

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within
twenty (20) days from service hereof, or a judgment of non pros may be entered against you.



William A. Shaw, Prothonotary

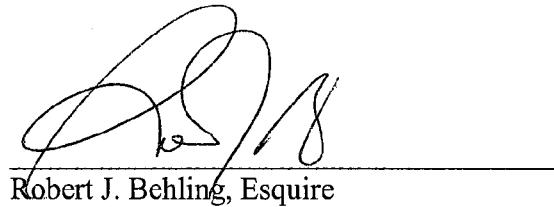
Dated: March 15, 2004

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within
Affidavit of Service of Rule to File a Complaint was forwarded by first class mail,
postage prepaid, this 22nd day of March, 2004, to the following:

John R. Carfley, Esquire
222 Presqueisle Street
P.O. Box 249
Philipsburg, PA 16866
Attorney for Plaintiff

Mountain Laurel Nursing & Rehab Center
700 Leonard Street
Clearfield, PA 16830
Defendant



Robert J. Behling, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian : No. 2004-00251-CD
over the person and Estate of : Type of Case: Civil Action
BERNETA FONTENOY, an alleged :
incapacitated person, :
Plaintiff : Type of Pleading:
vs. : PRAECIPE FOR APPEARANCE
CLEARFIELD COLONIAL :
COURTYARD and MOUNTAIN : Filed on Behalf of:
LAUREL NURSING & : Mountain Laurel Nursing &
REHABILITATION CENTER, : Rehabilitation Center
Defendants : Counsel of Record for this
: Party:
: Ann B. Wood, Esquire
: Supreme Court No. 23364
: Bell, Silberblatt & Wood
: 318 East Locust Street
: P.O. Box 670
: Clearfield, PA 16830
: (814) 765-5537
:
:
:
:

FILED

APR 05 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

MARGARET A. KORMAN, Guardian over the person and Estate of BERNETA FONTENOY, an alleged incapacitated person,	:	Civil Division
	:	
	:	No.2004-00251-CD
Plaintiff	:	
	:	
vs.	:	
	:	
CLEARFIELD COLONIAL COURTYARD and MOUNTAIN LAUREL NURSING & REHABILITATION CENTER,	:	
	:	
Defendants	:	

PRAECIPE FOR APPEARANCE

TO: William A. Shaw, Prothonotary, Clerk of Courts,
Please enter my appearance on behalf of Defendant,
MOUNTAIN LAUREL NURSING & REHABILITATION CENTER, in the above
captioned case.

BELL, SILBERBLATT & WOOD
By

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant, Mountain
Nursing & Rehabilitation Center

Date: April 5. 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

MARGARET A. KORMAN, Guardian over the person and Estate of BERNETA FONTENOY, an alleged incapacitated person,	:	Civil Division
	:	
	:	No.2004-00251-CD
Plaintiff	:	
	:	
vs.	:	
	:	
CLEARFIELD COLONIAL COURTYARD and MOUNTAIN LAUREL NURSING & REHABILITATION CENTER,	:	
	:	
Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of the PRAECIPE FOR APPEARANCE with reference to the above matter has been served upon the Attorneys of Record by mailing a true and correct copy of same to them by United States First Class Mail, postage prepaid, addressed as follows on April 5, 2004 :

Attorney For Plaintiff, Margaret A. Korman,
Guardian For Berneta Fontenoy:

John R. Carfley, Esquire
P.O. Box 249
Philipsburg, PA 16866

Attorney For Defendant,
Clearfield Colonial Courtyard:

Robert J. Behling, Esquire
DAPPER, BALDASARE, BENSON & KANE, P.C.
Three Gateway Center
401 Liberty Avenue, Suite 1375
Pittsburgh, PA 15222

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant,
Mountain Laurel Nursing &
Rehabilitation Center

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action
No. 2004-00251-CD

MARGARET A. KORMAN, Guardian over
the person and Estate of BERNETA
FONTENOY, an alleged incapacitated
person,

Plaintiff

vs.
CLEARFIELD COLONIAL COURTYARD and
MOUNTAIN LAUREL NURSING & REHAB
CENTER,

Defendant

PRAECIPE FOR APPEARANCE

FILED

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APR 05 2004
WAS

William A. Shaw
Prothonotary

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian :
over the person and Estate of :
BERNETA FONTENOY an alleged :
incapacitated person, :
Plaintiff :

vs. : No. 2004-00251-CD
CLEARFIELD COLONIAL COURTYARD : Jury Trial Demanded
MOUNTAIN LAUREL NURSING & : DOCUMENT FILED: COMPLAINT
REHAB CENTER, : FILED ON BEHALF OF:
Defendants : PLAINTIFF

: Counsel for this Party:
John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

FILED

APR 05 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian :
over the person and Estate of :
BERNETA FONTENOY an alleged :
incapacitated person, :
Plaintiff :

vs. : No. 2004-00251-CD

CLEARFIELD COLONIAL COURTYARD :
MOUNTAIN LAUREL NURSING & :
REHAB CENTER, :
Defendants :

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claims or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
COURTHOUSE
CLEARFIELD, PA. 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian :
over the person and Estate of :
BERNETA FONTENOY an alleged :
incapacitated person, :
Plaintiff :

vs. : No. 2004-00251-CD

CLEARFIELD COLONIAL COURTYARD :
MOUNTAIN LAUREL NURSING & :
REHAB CENTER, :
Defendants :

COMPLAINT

AND NOW comes your Plaintiff, Margaret Korman, Guardian over the person and Estate of Berneta Fontenoy, an alleged incapacitated person, who by and through her attorney, John R. Carfley, Esquire, files the following claim and in support thereof avers as follows:

1. Plaintiff is Margaret Korman, Guardian over the person and Estate of Berneta Fontenoy, an alleged incapacitated person, who is a resident of Mountain Laurel Nursing & Rehabilitation Center, 700 Leonard Street, Clearfield, Pennsylvania.

2. Defendant is Clearfield Colonial Courtyard, an assisted living facility for incapacitated persons, located at 1300 Leonard Street, Clearfield, Pennsylvania.

3. Defendant is Mountain Laurel Nursing & Rehabilitation Center located at 700 Leonard Street, Clearfield, Pennsylvania.

4. Plaintiff Berneta Fontenoy was admitted to the Mountain Laurel Nursing Facility on or about the 1st day of June, 2002, as a result of injuries sustained in an automobile accident.

5. Plaintiff Berneta Fontenoy was treated at Mountain Laurel

Nursing facility until June of 2003 when she had recovered sufficiently to be released to her home environment or to an assisted care facility such as the Colonial Courtyard.

6. Plaintiff was admitted to Colonial Courtyard on or about the 17th day of June, 2003.

7. One day after her admission to the said facility Plaintiff was administered improper medication by a registered nurse, an employee, servant and agent retained by the defendant in the capacity of a health care provider which resulted in the plaintiff being relegated to a comatose condition and further resulting in her hospitalization at the Clearfield Hospital for several days when her life appeared to be in jeopardy.

8. At the times and places relevant hereto, Plaintiff, Berneta Fontenoy was 89 years old, was approximately four feet in height and weighed approximately 85 pounds.

9. Plaintiff at the times and places now relevant hereto has a life expectancy of 4.8 years as established by the Federal Actuarial and Mortality Standards and Tables.

10. The medication improperly provided to Ms. Fontenoy by the defendant's employee at the dates and times in question consisted of the following:

- (a) Zyprexa 20 miligrams
- (b) Zanax .05 miligrams
- (c) Neurontin 400 miligrams

11. Upon her release from the Clearfield Hospital, Ms. Fontenoy was readmitted to the Colonial Courtyard where her condition continued to deteriorate to the point where it was

necessary for her primary health care providers and treating physicians to seek readmission to Mountain Laurel, an extended care facility operating in conjunction with the Colonial Courtyard. This readmission to Mountain Laurel occurred in September of 2003.

12. It is believed and therefore averred that the deterioration in Ms. Fontenoy's condition is directly related to the improper medication administered to her by a staff member at Colonial Courtyard.

13. This belief is supported by the fact that Ms. Fontenoy had sufficiently recovered from the injuries sustained in the automobile accident of 2002 by June of 2003 to be administered care in a less invasive facility such as the Colonial Courtyard or to be released to her home environment under controlled circumstances.

14. The agent of the defendant responsible for the administration of these drugs did not report the incident to her immediate supervisor or to any other individual representing the plaintiff for a period of almost thirty-six hours which is in violation of all professional standards, regimens or protocols relative to the care of individuals in a class similar to that of the plaintiff.

15. The said employee, agent or servant of the defendant committed an assault and battery upon the plaintiff by administering medications without her permission and consent or the consent of her treating physician and by failing to advise the plaintiff and/or her guardian and/or other responsible individuals of the incident which had occurred.

16. The cost of maintaining Ms. Fontenoy in Colonial

Courtyard at the dates and times relevant hereto was approximately \$2400.00 per month plus medications, the cost of which averaged \$250.00 per month.

17. Because of the deterioration in her health she has now had to be readmitted to Mountain Laurel at a monthly cost of \$4495.00 with an increase in her medication expenses in the amount of \$475.00 per month.

18. This cost analysis is based on the differential that existed in September of 2003. The difference in her cost of maintenance for the remainder of her life expectancy is, therefore, no less than \$2100.00 per month basic care with an additional \$225.00 per month in increased medication costs which costs may increase as the cost of health care accelerates over the next several years.

19. Projected over her life expectancy the increased cost of maintenance occasioned by the mishap at Colonial Courtyard, since September of 2003, totals \$155,079.00.

20. Immediately prior to her accident Ms. Fontenoy was fully able to care for herself, lived alone, drove a motor vehicle, did her own shopping and housekeeping and was able to manage a portfolio consisting of a personal estate estimated in round figures to approach \$500,000.00.

21. Subsequent to her discharge from the hospital as a result of the overdose of medication plaintiff's condition deteriorated to the point where she was once again transferred to Mountain Laurel Nursing facility for full care and assistance.

22. It is believed and therefore averred that plaintiff will

be required to pay for full nursing care and assistance throughout the remainder of her life based upon the incident which occurred through the negligence and carelessness of the defendant and its agents and employees.

