

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS  
4<sup>TH</sup> DIVISION

CAROL HAWKINS, AS PERSONAL REPRESENTATIVE  
OF THE ESTATE OF VERNELL HAWKINS, JR., AND ON BEHALF OF  
THE WRONGFUL DEATH BENEFICIARIES OF  
VERNELL HAWKINS, JR.

PLAINTIFF

FILED  
SALINE COUNTY  
CIRCUIT CLERK  
2016 FEB 29 AM 11:51  
BY: *PM*

v.

NO. 63CV-15-897

STONEYBROOK HEALTHCARE & REHAB, LLC D/B/A  
STONEYBROOK HEALTH AND REHABILITATION CENTER;  
NEW BEGINNINGS CARE, LLC;  
TRENT TOLBERT; AND  
KATHY BARNHILL IN HER CAPACITY AS ADMINISTRATOR OF  
STONEYBROOK HEALTH AND REHABILITATION CENTER

DEFENDANTS

ANSWER TO COMPLAINT

Come Defendants Stoneybrook Healthcare & Rehab, LLC d/b/a Stoneybrook Health and Rehabilitation Center ("Stoneybrook"); New Beginnings Care, LLC, Trent Tolbert and Kathy Barnhill in her capacity as administrator of Stoneybrook Health and Rehabilitation Center, by and through their attorneys, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., and for their Answer to Plaintiff's Complaint, state as follows:

Defendants affirmatively assert that Stoneybrook Healthcare & Rehab, LLC d/b/a Stoneybrook Health and Rehabilitation Center and New Beginnings Care, LLC have filed for protection under the United States Bankruptcy Court and all claims, allegations and claims for damages are improper and in violation of the automatic stay currently in place. Plaintiff should be required to seek relief from the stays entered by the respective Bankruptcy Court in order to proceed in any manner with this case. Out of an abundance of caution, Defendants answer the Complaint as follows:

1. Defendants admit that Exhibit A appears to be an order issued by the Pulaski County Circuit Court, Probate Division, which purports to acknowledge the appointment of Carol Hawkins as Personal Representative of the Estate of Vernell Hawkins, Jr. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 1 of the Complaint and therefore deny them.

2. Defendants are without sufficient information or knowledge to admit or deny the allegations in Paragraph 2 of Plaintiff's Complaint and therefore deny them.

3. Defendants admit the allegations contained in Paragraph 3 of the Complaint to the extent consistent with the actual medical records concerning Vernell Hawkins, Jr. Defendants deny all remaining allegations contained in Paragraph 3 of the Complaint.

4. Defendants deny the allegations contained in Paragraph 4 of the Complaint to the extent inconsistent with the filings at the relevant offices of the Secretary of State. Defendants deny all remaining allegations contained in Paragraph 4 of the Complaint to the extent inconsistent with Stoneybrook Healthcare & Rehab, LLC d/b/a Stoneybrook Health and Rehabilitation Center's actual involvement with the subject nursing home. Defendants affirmatively assert that Stoneybrook has filed for protection under the United States bankruptcy laws and therefore such suit is in violation of the automatic stay currently in place.

5. Defendants admit the allegations contained in Paragraph 5 of the Complaint related to New Beginnings Care, LLC ("New Beginnings") being a foreign limited liability company to the extent consistent with the actual records on file with the Arkansas Secretary of State. Defendants deny all remaining allegations contained in Paragraph 5 of the Complaint to the extent inconsistent with New Beginnings' actual involvement with the subject nursing home. Defendants affirmatively assert that New Beginnings has filed for protection under the United

States bankruptcy laws and therefore such suit is in violation of the automatic stay currently in place.

6. Defendants admit that Trent E. Tolbert is a resident of the state of Tennessee, as stated in Paragraph 6 of the Complaint. Defendants admit the allegations contained in Paragraph 6 related to licensure and ownership to the extent consistent with the actual records on file with the Arkansas Office of Long Term Care. Defendants deny all remaining allegations contained in Paragraph 6 of the Complaint.

7. Defendants admit that Kathy Barnhill was an administrator at Stoneybrook during at least a portion of the residency of Vernell Hawkins, Jr. as alleged in Paragraph 7 of the Complaint. Defendants deny the remaining allegations contained in Paragraph 7 of the Complaint.

