

Cause No. DC-14-12576

FRANKIE WILSON and WILLIE	§	IN THE DISTRICT COURT OF
WILSON, Individually and as a	§	
Representative of the Estate of	§	
WILLIE PHILLIP WILSON	§	
	§	
Plaintiffs,	§	
	§	DALLAS COUNTY, TEXAS
	§	
v.	§	
	§	
CHILDREN'S MEDICAL CENTER OF	§	
DALLAS	§	
	§	
Defendant.	§	134TH JUDICIAL DISTRICT COURT

**PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Frankie and Willie Wilson, Individually and as Representative of the Estate of Willie Phillip Wilson ("Plaintiffs"), and files this Plaintiffs' Original Petition complaining of Defendant Children's Medical Center of Dallas, and for cause of action would respectfully show unto the Court as follows:

**I. DISCOVERY CONTROL PLAN**

The Plaintiffs intend to conduct discovery under Level 2 pursuant to Texas Rules of Civil Procedure 190.

**II. THE PARTIES**

Plaintiff Frankie Wilson, Individually and as Representative of the Estate of Willie Phillip Wilson, is an individual who resides in Collin County, Texas.

Plaintiff Willie Wilson, Individually and as Representative of the Estate of Willie Phillip Wilson, is an individual who resides in Collin County, Texas.

Defendant Children's Medical Center of Dallas, Texas ("Defendant") is a registered

hospital in Texas and may be served through its registered agent, CT Corporation, 1999 Bryan Street, Suite 900, Dallas, TX 75201-3136.

### **III. JURISDICTION AND VENUE**

A. ***Jurisdiction.*** The Court has jurisdiction over the parties, the subject matter in controversy, and the amount in controversy in this case. More specifically, the jurisdiction in this case is proper in Texas for the following reasons:

1. The Court has jurisdiction over the Defendant because Defendant does business in or resides in Texas, committed a tort in whole or in part in Texas and is amenable to service by a Texas Court.
2. The Court has jurisdiction over the subject matter of the controversy in this case, because the Plaintiffs' asserted causes of action are based upon actions for damages under Texas law and the damages are in excess of the minimum jurisdictional limits of the Court, exclusive of interest and costs.
3. The Court has jurisdiction over the amount in controversy in the above-numbered and styled cause, because the Plaintiffs' asserted claims and causes of action for damages, interest, costs, and other relief are based upon actions for damages under Texas law and the damages are in excess of the minimum jurisdictional limits of the Court, exclusive of interest and costs.

B. ***Venue.*** The venue in this case is proper in Dallas County, Texas under Texas Civil Practice and Remedies Code §§ 15.001-15.003. More specifically, venue is proper in Dallas County, Texas for the following reasons:

1. All or substantial part of the events or omissions made the basis of the Plaintiffs' claims in this action occurred in Dallas County, Texas. *See Tex.*

Civ. Prac. & Rem. Code § 15.002(a)(1).

2. Defendant's principal office is located in Dallas County, Texas. *See* Tex. Civ. Prac. & Rem. Code § 15.002(a)(3).

#### **IV. FACTUAL BACKGROUND**

- A. This is a wrongful death and medical malpractice action brought by Plaintiffs to recover those damages, interest, court costs, and other relief provided by law for Willie Phillip Wilson's death arising from the medical and health care, diagnosis, assessment, and treatment of Willie Phillip Wilson at Children's Medical Center of Dallas facility in Dallas County, Texas.
- B. At all times mentioned in this Petition, Defendant Children's Medical Center of Dallas was and still is a licensed and accredited healthcare institution in the State of Texas. Defendant Children's Medical Center of Dallas held itself out to Willie Phillip Wilson and the general public as possessing that degree of knowledge and skill required of a qualified and competent hospital through its employees, nurses and technicians and staff.

#### **V. FACTUAL CIRCUMSTANCES**

On or about October 25, 2012, Willie Phillip Wilson's life was abruptly ended. He was rushed to the Defendant on the 24<sup>th</sup> of October 2012, suffering from uncontrollable seizures during a drive with his father. Upon arrival, Mr. Wilson was given anti-seizure medication and remained in the hospital for observation.