23. The tortious acts of the agents and employees of Colonial Courtyard are wanton, reckless and malicious.

24. Plaintiff further avers that Colonial Courtyard was negligent and careless in hiring employees and agents who attended to her and as a result the unauthorized issuance of improper medications received were the direct result of negligent and careless acts of the defendants.

25. The defendant is *prima facie* guilty of negligence based on the doctrine of res ipsa loquitur since all of the conditions necessary for the application of said doctrine exist in this case to wit: (1) a lay person would be able to determine as a matter of common knowledge that the result which has occurred does not ordinarily occur in the absence of negligence or an expert will so testify; (2) the agent or instrumentality causing the harm was within the exclusive control of the defendant and (3) the evidence offered is sufficient to remove the causation question from the realm of conjecture but is not so substantial that it provides a full and complete explanation of the event.

26. The registered nurse employed by the defendant admitted to staff personnel who thereafter admitted to the plaintiff through her duly authorized agents that improper medications of the kinds, and in the quantities herein recited were improperly administered to the plaintiff at the dates and times in question.

27. That immediately upon ingesting the medications, plaintiff lapsed into a coma which required her transport to the Clearfield Hospital via ambulance where she remained comatose for a period of in excess of twenty-four (24) hours.

28. Plaintiff avers that but for the improper administration of prescriptive drugs as herein set forth plaintiff would not have sustained the injuries and resultant damages set forth herein.

29. It is believed and therefore averred that the condition of the Plaintiff occurred and/ was exacerbated solely through the negligent and careless conduct of the defendant and/or its agent creating vicarious liability which acts of negligence include but are not limited to the following:

(a) Improperly administering medication earmarked for another patient.

(b) Failing to notify the proper officials or other medical personnel for a period of almost 36 hours of the improper dosage.

(c) Administering medications without the consent, implied consent and/or approval of the plaintiff, her guardian, family members and/or her treating physician.

(d) Violating the provisions of the Medical Care Standards applicable in Pennsylvania by failing to properly medicate an inpatient and to properly notify the patient and/or her family or her guardian or treating physician within an appropriate period of time subsequent to the administration of this negligent standard of care.

(e) Failing to have in place protocols or regimens which would prevent the improper administering of medications to patients

and/or residents of this assisted care facility.

(f) Failing to have in place protocols or regimens which would have allowed for the discovery of improper dosage of medication and/or the reporting of said overdose to appropriate hospital officials so that immediate measures could have been undertaken in order to limit the affects of this overdose at or about the time of plaintiff's admission to the Clearfield Hospital.

30. As a result of the negligent conduct of the defendant, plaintiff's sustained injuries or her condition was exacerbated to the extent that she is now required to remain as an inpatient at the Mountain Laurel Nursing facility for the remainder of her life.

31. The damages sustained by the plaintiff are liquidated in an amount of \$155,000.00 as previously stated.

32. Plaintiff seeks further noneconomic damages for pain and suffering, inconvenience and loss of independence in an unliquidated amount to be determined but believed to be in excess of \$25,000.00.

WHEREFORE, Plaintiff requests that judgment be entered in favor of the plaintiff and against the defendant for economic and non-economic losses in an unliquidated amount in excess of \$20,000.00 together with interest, delay damages and costs thereon.

COUNT II

ASSAULT AND BATTERY

33. Plaintiff hereby incorporates by reference Paragraphs 1 through 32 as fully as though set forth at length.

34. At all times mentioned herein the registered nurse

employed by Colonial Courtyard was an agent, servant and/or employee of the Defendant, Colonial Courtyard.

35. At all times herein mentioned said individual was acting within the scope of her employment as an agent, servant and/or employee of the defendant who therefore is vicariously liable for her actions.

36. On or about the 12th day of June, 2003, at approximately 2:30 A.M. at the Colonial Courtyard residence, defendant without any provocation or cause, violently assaulted and battered the plaintiff by providing her with improper medications without securing her consent and/or implied consent and/or the consent of her treating physician, her guardian and/or any other family members, which administration of improper medications caused her to sustain severe personal injuries hereinafter set forth.

37. The assault and battery committed by the defendant upon the person of the plaintiff was unprovoked and was due in no manner whatsoever to any act or failure to act on the part of the plaintiff.

38. As a result of the assault and battery by the defendant, the plaintiff sustained multiple injuries including being rendered into a comatose condition which eventually caused the exacerbation of her mental condition and a deterioration of her mental capabilities together with severe emotional stress some of which may be permanent in nature.

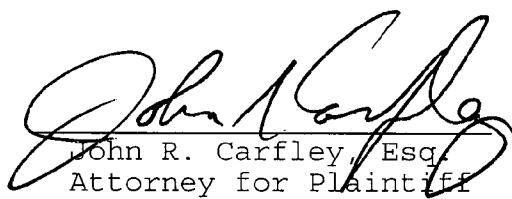
39. Plaintiff also makes claim for such injuries, damages and consequences resulting from the assault and battery which may occur in the future.

40. As a further result of the assault and battery by the defendant, plaintiff suffered and underwent great pain and was hindered and prevented from performing and transacting her usual affairs and business which hinderance and prevention will continue for an indefinite time in the future.

41. As a further result of the assault and battery by the defendant, plaintiff has been forced to expend various sums of money in endeavoring to cure herself of these injuries and will in the future be required to expend further sums of money in endeavoring to cure herself of the injuries or to remain in a facility to care for her and the conditions which have developed from the use of these improper medications.

42. The plaintiff, Berneta Fontenoy was the victim of an assault and battery.

WHEREFORE, Plaintiff claims compensatory and/or punitive damages from the defendants in an amount in excess of \$25,000.00 together with interest thereon, delay damages and costs of this proceeding.



John R. Carfley, Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581

Dated: April 5, 2004

FILED

Dec 30 2004 Amy Carlley

APR 05 2004

W.A. Shaw
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian :
over the person and Estate of :
BERNETA FONTENOY an alleged :
incapacitated person, :
Plaintiff :

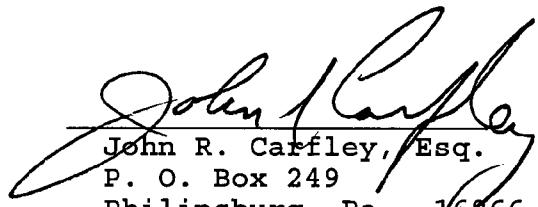
vs. : No. 2004-00251-CD

CLEARFIELD COLONIAL COURTYARD :
MOUNTAIN LAUREL NURSING & :
REHAB CENTER, :
Defendants :
:

PRAECIPE

TO THE PROTHONOTARY:

PLEASE attach the enclosed verification to the Complaint filed
in the above captioned matter on April 5, 2004.



John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

Dated: April 6, 2004

FILED

APR 07 2004

William A. Shaw
Prothonotary/Clerk of Courts

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Dated: April 5, 2004

Betty Lou Gathagan

Attorney-in-Fact for
Margaret A. Korman and
Berneta Fontenoy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian :
over the person and Estate of :
BERNETA FONTENOY an alleged :
incapacitated person, :
Plaintiff :

vs. : No. 2004-00251-CD

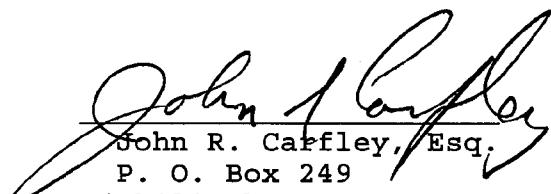
CLEARFIELD COLONIAL COURTYARD :
MOUNTAIN LAUREL NURSING & :
REHAB CENTER, :
Defendants :

CERTIFICATE OF SERVICE

I, John R. Carfley, Esquire, attorney for the Plaintiff in the above matter do certify that on the 6th day of April, 2004, I served a copy of the Complaint filed in the above matter, by placing the same in the United States Mail, regular service to the following attorneys and parties of record by first class U.S. mail, postage prepaid:

Robert J. Behling, Esq.
DAPPER, BALDASARE, BENSON & KANE, P.C.
Attorneys for Clearfield Colonial Courtyard
Three Gateway Center, Suite 1375
401 Liberty Avenue
Pittsburgh, Pa., 15222

Mountain Laurel Nursing & Rehab Center
c/o Ann Wood, Esq.
BELL, SILBERBLATT & WOOD
318 E. Locust Street
Clearfield, Pa., 16830


John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

FILED

APR 07 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OPX

MARGARET A. KORMAN, Guardian : No. 2004-00251-CD
over the person and Estate of : Type of Case: Civil Action
BERNETA FONTENOY, an alleged :
incapacitated person,

Plaintiff : Type of Pleading:

vs.

CLEARFIELD COLONIAL
COURTYARD and MOUNTAIN
LAUREL NURSING &
REHABILITATION CENTER,

Defendants : Counsel of Record for this
Party:
: Ann B. Wood, Esquire
: Supreme Court No. 23364
: Bell, Silberblatt & Wood
: 318 East Locust Street
: P.O. Box 670
: Clearfield, PA 16830
: (814) 765-5537
:
:
:

FILED

APR 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

MARGARET A. KORMAN, Guardian over the person and Estate of BERNETA FONTENOY, an alleged incapacitated person,	:	Civil Division
	:	
	:	No.2004-00251-CD
Plaintiff	:	
	:	
vs.	:	
	:	
CLEARFIELD COLONIAL COURTYARD and MOUNTAIN LAUREL NURSING & REHABILITATION CENTER,	:	
	:	
Defendants	:	

DEFENDANT, MOUNTAIN LAUREL NURSING & REHABILITATION CENTER'S PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

Defendant, Mountain Laurel Nursing & Rehabilitation Center, by its undersigned Attorney, preliminarily objects to Plaintiff's Complaint pursuant to Pa.R.C.P. 1028(a)(3) and (4) as follows:

Preliminary Objection Raising Insufficient Specificity in Plaintiff's Complaint

1. Paragraph 3 of the Plaintiff's Complaint alleges the identity of Mountain Laurel Nursing & Rehabilitation Center and its address, hereinafter referred to as "Mountain Laurel".

2. Paragraph 4 and 5 of the Plaintiff's Complaint recite an earlier admission and discharge of the Plaintiff which are not related to the cause of action set forth hereto.

3. Paragraph 11 of the Plaintiff's Complaint alleges that the Plaintiff, Berneta Fontenoy, was readmitted to Mountain Laurel "an extended care facility operating in conjunction with the Colonial Courtyard".

