

CASE NO. CV-16-584

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7 Pages

IN THE ARKANSAS SUPREME COURT

Robinson Nursing and)
 Rehabilitation Center, LLC, d/b/a)
 Robison Nursing and)
 Rehabilitation Center,; Central)
 Arkansas Nursing Centers, Inc.;)
 Nursing Consultants, Inc., and)
 Michael Morton)

APPELLANTS

vs.)

Andrew Phillips, as Personal)
 Representative of the Estate of)
 Dorothy Phillips, deceased and on)
 behalf of the wrongful death)
 beneficiaries of Dorothy Phillips;)
 and on behalf of themselves and)
 all others similarly situated)

APPELLEES

**On Appeal from the Circuit Court Of Pulaski County, Arkansas
 Sixth Division**

**The Honorable Timothy Fox, Circuit Judge
 No. 60 CV-14-4568**

MOTION TO DISQUALIFY

1. This is a nursing home case against Michael Morton, Robinson Nursing and Rehabilitation Center, LLC d/b/a Robinson Nursing and Rehabilitation Center, in Pulaski County, Arkansas (“Facility”) and Central

Arkansas Nursing Centers, Inc. The undisputed record shows that from June 11, 2010 to present (“Class Period”), the Defendants owned and operated the Facility. Throughout the class period, Michael Morton was the President, sole officer, sole director and owned one-hundred percent (100%) of the Facility, Central Arkansas Nursing Centers, Inc. and Nursing Consultants, Inc. and had total and complete control of all the Defendants.

2. This lawsuit alleges that during the entire Class Period, Michael Morton and his companies engaged in a civil conspiracy to chronically understaff the Facility constituting a deceptive business practice in violation of the Arkansas Deceptive Trade Practices Act (“ADTPA”), thereby unjustly enriching Michael Morton.

3. It is well known that Michael Morton and his companies, including the Defendants in this case, contribute large sums of money to judicial races to support judicial candidates *he believes* will be sympathetic to his cause and his desire to prevent nursing home residents from exercising their constitutional right to a jury trial and to limit damages available to the most vulnerable in our society. Michael Morton is also the leading proponent of an initiated act to limit non-economic damages for nursing residents abused and neglected in the nursing homes he owns.

4. Further, Michael Morton and his contributions to judicial races are part of both a civil lawsuit and the criminal prosecution for bribery of former judge Michael Maggio. According to reports and the Maggio plea in his criminal case, Michael Morton used his financial influence providing campaign contributions to Michael Maggio in return for reducing a large verdict against Morton's nursing home.

5. Attached as Exhibit A are copies of checks that are a matter of public record in the civil lawsuit against Michael Maggio from Gilbert Baker's deposition that were attached to a summary judgment pleading filed in that case. These \$2000 checks are contributions made to "Rhonda Wood for Supreme Court" and the date on each was altered allegedly because the checks were actually written prior to the date contributions could legally be made to a judicial race . Each of the contributors have the same address and are companies owned and controlled by Michael Morton, including the Facility which is the Appellant in this appeal:

- a. ***Robinson Nursing and Rehabilitation Center, LLC d/b/a Robinson Nursing and Rehabilitation Center; (check #01337)***
- b. Heather Manor Care Center, Inc. d/b/a Heather Manor Nursing;
- c. Greenbriar Care Center, Inc. b/b/a Greenbriar Nursing & Rehab;
- d. Greystone Nursing & Rehabilitation, LLC;
- e. Jamestown Nursing & Rehabilitation, LLC;
- f. Jefferson County Health and Rehab, LLC;
- g. Legacy Heights Nursing & Rehab, LLC;
- h. Oak Manor Nursing & Rehabilitation, Inc.;

- i. Perry County Care Center, Inc. d/b/a Perry County Nursing;
- j. Quapaw Care & Rehabilitation, LLC;
- k. Russellville Care Center, Inc.;
- l. Salem Place Nursing & Rehabilitation Center, Inc.;
- m. Sherwood Nursing & Rehabilitation, Inc.;
- n. Stella Manor Care Center, Inc.; and
- o. White Hall Nursing & Rehabilitation, LLC

6. In addition to these contributions, Justice Wood's Campaign and Expenditure Report (Exhibit B attached) disclosed that Michael Morton, individually and his other companies [including Appellant Central Arkansas Nursing Centers, Inc.] also contributed \$2000 each to "Rhonda Wood for Supreme Court":

- a. Michael Morton;**
- b. Central Arkansas Nursing Centers, Inc.;**
- c. MSM Properties, Inc.;
- d. Dardanelle Nursing & Rehabilitation, Inc.; and
- e. Briarwood Nursing & Rehabilitation Center

7. Michael Morton, Robinson Nursing and Rehabilitation Center, LLC d/b/a Robinson Nursing and Rehabilitation Center and Central Arkansas Nursing Centers, Inc. are Appellants in this case. The contributions made by Michael Morton and his companies comprise 30% of the total contributions to "Rhonda Wood for Supreme Court" as of the reported date of April 16, 2014. More

importantly, the alteration to the check from Appellant Robinson Nursing and Rehabilitation Center, LLC d/b/a Robinson Nursing and Rehabilitation Center by Gilbert Baker to “Rhonda Wood for Supreme Court” is at the center of both the criminal prosecution of former judge Michael Maggio and the civil lawsuit against him in which Maggio reduced a jury verdict against one of Morton’s nursing home.

8. Rule 1.2 of the Arkansas Code of Judicial Conduct states that a “judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” It is well settled by this Court and all courts across the country that judicial independence is fundamental to our system of justice and the cornerstone of the public’s confidence in the integrity of the judiciary. The *appearance* of any bias must be avoided at all cost so as not to tarnish the public’s confidence in our system of justice or the integrity of the judicial system.

9. Likewise, Rule 2.11 (A) provides that “[a] judge *shall* disqualify himself or herself in any proceeding in which the judge’s impartiality *might reasonably be questioned . . .*” (emphasis added). Based upon the circumstances presented here, the public *might reasonably question* Justice Wood’s impartiality.

10. In keeping with the spirit and intent of Rule 1.2 and Rule 2.11, Appellees respectfully request that Justice Wood recuse from hearing this case and any case involving Michael Morton or his nursing homes as well as any other nursing home case the decision of which might affect Michael Morton and/or his nursing home businesses.

Respectfully submitted,



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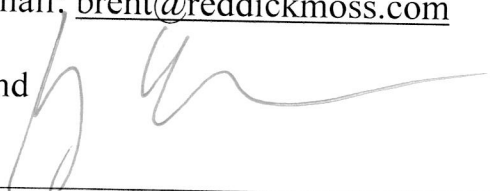
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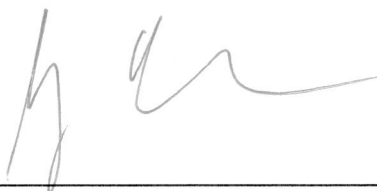
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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August 2016, I electronically filed the foregoing with the Clerk of the Court using the electronic filing system, which will send notification and service of the filing to the following counsel of record:

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A handwritten signature in grey ink, appearing to be 'H. A.', written over a horizontal line.

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