8. Defendants deny the allegations contained in Paragraphs 8, 9, 10 and 11 of the Complaint.

9. Defendants deny the allegations set forth in Paragraph 12 of the Complaint. Defendants object to Plaintiff's attempt to lump separate and distinct corporations and persons, some or all of which had absolutely nothing to do with providing any care to Vernell Hawkins, Jr., into one definitional category and simply refer to them as "Nursing Home Defendants."

10. Defendants deny the allegations set forth in Paragraph 13 of the Complaint.

11. Defendants deny allegations set forth in Paragraph 14 of the Complaint. Defendants object to Plaintiff's attempt to lump separate and distinct corporations and persons, some or all of which had absolutely nothing to do with providing any care to Vernell Hawkins, Jr., into one definitional category and simply refer to them as "Defendants."

12. Defendants deny that jurisdiction and venue are proper as alleged in Paragraph 15 of the Complaint.

13. Defendants deny the allegations set forth in Paragraph 16 of the Complaint.

14. Paragraph 17 and its subparts and Paragraph 18 of the Complaint state what appear to consist of general statements rather than factual allegations against Defendants, and, therefore, such statements do not call for an admission or a denial. However, to the extent those paragraphs can be construed as making any material allegations against any of the Defendants, all such allegations are denied.

15. Defendants deny the allegations set forth in Paragraphs 19, 20, 21, 22 and its subparts, and 23 of the Complaint.

16. In response to Paragraphs 24 and its subparts and Paragraph 25 of the Complaint, Defendants state that the surveys conducted by the Office of Long Term Care speak for themselves. Defendants deny the remaining allegations contained in Paragraph 24 and its subparts and the remaining allegations contained in paragraph 25 of the Complaint.

17. In response to Paragraphs 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 of the Complaint, Defendants state that said paragraphs contain no allegations against them and, thus, do not call for an admission or a denial. The federal laws and regulations and the Arkansas statutes referenced in those paragraphs speak for themselves. However, to the extent any of those paragraphs can be construed as containing material allegations or implications directed at any of the Defendants, they are denied.

18. Defendants are without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 37 of the Complaint and therefore deny the allegations to the extent inconsistent with the medical records of Plaintiff. Plaintiff's medical records of Vernell

Hawkins, Jr. during his residency at Stoneybrook Healthcare & Rehab, LLC d/b/a Stoneybrook Health and Rehabilitation Center most accurately state the dates of Mr. Hawkins' residency.

19. Defendants deny all allegations and implications set forth in Paragraphs 38, 39 and its subparts, 40 and its subparts, 41, 42, 43, 44, 45 and 46 of the Complaint.

20. Upon information and belief, Paragraph 47 of the Complaint does not require responsive pleading. However, to the extent Paragraph 47 can be construed as making material allegations against any of the Defendants, all such allegations are denied.

21. Defendants deny all allegations and implications set forth in Paragraphs 48, 49, 50, 51, 52, 53 and its subparts, 54, 55 and its subparts, 56 and its subparts, 57 and 58 of the Complaint.

22. Paragraph 59 of the Complaint does not set forth factual allegations that require responsive pleading. However, to the extent a response is required, Defendants deny all such allegations.

23. In response to Paragraph 60 of the Complaint, Defendants specifically deny any of them is a "medical care provider" as defined by Ark. Code Ann. § 16-114-201(2) or is liable for medical care providers as defined by Ark. Code Ann. § 16-114-201(2).

24. Defendants deny all allegations set forth in Paragraphs 61, 62, 63 and its subparts, 64, 65 and 66 of the Complaint.

25. Paragraph 67 of the Complaint does not set forth factual allegations that require a responsive pleading. To the extent a response is required, Defendants deny all such allegations.

26. Paragraphs 68 and 69 of the Complaint are denied as written. Further, the Resident Admissions Agreement speaks for itself and Defendants deny any allegations that

misstate or misconstrue the language of said agreement or any other admission agreement referenced in the Complaint.

27. Defendants deny all allegations set forth in Paragraph 70 of the Complaint.

28. Defendants deny that the Plaintiff is entitled to the relief requested in Paragraphs 71 and 72 of the Complaint and deny all allegations set forth therein generally and specifically.

29. Defendants are without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 73 of the Complaint and therefore deny the allegations contained therein.

30. Paragraph 74 of the Complaint does not set forth factual allegations that require a responsive pleading. To the extent a response is required, Defendants deny the allegations set forth therein.