4. There are no allegations in the Complaint raising any conduct, misconduct, duty or negligence of Mountain Laurel, its officers, employees or staff.

5. Pa.R.C.P. 1019(a) requires that "material facts on which a cause of action or defense is based shall be stated in a concise and summary form".

6. Pa.R.C.P. 1019(f) requires that "averments of time, place and items of special damage shall be specifically stated".

7. The aforesaid Paragraph 11 fails to state any action, negligence, or misconduct of Mountain Laurel, its officers or employees or anyone connected with the entity of Mountain Laurel in relation to anything affecting the health and/or care of the Plaintiff, Berneta Fontenoy.

8. The aforesaid Paragraph 11 fails to state with any sufficiency any involvement of Mountain Laurel in the alleged misadministration of medication which is described in Paragraph 12

as having been done by an employee or staff member of Colonial Courtyard.

9. Plaintiff's Complaint lacks specificity to appraise this Defendant of the issues to be litigated, to allow it to adequately prepare and assert defenses to Plaintiff's allegations, and/or to identify and join any potentially responsible parties as Additional Defendants.

WHEREFORE, Defendant, Mountain Laurel Nursing & Rehabilitation Center, respectfully requests that the Court order Plaintiff to more specifically plead the averments of Paragraph 11 and the remainder of Plaintiff's Complaint as it relates to Mountain Laurel Nursing and Rehabilitation Center.

Defendant, Mountain Laurel Nursing & Rehabilitation Center's
Preliminary Objections to Plaintiff's Complaint
Demurrer To Paragraphs 1 Through 42 Of the Plaintiff's Complaint

10. Plaintiff's Complaint against the Defendant, Mountain Laurel, alleges in Paragraph 11 that Mountain Laurel is a facility operating "in conjunction with the Colonial Courtyard".

11. The Plaintiff fails to specifically identify the nature of any joint operation between Clearfield Colonial Courtyard and Mountain Laurel.

12. The Plaintiff fails to set forth any allegations of any misconduct, negligence, or actions by or on behalf of Mountain Laurel, its officers, employees and staff, that in any way contributed to the misadministration of medication as raised in Paragraph 12 of the Complaint.

13. That as such, Plaintiff's Complaint as to Defendant, Mountain Laurel, is legally insufficient and should be dismissed.

WHEREFORE, Defendant, Mountain Laurel Nursing Home & Rehabilitation Center, respectfully requests that this Court sustain Defendant's Preliminary Objections by way of demurrer and dismiss the Complaint as to Mountain Laurel Nursing & Rehabilitation Center.

BELL, SILBERBLATT & WOOD
BY:

Ann B. Wood
Ann B. Wood, Esquire
Attorney For Defendant, Mountain
Laurel Nursing & Rehabilitation
Center

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

MARGARET A. KORMAN, Guardian : Civil Division
over the person and Estate of :
BERNETA FONTENOY, an alleged :
incapacitated person, : No.2004-00251-CD
Plaintiff :
vs. :
CLEARFIELD COLONIAL :
COURTYARD and MOUNTAIN :
LAUREL NURSING & REHABILITATION :
CENTER, :
Defendants :
:

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of the DEFENDANT,
MOUNTAIN LAUREL NURSING & REHABILITATION CENTER'S PRELIMINARY
OBJECTIONS TO PLAINTIFF'S COMPLAINT with reference to the above
matter has been served upon the Attorneys of Record by mailing a
true and correct copy of same to them by United States First Class
Mail, postage prepaid, addressed as follows on April 19, 2004 :

Attorney For Plaintiff, Margaret A. Korman,
Guardian For Berneta Fontenoy:

John R. Carfley, Esquire
P.O. Box 249
Philipsburg, PA 16866

Attorney For Defendant,
Clearfield Colonial Courtyard:

Robert J. Behling, Esquire
DAPPER, BALDASARE, BENSON & KANE, P.C.
Three Gateway Center
401 Liberty Avenue, Suite 1375
Pittsburgh, PA 15222

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant,
Mountain Laurel Nursing &
Rehabilitation Center

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No. 2004-00251-CD

MARGARET A. KORMAN, Guardian over
the Person and Estate of BERNETTA
FONTENOY, an alleged incapacitated
person,

Plaintiff

vs.
CLEARFIELD COLONIAL COURTYARD and
MOUNTAIN LAUREL NURSING &
REHABILITATION CENTER, Defendant

DEFENDANT, MOUNTAIN LAUREL NURSING
& REHABILITATION CENTER'S
PRELIMINARY OBJECTIONS TO PLAINTIFF'S
COMPLAINT

FILED *cc*
Col 3-21-04 *Att'y Wood*
APR 19 2004

W.A. Shaw
William A. Shaw
Prothonotary/Clerk of Courts

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

MARGARET A. KORMAN, Guardian : Civil Division
over the person and Estate of :
BERNETA FONTENOY, an alleged :
incapacitated person, : No.2004-00251-CD
:
Plaintiff :
vs. :
: :
CLEARFIELD COLONIAL :
COURTYARD and MOUNTAIN :
LAUREL NURSING & REHABILITATION :
CENTER, :
: :
Defendants :
:

CERTIFICATE OF SERVICE

I hereby certify that a Certified Copy of the BRIEF with
reference to the above matter has been served upon the Attorneys of
Record by mailing a true and correct copy of same to them by
United States First Class Mail, postage prepaid, addressed as
follows on April 19, 2004:

Attorney For Plaintiff, Margaret A. Korman,
Guardian For Berneta Fontenoy:

John R. Carfley, Esquire
P.O. Box 249
Philipsburg, PA 16866

Attorney For Defendant,
Clearfield Colonial Courtyard:

Robert J. Behling, Esquire
DAPPER, BALDASARE, BENSON & KANE, P.C.
Three Gateway Center
401 Liberty Avenue, Suite 1375
Pittsburgh, PA 15222

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood, Esquire
Attorney for Defendant,
Mountain Laurel Nursing &
Rehabilitation Center

FILED

APR 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED NO. ac
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APR 19 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian :
over the person and Estate of :
BERNETA FONTENOY an alleged :
incapacitated person, :
Plaintiff :

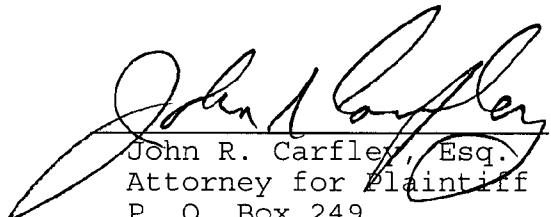
vs. : No. 2004-00251-CD

CLEARFIELD COLONIAL COURTYARD :
MOUNTAIN LAUREL NURSING & :
REHAB CENTER, :
Defendants :

PRAECIPE

TO THE PROTHONOTARY:

PLEASE discontinue, without prejudice, the action filed by the Plaintiff, Berneta Fontenoy by and through her guardian, Margaret Korman against Mountain Laurel Nursing & Rehab Center only.



John R. Carfley, Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581

Dated: April 23, 2004

FILED

APR 29 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED

No cc

01235678

Cert. of Disc to

APR 29 2004

Andy Carley

William A. Shaw
Prothonotary/Clerk of Courts

Copy to CJA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

**Margaret A Korman
Berneta Fontenoy, Estate**

Vs.
**Clearfield Colonial Courtyard
Mountain Laurel Nursing & Rehab Center**

No. 2004-00251-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on April 29, 2004, marked:

April 29, 2004

Record costs in the sum of \$85.00 have been paid in full by John R. Carfley, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 29th day of April A.D. 2004.

William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

**Margaret A. Korman, guardian over the
person and Estate of Berneta Fontenoy,
an alleged incapacitated person**

Vs.

No. 2004-00251-CD

**Clearfield Colonial Courtyard,
Mountain Laurel Nursing & Rehab Center**

AMENDED CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on April 29, 2004, marked:

Discontinued without Prejudice against Mountain Laurel Nursing & Rehab Center ONLY

Record costs in the sum of \$85.00 have been paid in full by John R. Carfley, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 21st day of May A.D. 2004.

William A. Shaw, Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

KORMAN, MARGARET A., Guardian over the person & Estate

Sheriff Docket # 15225

VS.

04-251-CD

CLEARFIELD COLONIAL COURTYARD and MOUNTAIN LAUREL NURSING

SUMMONS

SHERIFF RETURNS

NOW FEBRUARY 25, 2004 AT 2:55 PM SERVED THE WITHIN SUMMONS ON MOUNTAIN LAUREL NURSING & REHAB CENTER, DEFENDANT AT EMPLOYMENT, 700 LEONARD ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DEBBIE CONDON, DIRECTOR OF NURSING A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

NOW FEBRUARY 25, 2004 AT 3:00 PM SERVED THE WITHIN SUMMONS ON CLEARFIELD COLONIAL COURTYARD, DEFENDANT AT EMPLOYMENT, 1300 LEONARD ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JEAN KLINGER, EX. DIR. A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

Return Costs

Cost	Description
26.37	SHERIFF HAWKINS PAID BY: ATTY CK# 5957
20.00	SURCHARGE PAID BY: ATT CK# 5956

Sworn to Before Me This

4th Day Of May 2004
W. A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

*Chester A. Hawkins
by Marilyn Harris*
Chester A. Hawkins
Sheriff

FILED
03-40871 E
MAY 04 2004 KER

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

MARGARET A. KORMAN, Guardian
over the person and Estate of BERNETA
FONTENOY, an alleged incapacitated
person,

Plaintiff

v.