That evening, Mr. Wilson's mother, before departing for home, requested that the nurse on duty restrain Mr. Wilson in his bed, provide a nurse to watch him in case of seizures, and lower the height of the bed itself. At the time, Mr. Wilson's bed was

unusually raised to a height well above five feet. Mr. Wilson's mother request of in-bed restraints and in-room sitter was standard procedure previously implemented by Defendant during Mr. Wilson's mother's past visits. However, the abnormally high bed position was not previously utilized.

Despite Mr. Wilson's mother adamant requests of the aforementioned precautions, the nurse on duty declined to lower Mr. Wilson's bed, provide restraints and in-room assistance stating these measures were unnecessary since Mr. Wilson's room was in plain view of the nurse's station. Mr. Wilson's mother reluctantly left for the evening relying on the nurse's representation that she would prevent harm to her son, which injuries he actually sustained.

At or around 4:00 a.m. on the 25<sup>th</sup> of October 2012, Mr. Wilson fell out of his bed landing face first onto the solid concrete floor. Visibly his teeth, some of which were broken, penetrated his upper lip, his eye was badly bruised, he suffered bruises to his rib cage, blood emanated from his mouth, and the earlier surgical head wound was torn open.

Mr. Wilson's mother was contacted by the Defendant around 7:30 a.m., but was not informed of Mr. Wilson's tragic fall. Instead, the hospital relayed that Mr. Wilson's vital signs were drastically decreasing. The Defendant literally counted down while on the phone with Mr. Wilson's mother what allegedly was Mr. Wilson's final moment until his death. Mr. Wilson's mother, who was driving during the countdown, nearly crashed her automobile suffering severe emotional distress from such shocking news given Mr. Wilson was lucid and stable just hours before her receiving the call.

Further unconscionable, was that Mr. Wilson's parents were not made aware of Mr. Wilson's fatal fall until after entering into the room wherein laid their deceased son's

body. Mr. Wilson's parents were informed only after inquiring of the bloody contusions on his head, blood emanating from his mouth, broken front teeth, and a swollen face; only then were they informed of the fall.

The nurse on duty who brazenly refused to restrain Mr. Wilson, lower his extraordinary high bed height, provide bedside watching, apparently forgot to raise the protective side rail allowing Mr. Wilson to roll over and fall face down nearly 5 feet to his death.

## **VI. NEGLIGENCE OF DEFENDANT**

***Negligence of Defendant.*** Plaintiffs incorporate by reference all other paragraphs of this complaint as if fully set forth herein and further alleges the following:

On the occasion in question in this case, Defendant had a duty under Texas law to exercise ordinary care and were negligent in that it failed to meet the reasonable, prudent and accepted standards of medical care applicable in the course of providing diagnosis, assessment, care, and treatment to and/or for Willie Phillip Wilson on or about October 25, 2012 at Defendant Children's Medical Center of Dallas.

Defendant, by and through its agents and/or employees, was negligent in the conduct described above. Defendant, by and through its agents and/or employees, breached the duty of ordinary care owed to Mr. Wilson including, but not limited to, the following particulars:

- a. By failing to properly train and supervise any agents, employees, servants, and nursing staff when caring for Mr. Wilson to prevent and protect him from falls and injuries.
- b. By failing to provide Mr. Wilson with a safe environment in which to receive

treatment, and recover; and

- c. By failing to properly monitor Mr. Wilson;
- d. By failing to properly lowering Mr. Wilson's bed to a safe position;
- e. By failing to take precautions to prevent Mr. Wilson's fall;
- f. By failing to ensure that adequate policies and procedures were in place for hiring, training and supervision of the nursing staff at the hospital; and
- g. By failing to ensure that the person(s) hired to work at the hospital had sufficient understanding of the safety concerns for the patients and was competent to formulate policies and procedures for patient safety and quality assurance.