31. The allegations set forth in paragraphs 75, 76 and 77 of the Complaint are denied as written. Further, Exhibit B speaks for itself and Defendants deny any allegations that misstate or misconstrue the language of Exhibit B or any other provider agreement referenced in the Complaint.

32. The allegations set forth in Paragraphs 78, 79 and its subparts, and 80 of the Complaint are denied generally and specifically. Further, Defendants will not accept Plaintiff's attempt to lump separate business organizations and individuals, some or all of which had absolutely nothing to do with providing any care to the residents, into one definitional category and simply refer to them as "Defendants" and/or "Nursing Home Defendants."

33. Defendants deny that Plaintiff is entitled to the relief requested in Paragraphs 81, 82 and 83 of the Complaint and deny all allegations set forth therein generally and specifically.

34. Defendants are without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 84 of the Complaint and therefore deny the allegations contained therein.

35. Paragraph 85 of the Complaint does not set forth factual allegations that require a responsive pleading. To the extent a response is required, Defendants deny the allegations generally and specifically.

36. The allegations set forth in Paragraphs 86, 87 and its subparts and 88 of the Complaint are denied to the extent they misstate or misconstrue state law. The remaining allegations set forth in Paragraphs 86, 87 and its subparts and 88 of the Complaint are denied generally and specifically.

37. Defendants deny the allegations set forth in Paragraphs 89, 90, 91, 92, 93, 94, 95, 96 and 97 of the Complaint. Further, Defendants will not accept Plaintiff's attempt to lump separate business organizations and individuals, some or all of which had absolutely nothing to do with providing any care to the residents, into one definitional category and simply refer to them as "Defendants" and/or "Nursing Home Defendants".

38. Paragraph 98 of the Complaint does not set forth factual allegations that require a responsive pleading. To the extent a response is required, Separate Defendant Kathy Barnhill denies the allegations set forth therein.

39. Separate Defendant Kathy Barnhill admits she was an administrator at the facility during at least a portion of the residency of Vernell Hawkins, Jr. as alleged in Paragraph 99 of the Complaint.

40. Separate Defendant Kathy Barnhill denies all allegations set forth in Paragraph 100 of the Complaint.

41. Paragraph 101 of the Complaint does not set forth factual allegations that require a responsive pleading. To the extent a response is required, Separate Defendant Kathy Barnhill denies the allegations set forth therein.

42. Separate Defendant Kathy Barnhill denies all allegations set forth in Paragraphs 102, 103 and its subparts, 104 and 105 of the Complaint.

43. Defendants deny that Plaintiff is entitled to the relief sought in the “WHEREFORE” Paragraph of the Complaint and its subparts.

44. Defendants deny generally and specifically each and every material allegation of the Complaint not specifically admitted herein.

45. Defendants request a trial by jury of all issues of fact arising in this matter. Further, Defendants specifically request a jury of twelve (12) persons.

46. Defendants affirmatively assert that the claims against them fail to state a cause of action upon which relief can be granted and that they should be dismissed as a matter of law pursuant to Rule 12(b)(6) of the Arkansas Rule of Civil Procedure.

47. Defendants affirmatively assert that Plaintiff has failed to set forth facts to show that Plaintiff suffered damages as a proximate cause of a breach of duty as to Defendants.

48. Defendants affirmatively assert the provisions set forth in ARK. CODE ANN. §16-55-201, *et seq.*, and ARK. CODE ANN. §16-114-201, *et seq.*

49. Defendants affirmatively plead the applicable statutes of limitation as a complete or partial bar to some or all of the allegations set forth in the Complaint.

50. Defendants specifically incorporate by reference all standards of limitations regarding the determination and enforceability of punitive damages awards as set forth in the decisions of *State Farm v. Campbell*, 538 U.S. 408 (2003); *BMW of North America v. Gore*, 517



U.S. 559 (1996); and *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), together with all such standards applicable under state law.

51. Defendants affirmatively assert that Plaintiff's Complaint fails to state facts sufficient to justify an award of punitive damages.

52. Defendants affirmatively assert that any claim for punitive damages is preempted by the federal statutory and regulatory scheme related to nursing homes.

53. Plaintiff's claim for punitive damages cannot be sustained because an award of damages under Arkansas law by a jury does not provide constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a punitive damages award.

54. Plaintiff's claims for punitive damages against Defendants are barred, in whole or in part, because an award of punitive damages under Arkansas law would violate Defendants' due process rights and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§2, 3 & 8, of the Arkansas Constitution.