CLEARFIELD COLONIAL
COURTYARD and MOUNTAIN
LAUREL NURSING & REHAB
CENTER,

Defendants

CIVIL DIVISION

No. 2004-00251-CD

PRELIMINARY OBJECTIONS TO
PLAINTIFF'S COMPLAINT

Filed on behalf of Defendant, Clearfield
Colonial Courtyard

Counsel of Record for this Party:

Robert J. Behling, Esquire
Attorney's State ID: 30659

Douglas J. Stipanovich, Esquire
Attorney's State ID: 89099

Dapper, Baldasare, Benson, & Kane, P.C.
Three Gateway Center
401 Liberty Avenue, Suite 1375
Pittsburgh, PA 15222
(412) 456-5555

FILED

MAY 06 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

MARGARET A. KORMAN, Guardian) CIVIL DIVISION
over the person and Estate of BERNETA)
FONTENOY, an alleged incapacitated) No. 2004-00251-CD
person,)
Plaintiff)
v.)
CLEARFIELD COLONIAL)
COURTYARD and MOUNTAIN)
LAUREL NURSING & REHAB)
CENTER,)
Defendants)

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

AND NOW comes the Defendant, Clearfield Colonial Courtyard, by and through its attorneys, Robert J. Behling, Esquire and Dapper, Baldasare, Benson, & Kane, P.C., and files the within Preliminary Objections to Plaintiff's Complaint averring as follows:

I. FACTUAL BACKGROUND

1. This action arises from personal injuries allegedly sustained by the plaintiff due to the admission of improper medication while residing at Defendant Clearfield Colonial Courtyard, an assisted living facility for incapacitated persons.

2. Plaintiff alleges that Defendant is liable under a "theory" of *res ipsa loquitur*. See, Plaintiff's Complaint, ¶ 25.

3. Plaintiff further alleges that Defendant committed assault and battery in allegedly administering the wrong medication to Plaintiff. See, Plaintiff's Complaint at Count II.

4. In conjunction with the assault and battery claim, Plaintiff contends that Defendant is liable for punitive damages as a result of allegedly wanton, reckless, and malicious conduct. See, Plaintiff's Complaint, ¶¶ 23 and 42.

II. ARGUMENT

A. Scope of Review

5. A Preliminary Objection in the nature of a demurrer will be sustained where a Complaint shows with a certainty that, upon the facts averred, the law will not permit the plaintiff to recover. See, Cost v. Cost, 677 A.2d 1250, 1252 (Pa.Super. 1996), *alloc. denied*, 689 A.2d 233 (1997).

B. Paragraph 25 of Plaintiff's Complaint Must be Stricken

6. Plaintiff's Complaint alleges, in part, as follows:

The defendant is *prima facie* guilty of negligence based on the doctrine of res ipsa loquitur since all of the conditions necessary for the application of said doctrine exists in this case...

See, Plaintiff's Complaint, ¶ 25.

7. The doctrine of *res ipsa loquitur* is neither a doctrine of substantive law nor a theory of recovery, but a rule of circumstantial evidence. See, Toogood v. Rogal, DDS, P.C., 824 A.2d 1140 (Pa. 2003).

8. The doctrine of *res ipsa loquitur* does not have to be pled in the Complaint or noticed by specific designation to the adverse party at the pre-trial or at trial, as it is neither a cause of action, ground for recovery, nor an "issue." See, Hollywood Shop, Inc. v. Pennsylvania Gas & Water Co., 411 A.2d 509, 513 (Pa.Super. 1979), *citing Fassbinder v. Pennsylvania Railroad Co.*, 322 F.2d 859 (3d Cir. 1963).

9. Pennsylvania courts have held that allegations of liability under a theory of *res ipsa loquitur* was not a proper basis for finding liability and have sustained preliminary objections on the same grounds. See, Maryland Casualty Co. v. Marion Heights Water Co., 38 Pa. D. & C.3d 510 (C.P. Northumberland Co. 1985).

10. As the doctrine of *res ipsa loquitur* is neither a doctrine of substantive law nor a theory of recovery, but a rule of evidence, Plaintiff's "theory" that Defendant is liable under a theory of *res ipsa loquitur* is insufficient as a matter of law.

11. As the Plaintiff's allegations in paragraph 25 of the Complaint are not proper theories of liability or recovery, paragraph 25 of Plaintiff's Complaint must be stricken.

**C. Count II of Plaintiff's Complaint (Assault and Battery)
Must be Stricken**

12. Count II of Plaintiff's Complaint alleges that Defendant is liable for assault and battery as a result of administering improper medication without Plaintiff's consent. See, Plaintiff's Complaint, ¶ 36.

13. Under Pennsylvania law, the doctrine of informed consent is limited in its applicability to only those cases involving surgical or operative medical procedures and has not been expanded to include cases involving the administration of drugs. See, Boyer v. Smith, M.D., 497 A.2d 646 (Pa.Super. 1985).

14. The touching of a patient in the course of injecting a drug alleged to have caused undesirable side affects does not constitute battery. See, Wu v. Spence, M.D., 605 A.2d 395 (Pa.Super. 1992).

15. As this matter does not involve a surgical or operative procedure, the doctrine of implied consent, and potential liability for battery, are inapplicable in the present matter.

16. Pennsylvania courts have routinely refused to expand the doctrine of implied consent to cases involving the administration of therapeutic drugs. See, Boyer, supra and Wu, supra.

17. Plaintiff's allegations that the administration of improper medications constituted assault and battery are improper as Pennsylvania law does not recognize a claim for medical battery absent the requirement for informed consent in surgical procedures.

18. Plaintiff's allegations sound in negligence and not under the theory of assault and battery.

19. Accordingly, Count II of Plaintiff's Complaint must be stricken.

D. Plaintiff is Not Entitled to Punitive Damages

20. Plaintiff seeks to recover punitive damages from the Defendants based upon allegedly wanton, reckless, and malicious conduct.

21. Punitive damages are not a favorite of the law. See, Delahanty v. First Pennsylvania Bank, N.A., 464 A.2d 1243, 1263 (Pa.Super. 1983).

22. Punitive damages are imposed to punish and deter extreme behavior and are justified only in rare instances. See, Martin v. Johns-Manville Corp., 494 A.2d 1088, 1096 (Pa. 1985).

23. Under the law of Pennsylvania, the alleged conduct must be malicious, wanton, reckless, willful, or oppressive in order to sustain an award for punitive damages. See, DeBellis v. Kulp, 166 F. Supp. 2d 255 (E.D. Pa. 2001).

24. Punitive damages are only appropriate where the defendant has acted outrageously, for a bad motive, or with the reckless indifference to the interest of others. See, SHV Coal, Inc. v. Continental Grain, 587 A.2d 702, 705 (Pa. 1991); Bannar v. Miller, 701 A.2d 232, 242 (Pa.Super. 1997).

25. The nature of the defendant's conduct, the relationship between the parties, and all other attendant circumstances must be taken into account when deciding whether punitive damages should be awarded. Martin, 494 A.2d at 1096.

26. The defendant must know, or have reason to know, of facts which create a high degree of risk of physical harm to another and deliberately proceed to act, or fail to act, in conscious disregard of, or indifference to, that risk. See, Martin, 494 A.2d at 1097.

27. Punitive damages cannot be awarded where the defendant's conduct only rises to the level of ordinary negligence. Id.

28. Mere inadvertence, mistakes, or errors in judgment are not enough to justify the imposition of punitive damages. Id. and McDaniel v. Merck, Sharp, and Dohme, 533 A.2d 436 (447-448) (1987) *alloc. denied* 551 A.2d 215 (1988).

29. There is no indication or allegations within the Plaintiff's Complaint that Defendant intended to harm the Plaintiff or that it acted out of bad motive.

30. Plaintiff further failed to assert that the Defendant knew or had reason to know of facts that created a high degree of risk of physical harm to the Plaintiff and that

the Defendant deliberately proceeded to act in conscious disregard or indifference to that risk.

31. At most, Plaintiff has only alleged that a representative of the Defendant mistakenly administered improper medication to the Plaintiff, which is insufficient to impose punitive damages under Pennsylvania law. See, Id. and McDaniel, 533 A.2d at 447-448.

32. As a result, Plaintiff's request for punitive damages should be stricken.

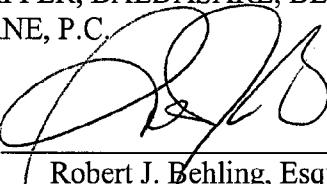
III. CONCLUSION

WHEREFORE, Defendant, Clearfield Colonial Courtyard, respectfully requests that this Honorable Court sustain its Preliminary Objections to Plaintiff's Complaint.

Respectfully Submitted,

DAPPER, BALDASARE, BENSON &
KANE, P.C.

BY


Robert J. Behling, Esquire
Douglas J. Stipanovich, Esquire

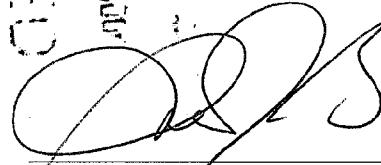
Attorneys for Defendant Clearfield
Colonial Courtyard

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within Preliminary Objections to Plaintiff's Complaint was forwarded by first class mail, postage prepaid, this 4th day of May, 2004, to counsel of record as follows:

John R. Carfley, Esquire
222 Presqueisle Street
P.O. Box 249
Philipsburg, PA 16866
Attorney for Plaintiff

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
*Attorneys for Defendant Mountain Laurel
Nursing & Rehab Center*



Robert J. Behling, Esquire
Douglas J. Stipanovich, Esquire

FILED

ice

10/20/04

MAY 06 2004

Att. Belling

William A. Shaw

Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian :
over the person and Estate of BERNET :
A. FONTENOY, an alleged :
incapacitated person :
vs. : No. 04-251-CD
CLEARFIELD COLONIAL :
COURTYARD :
:

ORDER

AND NOW, this 28th day of May, 2004, upon consideration of
Defendant's Preliminary Objections in the above matter, it is the ORDER of the
Court that argument on said Objections has been scheduled for the 21 day of
June, 2004, at 10:00 A.M. in Courtroom No.
1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDERIC J. AMMERMAN
President Judge

FILED

JUN 01 2004

William A. Shaw
Prothonotary

FILED

09-534 Notice
of Motion
for Summary
JUN 01 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian
Over the person and Estate of
BERNETA FONTENOY, an alleged
incapacitated person,

Plaintiff,

vs.

CLEARFIELD COLONIAL COURTYARD
and MOUNTAIN LAUREL NURSING &
REHAB CENTER,

Defendants.

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Type of Pleading:
**PRAECLYPE TO ENTER
APPEARANCE**

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207 East Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

JUN 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian
Over the person and Estate of
BERNETA FONTENOY, an alleged
incapacitated person,
Plaintiff,

*
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*
*
*
*

vs.

* No. 04 - 251 - CD

CLEARFIELD COLONIAL COURTYARD
and MOUNTAIN LAUREL NURSING &
REHAB CENTER,

Defendants.