As a result of the Defendant's negligence, Mr. Wilson is entitled to damages from Defendant by reason of Defendant's negligence, which was the sole proximate cause of Mr. Wilson's wrongful death.

## **VII. DAMAGES**

This lawsuit is brought under the provisions of the Texas Wrongful Death Statute and the Texas Survival Statute for the Estate of Willie Phillip Wilson. These statutes combined allow Plaintiff Frankie and Willie Wilson to recover for their individual losses of their son and personal injury damages, including, but not limited to, emotion distress, loss of love, nurturing and companionship, loss wages, medical expenses, funeral expense, and pain and suffering.

## **VIII. PLAINTIFFS' COMPLIANCE WITH THE TEX. CIV. PRAC. REM. CODE**

### **CHAPTER 74 PRE-SUIT NOTICE OF CLAIM PROVISIONS AND/OR COMPLIANCE WITH CONDITIONS**

- A. As allowed by Texas law, Plaintiffs filed this civil action against Defendant herein, after

giving such Defendant written pre-suit notice of claim under Texas Civil Practice and Remedies Code (“TCPRC”), Chapter 74 §§ 74.051 – 74.052.

- B. Alternatively, all conditions precedent have been performed or have occurred as required by Texas Rule of Civil Procedure § 54.

#### **IX. PLAINTIFFS’ REQUEST FOR JURY TRIAL**

The Plaintiffs hereby request a jury trial in this civil action and tender the appropriate fee to the clerk of the Court in this case. The Plaintiffs are entitled to a trial by jury in the above cause pursuant to the Constitution of the State of Texas, Article I, § 15, and Texas Rule of Civil Procedure 216. The Plaintiffs are entitled to, and hereby request, a jury of twelve jurors, as well as a valid number of alternate jurors. *See* Tex. Gov’t Code Ann. § 62.020.

#### **X. PLAINTIFFS’ RESERVATION OF RIGHT TO AMEND AND/OR**

##### **SUPPLEMENT THIS PETITION**

As allowed by Texas Rules of Civil Procedure 45, 62, 63, 64, 65, 66, 67, 69 and other related rules, the Plaintiffs assert and reserve their legal right to amend and/or supplement the allegations and other contents of this petition to conform with any additional evidence or information and/or to respond to any or all pleadings of the Defendant in the above numbered and styled civil action.

#### **XI. REQUEST FOR DISCLOSURE**

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, the Defendant is requested to disclose, within fifty (50) days of service of this request, the information or material describe in Rule 194.2 (a) – (l).

#### **XII. PRAYER**

For reasons above, Plaintiffs, Frankie and Willie Wilson, Individually and as Representative of the Estate of Willie Philip Wilson, pray that Defendant Children’s

Medical Center of Dallas be cited to appear and answer, and that Plaintiffs have judgment against Defendant, as follows:

1. ***Actual/Non-Economic damages*** of Plaintiffs described above, in a fair and reasonable amount of money in excess of the minimum jurisdictional limits of this Court, or alternatively, as otherwise allowed by law.
2. ***Economic damages*** of Plaintiffs described above, in a fair and reasonable amount of money.
3. ***Exemplary damages*** resulting from Defendant's willful acts, omissions and gross negligence.
4. ***Pre-judgment interest*** as described above, or, alternatively, as otherwise allowed by law;
5. ***Post-judgment interest*** as allowed by law;
6. ***Attorneys' Fees***, as reasonable and necessary;
7. ***Costs of court***, and,
8. ***All other relief***, in law and equity, to which the Plaintiffs may be entitled.

Respectfully submitted,

Montgomery Sims, PLLC

By: /s/ Dominique Sims  
Dominique Sims  
Montgomery Sims, PLLC  
Bar No. 24081980  
1910 Pacific Avenue STE 11400  
Dallas, Texas 75201  
dsims@montgomerysims.com  
Telephone: (214) 720-6090  
Fax: (888) 853-8680



**ATTORNEY FOR PLAINTIFFS**