55. Plaintiff's claims for punitive damages cannot be sustained because Arkansas law regarding the standards for determining liability for and the amount of punitive damages fail to give Defendants prior notice of the conduct for which punitive damages may be imposed, and the severity of the penalty that may be imposed, and are void for vagueness in violation of this Defendants' due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§2, 3 & 8, of the Arkansas Constitution.

56. Plaintiff's claims for punitive damages against Defendants cannot be sustained because an award of punitive damages under Arkansas law, subject to no predetermined limit,

such as a maximum multiple of compensatory damages or a maximum amount on the amount of punitive damages that may be imposed, would violate Defendants' due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§2, 3 & 8, of the Arkansas Constitution.

57. Plaintiff's claim for punitive damages against Defendants Stoneybrook Healthcare & Rehab, LLC d/b/a Stoneybrook Health and Rehabilitation Center and New Beginnings Care, LLC cannot be sustained because an award of punitive damages under Arkansas law which allows Plaintiff to prejudicially emphasize the corporate status of Stoneybrook Healthcare & Rehab, LLC d/b/a Stoneybrook Health and Rehabilitation Center and/or New Beginnings Care, LLC violates these Defendants' due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§2, 3 & 8, of the Arkansas Constitution and would be improper under the common law and public policy of Arkansas.

58. Plaintiff's claim for punitive damages against Defendants cannot be sustained because any award of punitive damages made under a process which fails to bifurcate the issue of punitive damages from the remaining issues would violate Defendants' due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§2, 3 & 8, of the Arkansas Constitution and would be improper under the common law and public policy of Arkansas.

59. Pleading affirmatively, Defendants states that Plaintiff is not entitled to a trial by jury on the issue of punitive damages under the United States Supreme Court decision in *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001).

60. Pursuant to ARK. CODE ANN. §16-55-211, Defendants request bifurcation at trial of the punitive and compensatory damages issues, if a claim for punitive damages is allowed.

WHEREFORE, Defendants Stoneybrook Healthcare & Rehab, LLC d/b/a Stoneybrook Health and Rehabilitation Center; New Beginnings Care, LLC, Trent Tolbert and Kathy Barnhill pray that the Complaint be dismissed with prejudice, for their costs and attorney's fees herein, and for any and all other relief to which they may be entitled.

Respectfully submitted,

**MITCHELL, WILLIAMS, SELIG,  
GATES & WOODYARD, P.L.L.C.**

425 West Capitol Avenue, Suite 1800

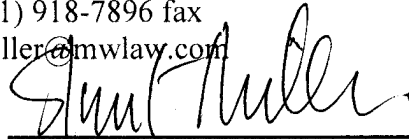
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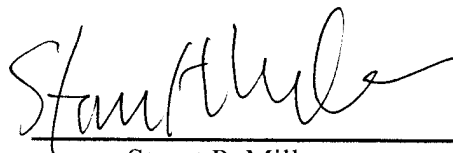
Ark. Bar No. 88137

**CERTIFICATE OF SERVICE**

I, Stuart P. Miller, do hereby certify that I forwarded a copy of the foregoing to the below named persons via U.S. Mail on this 26 day of February, 2016.

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\_\_\_\_\_  
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February 26, 2016

**VIA U.S. MAIL**

Myka Bono-Sample  
Saline County Circuit Clerk  
Courthouse  
200 N. Main Street, Room 113  
Benton, AR 72015-3767

Re: ***Carol Hawkins, as Personal Representative of the Estate of Vernell Hawkins, Jr.  
v. Stoneybrook Healthcare & Rehab, LLC, et al.; Saline County Circuit Court  
Case No.: 63CV-15-897***


Dear Ms. Sample:

Enclosed for filing in the above referenced matter is the *Answer to Plaintiff's Complaint, Notice of Bankruptcy of Stoneybrook and Notice of Bankruptcy of New Beginnings*. Please return the extra file-marked copies in the enclosed envelope.

By copy of this correspondence, counsel of record is being served with the pleadings. If you have any questions, please feel free to contact me.

Sincerely,

MITCHELL, WILLIAMS, SELIG,  
GATES & WOODYARD, P.L.L.C.

By   
Stuart P. Miller

SPM:az  
Enclosure

cc: Brian D. Reddick  
Brent L. Moss  
Robert W. Francis  
Joshua C. Rovelli  
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February 26, 2016

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