*
*
*
*

PRAECIPE FOR APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance as co-counsel on behalf of
the Plaintiff in the above-captioned case.

James A. Naddeo

James A. Naddeo, Esquire

CLERAFFIELD, PENNSYLVANIA 16830
P.O. BOX 552
ATTORNEY AT LAW
JAMES A. NADDEO

Lap over margin

FILED NO. cc
JFK 10/35 10/11 2004 COPY TO CLA
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

MARGARET A. KORMAN, Guardian
over the person and Estate of BERNETA
FONTENOY, an alleged incapacitated
person,

Plaintiff

v.

CLEARFIELD COLONIAL
COURTYARD,

Defendant

CIVIL DIVISION

No. 2004-00251-CD

AFFIDAVIT OF SERVICE OF ORDER
SCHEDULING ARGUMENT ON
PRELIMINARY OBJECTIONS

Filed on behalf of Defendant, Clearfield
Colonial Courtyard

Counsel of Record for this Party:

Robert J. Behling, Esquire
Pa. I.D. #30659

Dapper, Baldasare, Benson, & Kane, P.C.
Three Gateway Center
401 Liberty Avenue, Suite 1375
Pittsburgh, PA 15222
(412) 456-5555
(412) 456-2109 (fax)

FILED

JUN 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

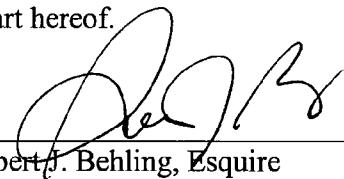
MARGARET A. KORMAN, Guardian) CIVIL DIVISION
over the person and Estate of BERNETA)
FONTENOY, an alleged incapacitated) No. 2004-00251-CD
person,)
)
Plaintiff)
v.)
)
CLEARFIELD COLONIAL)
COURTYARD,)
)
Defendants)

AFFIDAVIT OF SERVICE

STATE OF PENNSYLVANIA :
: ss:
COUNTY OF ALLEGHENY :

BEFORE ME, the undersigned authority, personally appeared, ROBERT J. BEHLING, ESQUIRE, who, being duly sworn according to law deposes and says that he served a true and correct copy of the Order scheduling argument on Defendant's Preliminary Objections upon counsel for the plaintiff, John R. Carfley, Esquire, and counsel for the co-defendant, Ann B. Wood, Esquire, by certified mail, return receipt requested, by correspondence dated June 2, 2004. The original green receipts of the U.S. Postal Service evidencing receipt of said Order are attached hereto and made a part hereof.

In addition, the undersigned served a copy of the Order upon the Court Administrator of Clearfield County by correspondence dated June 7, 2004, a copy of said correspondence is attached hereto and made a part hereof.



Robert J. Behling, Esquire

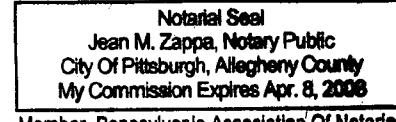
Attorney for Defendant Clearfield
Colonial Courtyard

Sworn to and subscribed before me this 8th day of June, 2004.



Notary Public

COMMONWEALTH OF PENNSYLVANIA



Member, Pennsylvania Association Of Notaries

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

John P. Carfley
222 Persquersle St.
P. O. Box 249
Philipsburg, PA 16866

2. Article Number

(Transfer from service label)

7002 2030 0005 7571 5561

PS Form 3811, August 2001

Domestic Return Receipt

2ACPRI-03-P-4081

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Tom Melis Agent
 Addressee

B. Received by (Printed Name)

Tom Melis C. Date of Delivery
6-4-04

D. Is delivery address different from item 1? Yes
if YES, enter delivery address below: No

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input checked="" type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ann B. Wood
318 E. LOCUST St.
P. O. Box 670
Clearfield, PA 16830

2. Article Number

(Transfer from service label)

7002 2030 0005 7571 5585

PS Form 3811, August 2001

Domestic Return Receipt

2ACPRI-03-P-4081

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Nancy Smale Agent
 Addressee

B. Received by (Printed Name)

NANCY SMALE C. Date of Delivery

D. Is delivery address different from item 1? Yes
if YES, enter delivery address below: No

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input checked="" type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes



■ Dapper, Baldasare, Benson & Kane, P.C. ■

Robert J. Behling
rbehling@dbbk.com

DIRECT DIAL: (412) 697-4657
Please Refer To: 113-64680

June 7, 2004

Court Administrator's Office
Clearfield County Courthouse
Suite 228, 230 East Market Street
Clearfield, PA 16830

**RE: Margaret A. Korman, Guardian over the person and Estate of
Berneta Fontenoy, an alleged incapacitated person v. Clearfield
Colonial Courtyard
No. 2004-00251-CD/Clearfield County, PA**

Dear Sir/Madam:

Enclosed is a true and correct copy of the Court's Order of May 28, 2004 scheduling argument on Defendant's Preliminary Objections for **June 21, 2004 at 10 a.m.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

Very truly yours,

Robert J. Behling/jmz
Robert J. Behling

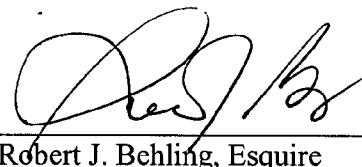
RJB/jmz
Enclosure
cc: John R. Carfley, Esquire

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within Affidavit of Service was forwarded by first class mail, postage prepaid, this 8th day of June, 2004, to the following:

John R. Carfley, Esquire
222 Presqueisle Street
P.O. Box 249
Philipsburg, PA 16866
Attorney for Plaintiff

Ann B. Wood, Esquire
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
*Attorney for Defendant Mountain Laurel
Nursing & Rehab Center*



Robert J. Behling, Esquire

FILED

NO
M 10:33 AM 10 CC
JUN 10 2004
[Handwritten signature]

William A. Shaw
Prothonotary/Clerk of Courts

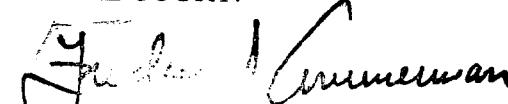
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian :
over the person and Estate of BERNET :
A. FONTENOY, an alleged :
incapacitated person :
: vs. : No. 04-251-CD
CLEARFIELD COLONIAL :
COURTYARD :
:

ORDER

AND NOW, this 16th day of June, 2004, it is the ORDER of the
Court that argument on Defendant's Preliminary Objections in the above matter
has been rescheduled from June 21, 2004 to Monday, August 16, 2004 at 10:30
A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED

JUN 17 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED

cc: *Andy Castley, Naddo, Bellring, Wood*
on 18/04/04

WAS
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

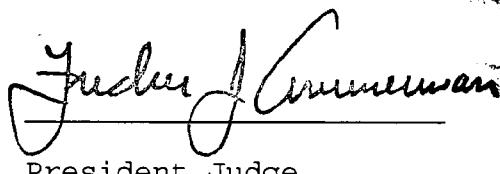
MARGARET A. KORMAN, Guardian :
over the Person and Estate of :
BERNET A. FONTENOY, an alleged :
incapacitated person :
VS. : NO. 04-251 -CD
CLEARFIELD COLONIAL COURTYARD :

O R D E R

NOW, this 16th day of August, 2004, following argument on the Preliminary Objections submitted on behalf of the Defendant, Clearfield Colonial Courtyard, it is the ORDER of this Court that the Preliminary Objection set forth in Count 1 of the same be and is hereby granted. The reference in Paragraph 25 of Plaintiff's Complaint setting forth the doctrine of res ipsa loquitur as a theory of recovery is hereby stricken.

The Court will issue subsequent ruling on the Preliminary Objections set forth in Count 2 and 3.

BY THE COURT:



J. Korman
President Judge

FILED

AUG 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED

of 1:30 PM
AUG 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

et al
ICC Atlys;
Carfley
Naddeo
Behling

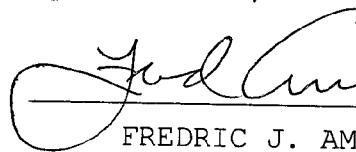
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian *
over the person and Estate of *
BERNETA FONTENOY, an alleged *
incapacitated person, *
Plaintiff *
*
vs. * No. 2004-251-C.D.
*
CLEARFIELD COLONIAL COURTYARD, *
Defendants *

O R D E R

NOW, this 25th day of August, 2004, relative the Preliminary Objections filed on behalf of the Defendant challenging the legal sufficiency of Count II of Plaintiff's Complaint alleging assault and battery and claiming punitive damages, it is the ORDER of this Court that the said Preliminary Objections be and are hereby granted. The provisions of Count II of the Plaintiff's Complaint are hereby dismissed.

By the Court,


FREDRIC J. AMMERMAN
President Judge

FILED

AUG 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED *cc: Hays, Cartley, Maddeo, Behling*

of 12:47 PM
AUG 26 2004
EBS

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian :
over the person and Estate of :
BERNETA FONTENOY an alleged :
incapacitated person, :
Plaintiff :

vs. : No. 2004-00251-CD

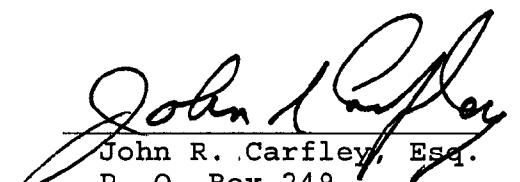
CLEARFIELD COLONIAL COURTYARD :
MOUNTAIN LAUREL NURSING & :
REHAB CENTER, :
Defendants :

CERTIFICATE OF SERVICE

I, John R. Carfley, Esquire, attorney for the Plaintiff in the above matter do certify that on the 10thj day of September, 2004, I served a copy of the Petition for Leave to File Amended Complaint filed in the above matter, by placing the same in the United States Mail, regular service to the following attorneys and parties of record by first class U.S. mail, postage prepaid:

Robert J. Behling, Esq.
DAPPER, BALDASARE, BENSON & KANE, P.C.
Attorneys for Clearfield Colonial Courtyard
Three Gateway Center, Suite 1375
401 Liberty Avenue
Pittsburgh, Pa., 15222

Mountain Laurel Nursing & Rehab Center
c/o Ann Wood, Esq.
BELL, SILBERBLATT & WOOD
318 E. Locust Street
Clearfield, Pa., 16830


John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

FILED ^{EGK}
03:45 PM NO CC
SEP 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

MARGARET A. KORMAN, Guardian
over the person and Estate of BERNETA
FONTENOY, an alleged incapacitated
person,

Plaintiff

v.

CLEARFIELD COLONIAL
COURTYARD and MOUNTAIN
LAUREL NURSING & REHAB
CENTER,

Defendants

CIVIL DIVISION

No. 2004-00251-CD

ANSWER AND NEW MATTER TO
PLAINTIFF'S COMPLAINT

Filed on behalf of Defendant, Clearfield
Colonial Courtyard

Counsel of Record for this Party:

Robert J. Behling, Esquire
Attorney's State ID: 30659

Douglas J. Stipanovich, Esquire
Attorney's State ID: 89099

Dapper, Baldasare, Benson, & Kane, P.C.
Three Gateway Center
401 Liberty Avenue, Suite 1375
Pittsburgh, PA 15222
(412) 456-5555

TO THE WITHIN-NAMED PARTIES:

YOU ARE HEREBY NOTIFIED TO FILE A
WRITTEN RESPONSE TO THE
ENCLOSED NEW MATTER WITHIN
TWENTY (20) DAYS FROM SERVICE
HEREOF OR A JUDGMENT MAY BE
ENTERED AGAINST YOU.

Raymond J. S.

Attorneys for Defendant Clearfield Colonial
Courtyard

FILED
10:50 AM
SEP 16 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

MARGARET A. KORMAN, Guardian) CIVIL DIVISION
over the person and Estate of BERNETA)
FONTENOY, an alleged incapacitated) No. 2004-00251-CD
person,)
Plaintiff)
v.)
CLEARFIELD COLONIAL)
COURTYARD and MOUNTAIN)
LAUREL NURSING & REHAB)
CENTER,)
Defendants)

ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT

AND NOW comes the Defendant, Clearfield Colonial Courtyard, by and through its attorneys, Robert J. Behling, Esquire and Dapper, Baldasare, Benson, & Kane, P.C., and files the within Answer and New Matter to Plaintiff's Complaint:

ANSWER

1. The allegations contained in paragraph 1 of Plaintiff's Complaint are admitted in part and denied in part. It is admitted that Margaret Korman is the named Plaintiff to the within action. By way of further answer, after reasonable investigation, this Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 1 of Plaintiff's Complaint. Therefore, the same are denied and strict proof thereof is demanded at the time of trial.

2. The allegations contained in paragraph 2 of Plaintiff's Complaint are admitted.

3. The allegations contained in paragraph 3 of Plaintiff's Complaint are admitted.
4. After reasonable investigation, this Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 4 of Plaintiff's Complaint. Therefore, the same are denied and strict proof thereof is demanded at the time of trial.
5. After reasonable investigation, this Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 5 of Plaintiff's Complaint. Therefore, the same are denied and strict proof thereof is demanded at the time of trial.
6. The allegations contained in paragraph 6 of Plaintiff's Complaint are admitted.
7. The allegations contained in paragraph 7 of Plaintiff's Complaint are denied as stated. This Defendant is unable to either admit or deny the allegations relating to the conduct of an unidentified employee, servant, or agent. By way of further answer, it is admitted that license practical nurses employed by this Defendant were involved in the health care provided to the patient. The remaining allegations contained in paragraph 7 of Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the remaining allegations set forth in Plaintiff's Complaint are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).
8. After reasonable investigation, this Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in

paragraph 8 of Plaintiff's Complaint. Therefore, the same are denied and strict proof thereof is demanded at the time of trial.

9. The allegations contained in paragraph 9 of Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 9 are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

10. The allegations contained in paragraph 10 Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 10 are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

11. After reasonable investigation, this Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 11 of Plaintiff's Complaint. Therefore, the same are denied and strict proof thereof is demanded at the time of trial.

12. The allegations contained in paragraph 12 Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 12 are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

13. The allegations contained in paragraph 13 Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 13 are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

14. The allegations contained in paragraph 14 Plaintiff's Complaint are denied as stated. This Defendant is unable to either admit or deny the allegations relating to the conduct of an unidentified agent. The remaining allegations contained in paragraph 14 of Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 14 of Plaintiff's Complaint are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

15. The allegations contained in paragraph 15 of Plaintiff's Complaint have been dismissed pursuant to the Order of Court dated August 25, 2004, which dismissed Plaintiff's claim for assault and battery and, therefore, no responsive pleading is required.

16. The allegations contained in paragraph 16 Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 16 are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

17. After reasonable investigation, this Defendant lacks sufficient knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 17 of Plaintiff's Complaint. Therefore, the same are denied and strict proof thereof is demanded at the time of trial.

18. The allegations contained in paragraph 18 Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 18 are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

19. The allegations contained in paragraph 19 Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 19 are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

20. After reasonable investigation, this Defendant lacks sufficient knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 20 of Plaintiff's Complaint. Therefore, the same are denied and strict proof thereof is demanded at the time of trial.

21. The allegations contained in paragraph 21 Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 21 are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

22. The allegations contained in paragraph 22 Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 22 are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

23. The allegations contained in paragraph 23 Plaintiff's Complaint are denied as stated. This Defendant is unable to either admit or deny the allegations relating to the conduct of unidentified agents and employees. By way of further answer, the allegations contained in paragraph 23 of Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 23 of Plaintiff's Complaint are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

24. The allegations contained in paragraph 24 Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 24 are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

25. The allegations contained in paragraph 25 of Plaintiff's Complaint were dismissed pursuant to Order of Court dated August 16, 2004. Accordingly, no responsive pleading is required.

26. The allegations contained in paragraph 26 Plaintiff's Complaint are denied as stated. This Defendant is unable to either admit or deny the allegations relating to the conduct of an unidentified employee. By way of further answer, it is admitted that licensed practical nurses were employed by this Defendant and associated with the health care provided to the patient. The remaining allegations contained in paragraph 26 of Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the remaining allegations contained in paragraph 26 of Plaintiff's Complaint are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

27. After reasonable investigation, this Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 27 of Plaintiff's Complaint. Therefore, the same are denied and strict proof thereof is demanded at the time of trial.

28. The allegations contained in paragraph 28 Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive

pleading is required, the allegations contained in paragraph 28 of Plaintiff's Complaint are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

29. The allegations contained in paragraph 29 (a)-(f) of Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 29 (a)-(f) are generally denied pursuant to Pa. R.Civ.P. 1029(c) and (e).

30. The allegations contained in paragraph 30 Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 30 are generally denied pursuant to Pa. R.Civ. P. 1029(c) and (e).

31. The allegations contained in paragraph 31 Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 31 are generally denied pursuant to Pa. R.Civ. P. 1029(c) and (e).

32. The allegations contained in paragraph 32 Plaintiff's Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in paragraph 32 are generally denied pursuant to Pa. R.Civ. P. 1029(c) and (e).

WHEREFORE, the Defendant Clearfield Colonial Courtyard denies liability to any party under any theory and respectfully requests judgment in its favor with costs.

COUNT II

ASSAULT AND BATTERY

33. In response to paragraph 33 of Plaintiff's Complaint this Defendant herein incorporates by reference paragraphs 1 through 32, inclusive of this Answer and New Matter as though the same were set forth more fully herein.

34-42. The allegations contained in paragraphs 34 – 42 of Plaintiff's Complaint have been dismissed pursuant to the Order of Court dated August 25, 2004 and, therefore, no responsive pleading is required.

WHEREFORE, the Defendant Clearfield Colonial Courtyard denies liability to any party under any theory and respectfully requests judgment in its favor with costs.

NEW MATTER

34. Plaintiff's Complaint fails to state a claim, in whole or in part, upon which relief may be granted.

35. Plaintiff's claims may be barred by the applicable statute of limitations.

36. Defendant Clearfield Colonial Courtyard acted in a reasonable, prudent, and non-negligent manner at all times material and relevant hereto.

37. The patient suffered from pre-existing conditions, ailments, diseases, and infirmities. The patient's current alleged medical problems are related to those conditions and not the conduct of this Defendant, its agents, representatives, or employees.

38. Patient's injuries, if any, were caused by intervening and superseding causes not within the control of the Defendant Clearfield Colonial Courtyard.

39. Patient's injuries, if any, were caused by the acts or omissions of third parties not within the control of Defendant Clearfield Colonial Courtyard.

40. Plaintiff's claims may be barred by the doctrines of waiver and estoppel.

41. Plaintiff's claims may be barred by the doctrine of laches.

WHEREFORE, the Defendant Clearfield Colonial Courtyard denies liability to any party under any theory and respectfully requests judgment in its favor with costs.

Respectfully Submitted,

DAPPER, BALDASARE, BENSON & KANE, P.C.

BY



Robert J. Behling, Esquire

Douglas J. Stipanovich, Esquire

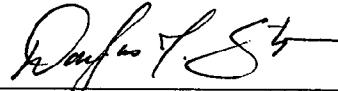
Attorneys for Defendant Clearfield
Colonial Courtyard

VERIFICATION

I, Douglas J. Stipanovich, Esquire, as counsel of record for Defendant Clearfield Colonial Courtyard, do hereby verify that the averments set forth in the foregoing Answer and New Matter to Plaintiff's Complaint are true and correct based on knowledge, information and belief and I am authorized to execute this Verification on behalf of Defendant Clearfield Colonial Courtyard. This Verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

9/14/04

Dated



Douglas J. Stipanovich

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within Answer and New Matter to Plaintiff's Complaint was forwarded by first class mail, postage prepaid, this 14th day of September, 2004, to counsel of record as follows:

John R. Carfley, Esquire
222 Presqueisle Street
P.O. Box 249
Philipsburg, PA 16866

James A. Naddeo, Esquire
211-1/2 East Locust Street
Marino Building
P.O. Box 552
Clearfield, PA 16830
Attorneys for Plaintiff

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
*Attorneys for Defendant Mountain Laurel
Nursing & Rehab Center*

Robert J. Behling, Esquire
Robert J. Behling, Esquire
Douglas J. Stipanovich, Esquire
Douglas J. Stipanovich, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian :
over the person and Estate of :
BERNETA FONTENOY an alleged :
incapacitated person, :
Plaintiff :

vs. : No. 2004-00251-CD

CLEARFIELD COLONIAL COURTYARD :
MOUNTAIN LAUREL NURSING & :
REHAB CENTER, :
Defendants :

④
FILED ^{cc}
01255/04 ^{Aug}
SEP 30 2004 ^{Carley}

William A. Shaw
Prothonotary/Clerk of Courts

RULE

AND NOW, this 30 day of Sept, 2004, upon consideration
of the foregoing Petition, a rule is hereby issued upon Defendants
to Show Cause why the Motion should not be granted. Rule
returnable the 20 day of October, 2004, for filing written
response and the 22 day of October, 2004, at 1:30 P.M.
in Courtroom No. 1 for hearing thereon.

NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH
TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION,
YOU MUST TAKE ACTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR
BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR
OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED
THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN
ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER
NOTICE FOR RELIEF REQUESTED BY THE MOVANT. YOU MAY LOSE RIGHTS
IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO
NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE
SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
COURTHOUSE
CLEARFIELD, PENNSYLVANIA, 16830
(814) 765-2641

BY THE COURT:



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FILED *cc*

*REC'D 03-5284 Atty
SEP 10 2004 Carfley*
BS William A. Shaw
Prothonotary/Clerk of Courts

MARGARET A. KORMAN, Guardian :
over the person and Estate of :
BERNETA FONTENOY an alleged :
incapacitated person, :
Plaintiff :

vs. : No. 2004-00251-CD

CLEARFIELD COLONIAL COURTYARD :
MOUNTAIN LAUREL NURSING & :
REHAB CENTER, :
Defendants :

PETITION FOR LEAVE TO FILE AMENDED COMPLAINT

AND NOW comes the Plaintiff, Berneta Fontenoy, by her attorneys, John R. Carfley, Esquire, and James A. Naddeo, Esquire, who petition this court for leave to file an amended complaint in the above matter and in support thereof avers as follows:

1. Plaintiff's original complaint consisted of two counts asserting a cause of action in Count I for negligence which allegedly occurred as a result of the improper application of medication to the plaintiff resulting in injuries as specified in said pleading.

2. Count II of Plaintiff's complaint specifically asserted a claim alleging assault and battery and requesting punitive damages coincident thereto.

3. Preliminary objections were filed by the Defendant challenging the sufficiency of Plaintiff's complaint.

4. This court after due consideration entered its order dated the 25th day of August, 2004, dismissing Count II of Plaintiff's complaint.

5. The Order did not specify the grounds under which Count II was dismissed nor did the court differentiate between the cause of action sounding in assault and battery and the separate issue of whether the plaintiff was entitled to punitive damages as a result of the admitted improper administration of prescriptive drugs.

6. Plaintiff believes and therefore avers that the admitted administration of improper medication constitutes an assault and battery under applicable tort standards and would request leave to file an amended complaint specifying the factual averments giving rise to this cause of action.

7. Defendants argued that Plaintiff's claim of battery should be adjudicated under case law involving informed consent.

8. It is believed and therefore averred that defendants have improperly applied this standard to informed consent cases in that the cases cited in defendant's brief address situations in which plaintiffs knowingly agreed to drugs or surgery but had adverse reaction and results after their consent to the drugs or procedures.

9. It is believed and therefore averred that the cases cited by the defendant are distinguishable from the facts of the case at bar by reason of the fact that in those cases plaintiffs had agreed to the application of the drugs or the surgery contemplated but suffered side effects or adverse results from the drugs or surgery outside the purview of the normal risks and side effects anticipated in these procedures.

10. In the case at bar the plaintiff was knowingly administered drugs for which no consent was ever provided and as

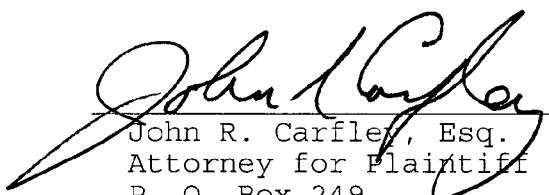
such plaintiff should be entitled to modify the averments of her complaint in order to assert a cause of action based upon the tort law of battery.

11. Since Defendant's cases dealing with informed consent are distinguishable this court should consider granting leave to the plaintiff as herein requested in order to provide plaintiff with the opportunity to more specifically state her cause of action in this matter.

12. Plaintiff would have been permitted to amend her complaint as a matter of right after the filing of preliminary objections.

13. The statute of limitations has not run on this claim, therefore, no prejudice would result to the defendant by granting plaintiff leave to refile her complaint alleging this cause of action.

WHEREFORE, Plaintiff/petitioner requests this Honorable Court to enter an order granting permission to the plaintiff to file an amended complaint in this matter.



John R. Carfley, Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581

Dated: September 8, 2004

LAW Office
BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830-0670
e-mail: bswlaw@pennswoods.net
Writer's Direct e-mail: annwood@pennswoods.net

04-251-CD

RICHARD A. BELL
ANN B. WOOD

(814) 765-5537
Fax: (814) 765-9730

PAUL SILBERBLATT 1954-1985
F. CORTEZ BELL, JR. 1954-2002

OF Counsel
Daniel C. Bell

August 23, 2004

RE: Margaret A. Korman, Guardian
over the person and Estate of
Berneta Fontenoy, an alleged
incapacitated person, Plaintiff vs.
Clearfield Colonial Courtyard and
Mountain Laurel Nursing & Rehab
Center, Defendants - No. 2004-0025

Marcy Kelley
Deputy Court Administrator
CLEARFIELD COUNTY COURTHOUSE
230 East Market Street
Clearfield, PA 16830

RECEIVED
PROTHONOTARY'S OFFICE
8/25/04
WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS

Dear Marcy:

Earlier in the year, you and I had discussed a question as to whether Mountain Laurel had been properly dismissed as a party in the above action, as the original dismissal did not have the consent of the Counsel for the Defendant, Clearfield Colonial Courtyard. Because of the question, you were going to keep me posted on any scheduling of any matters in this case.

I am pleased to report that I have received confirmation from Mr. Behling, Counsel for Clearfield Colonial Courtyard, that he consents to the dismissal previously filed by the Plaintiff. With that consent in place, I believe that you can go ahead and take my information and Mountain Laurel off of the case.

I appreciate your assistance in this matter.

Very truly yours,

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood

Ann B. Wood

ABW/nms

cc: John R. Carfley, Esquire
James A. Naddeo, Esquire
Robert J. Behling, Esquire

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

**Margaret A Korman
Berneta Fontenoy, Estate**

Vs. No. 2004-00251-CD
**Clearfield Colonial Courtyard
Mountain Laurel Nursing & Rehab Center**

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on April 29, 2004, marked:

Discontinued, Settled and Ended without prejudice against Mountain Laurel Nursing and Rehab Center ONLY.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 24th day of May A.D. 2004.

William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARGARET A. KORMAN, Guardian
over the person and Estate of BERNETA
FONTENOY, an alleged incapacitated
person,

CIVIL DIVISION

No. 2004-00251-CD

Plaintiff

v.

CLEARFIELD COLONIAL
COURTYARD and MOUNTAIN
LAUREL NURSING & REHAB
CENTER,

**ANSWER TO PLAINTIFF'S
PETITION FOR LEAVE TO FILE
AMENDED COMPLAINT**

Filed on behalf of Defendant, Clearfield
Colonial Courtyard

Defendants

Counsel of Record for this Party:

Robert J. Behling, Esquire
Attorney's State ID: 30659

Douglas J. Stipanovich, Esquire
Attorney's State ID: 89099

Dapper, Baldasare, Benson, & Kane, P.C.
Three Gateway Center
401 Liberty Avenue, Suite 1375
Pittsburgh, PA 15222
(412) 456-5555

EWK
FILED NO cc
m/11/03 3:44
OCT 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARGARET A. KORMAN, Guardian) CIVIL DIVISION
over the person and Estate of BERNETA)
FONTENOY, an alleged incapacitated) No. 2004-00251-CD
person,)
Plaintiff)
v.)
CLEARFIELD COLONIAL)
COURTYARD and MOUNTAIN)
LAUREL NURSING & REHAB)
CENTER,)
Defendants)

**ANSWER TO PLAINTIFF'S PETITION FOR LEAVE TO FILE AMENDED
COMPLAINT**

AND NOW comes the Defendant, Clearfield Colonial Courtyard, by and through its attorneys, Robert J. Behling, Esquire and Dapper, Baldasare, Benson, & Kane, P.C., and files the within Answer to Plaintiff's Petition for Leave to File Amended Complaint:

1. The allegations contained in Paragraph 1 of Plaintiff's Petition are admitted in part and denied in part. It is admitted that the Plaintiff's original Complaint consisted of two causes of action in the form of negligence and assault and battery. It is denied that Plaintiff's original Complaint contained a Count I for negligence.
2. The allegations contained in Paragraph 2 of Plaintiff's Petition are admitted.
3. The allegations contained in Paragraph 3 of Plaintiff's Petition are admitted.

4. The allegations contained in Paragraph 4 of Plaintiff's Petition are admitted.

5. The allegations contained in Paragraph 5 of Plaintiff's Petition constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the same are denied and strict proof thereof is demanded. To the contrary, the Order indicates that Count II and the claim for punitive damages were dismissed for legal insufficiency. By way of further answer, the Order of Court dated August 25, 2004 to which reference is made is a written document that speaks for itself and Plaintiff's abbreviated characterization of the same is denied.

6. The allegations contained in Paragraph 6 of Plaintiff's Petition are admitted in part and denied in part. It is admitted that Plaintiff believes that the administration of improper medication constituted an assault and battery and has requested leave of Court to file an Amended Complaint. It is specifically denied that the administration of the allegedly improper medication constituted an assault and battery under applicable tort standards. To the contrary, this Court has already determined that the Plaintiff's allegations and claim for assault and battery were improper as Pennsylvania Law does recognize a claim for medical battery absent the requirement for informed consent in surgical procedures.

7. The allegations contained in Paragraph 7 of Plaintiff's Petition are specifically denied. It is specifically denied that the Defendants argued that the Plaintiff's claim of battery should be adjudicated under case law involving informed consent. To the contrary, the Defendants argued that the doctrine of informed consent should not be applied to the cases involving the administration of therapeutic drugs and

that Pennsylvania courts have routinely refused to expand the doctrine of implied consent to such cases. Accordingly, the allegations contained in Paragraph 7 of Plaintiff's Petition are denied and strict proof thereof is demanded.

8. The allegations contained in Paragraph 8 of Plaintiff's Petition constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in Paragraph 8 of Plaintiff's Petition are specifically denied. It is specifically denied that the Defendants improperly applied the standard to informed consent cases to the matter presently before the Court. To the contrary, the Court applied the applicable standard to the Plaintiff's claim for medical assault and battery and determined that Plaintiff's claim was insufficient under Pennsylvania law.

9. The allegations contained in Paragraph 9 of Plaintiff's Petition constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in Paragraph 9 are denied and strict proof thereof is demanded.

10. The allegations contained in Paragraph 10 of Plaintiff's Petition are specifically denied. It is specifically denied that the Plaintiff is entitled to modify the averments of her Complaint in order to assert a cause of action based upon the tort law of battery because the Plaintiff was allegedly knowingly administered drugs to which no consent was ever provided. Moreover, the allegations contained in Paragraph 10 of Plaintiff's Petition indicate that the Plaintiff is attempting to amend the Complaint only to include the same factual allegations relating to the same occurrence. This is in direct contrast to the purpose of Pennsylvania Rule of Civil Procedure 1033, which permits

amendment of a pleading for different transactions and occurrences than previously pled. Accordingly, the allegations contained in Paragraph 10 of Plaintiff's Petition are denied and strict proof thereof is demanded.

11. The allegations contained in Paragraph 11 of Plaintiff's Petition constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in Paragraph 11 of Plaintiff's Petition are denied. Pennsylvania Rule of Civil Procedure 1033 does not permit for the amendment of a pleading on the basis of reconsideration of case law cited in previous Preliminary Objections, Brief in Support of Preliminary Objections, and oral arguments. Plaintiff's filling of the Petition for Leave of Court to Amend Complaint circumvents both the Pennsylvania and Appellate Rules of Civil Procedure. Accordingly, the allegations contained in Paragraph 11 of Plaintiff's Petition are denied and strict proof thereof is demanded.

12. The allegations contained in Paragraph 12 of Plaintiff's Petition are admitted. It is admitted that pursuant to Pennsylvania Rule of Civil Procedure 1028(c)(1) a party may file an amended pleading within 20 days after the service of the copy of the Preliminary Objections. As the Plaintiff did not file an Amended Complaint within the 20 day period following service of the Preliminary Objections, the subject Petition is an attempt to circumvent the Pennsylvania Rules of Civil and Appellate Procedure.

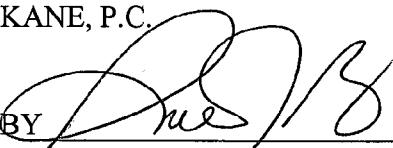
13. The allegations contained in Paragraph 13 of Plaintiff's Petition constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in Paragraph 13 of the Petition are admitted in part and denied in part. It is admitted that the statute of limitations for an

assault and battery claim based in tort has not run. By way of further answer, it is specifically denied that no prejudice would result to the Defendant by granting Plaintiff leave to refile the Complaint alleging a cause of action for assault and battery. To the contrary, prejudice would result to the Defendant if the Court were to permit the Plaintiff to refile her Complaint alleging a cause of action for assault and battery. Specifically, Plaintiff previously asserted a claim for assault and battery in the original Complaint, which was dismissed by this Court. To permit the Plaintiff to refile her Complaint to raise the same cause of action, without the rise of any new occurrence would in direct violation of Pennsylvania Rule of Civil Procedure 1033. The Defendant would be severely prejudiced in incurring additional costs and expenses in defense of the claim that has already been determined to be legally insufficient under Pennsylvania law. Accordingly, the allegations contained in Paragraph 13 of Plaintiff's Petition are denied and strict proof thereof is demanded.

WHEREFORE, Defendant, Clearfield Colonial Courtyard, respectfully requests that this Honorable Court deny the Plaintiff's Petition for Leave to File an Amended Complaint.

Respectfully Submitted,

DAPPER, BALDASARE, BENSON &
KANE, P.C.

BY 

Robert J. Bohling, Esquire
Douglas J. Stipanovich, Esquire

Attorneys for Defendant Clearfield
Colonial Courtyard

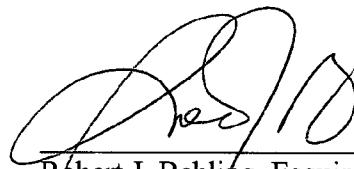
CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within
ANSWER AND NEW MATTER TO PLAINTIFF'S PETITION FOR LEAVE TO
FILE AMENDED COMPLAINT was forwarded by first class mail, postage prepaid,
this 19th day of October, 2004, to counsel of record as follows:

John R. Carfley, Esquire
222 Presqueisle Street
P.O. Box 249
Philipsburg, PA 16866

James A. Naddeo, Esquire
211-1/2 East Locust Street
Marino Building
P.O. Box 552
Clearfield, PA 16830
Attorneys for Plaintiff

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
*Attorneys for Defendant Mountain Laurel
Nursing & Rehab Center*



Robert J. Behling, Esquire
Douglas J. Stipanovich, Esquire

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET A. KORMAN, Guardian :
over the Person and Estate
of BERNETTA FONTENOY, an
alleged incapacitated person

-VS-

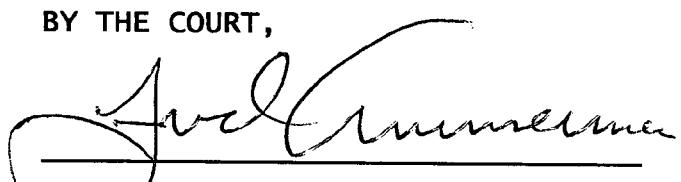
No. 04-251-CD

CLEARFIELD COLONIAL COURTYARD:

O R D E R

NOW, this 22nd day of October, 2004, this being
the date set for Petition for Leave to File Amended
Complaint filed on behalf of the Plaintiff, it is the ORDER
of this Court that counsel for the Defendant have no more
than ten (10) days from this date in which to submit any
further brief.

BY THE COURT,



President Judge

FILED ^{E6K}
OCT 26 2004
cc: ally Darby
cc: atty Wohl
cc: atty Bohling

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OA

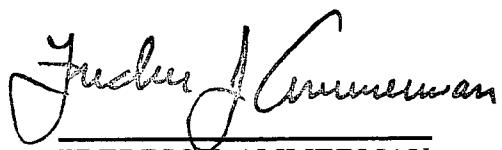
MARGARET A. KORMAN, Guardian :
over the Person and Estate :
of BERNETTA FONTENOY, an :
alleged incapacitated person :
: -vs- : No. 04-251-CD
:

CLEARFIELD COLONIAL COURTYARD:

ORDER

NOW, this 5th day of November, 2004, relative the Plaintiff's Petition for Leave to File Amended Complaint; the Court being satisfied that the Plaintiff's cause of action sounds in negligence and not assault and battery and that amendment of the Complaint would serve no legitimate purpose, it is the ORDER of This Court that the Plaintiff's Petition be and is hereby dismissed.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED EGV
01:36 8A 100 Atty Coffey
100 Atty Bedding
NOV 08 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

MARGARET A. KORMAN, Guardian
over the person and Estate of BERNETA
FONTELOY, an alleged incapacitated
person,

Plaintiff

v.

CLEARFIELD COLONIAL
COURTYARD,

Defendant

CIVIL DIVISION

No. 2004-00251-CD

PRAECIPE FOR ENTRY OF
JUDGMENT OF NON PROS
PURSUANT TO RULE 1042.6

Filed on behalf of Defendant, Clearfield
Colonial Courtyard

Counsel of Record for this Party:

Robert J. Behling, Esquire
Pa. I.D. #30659

Dapper, Baldasare, Benson, & Kane, P.C.
Three Gateway Center
401 Liberty Avenue, Suite 1375
Pittsburgh, PA 15222
(412) 456-5555
(412) 456-2109 (fax)

FILED

REC'D 10:43 AM 20 NOV 2005
NOCC. 100-00251-CD
JAN 18 2005
Behling
Clearfield
Prothonotary
Nodales

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

MARGARET A. KORMAN, Guardian) CIVIL DIVISION
over the person and Estate of BERNETA)
FONTENOY, an alleged incapacitated) No. 2004-00251-CD
person,)
Plaintiff)
v.)
CLEARFIELD COLONIAL)
COURTYARD,)
Defendants)

**PRAECIPE FOR ENTRY OF JUDGMENT OF
NON PROS PURSUANT TO RULE 1042.6**

TO THE PROTHONOTARY:

Enter judgment of non pros against the PLAINTIFF, MARGARET A. KORMAN, Guardian over the person and Estate of BERNETA FONTENOY, an alleged incapacitated person, in the professional liability claim against DEFENDANT, CLEARFIELD COLONIAL COURTYARD, in the above-captioned matter.

I, the undersigned, certify that the Plaintiff named above has asserted a professional negligence liability claim against the Defendant named above who is a licensed professional, that no certificate of merit has been filed within the time required by Pa.R.C.P. 1042.3 and that there is no motion to extend the time for filing the certificate pending before the court.

DAPPER, BALDASARE, BENSON &
KANE, P.C.

1/10/05
Dated

BY Douglas J. Stipanovich

Robert J. Behling, Esquire
Douglas J. Stipanovich, Esquire

Attorneys for Defendant Clearfield Colonial
Courtyard

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within Praecipe was forwarded by first class mail, postage prepaid, on the 10th day of January, 2005, to the following:

John R. Carfley, Esquire
222 Presqueisle Street
P.O. Box 249
Philipsburg, PA 16866
Attorney for Plaintiff

James A. Naddeo, Esquire
211-1/2 East Locust Street
Marino Building
P.O. Box 552
Clearfield, PA 16830
Attorney for Plaintiff

Douglas J. Stipanovich

Robert J. Behling, Esquire
Douglas J. Stipanovich, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,
PENNSYLVANIA
STATEMENT OF JUDGMENT

Margaret A Korman, Guardian over
the person and estate of
Berneta Fontenoy, an alleged incapacitated
person
Plaintiff(s)

No.: 2004-00251-CD

Clearfield Colonial Courtyard
Defendant(s)

Real Debt: \$

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Entry: \$20.00

Instrument: Non Pros

Date of Entry: January 18, 2005

Expires: January 18, 2010

Certified from the record this 18th day of January, 2005

William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment, Debt,
Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney