



E.R. et al v. Mid-America Transplant Services et al

2018 | Cited 0 times | E.D. Missouri | August 31, 2018

TRANSPLANT SERVICES,

Services'

Statement

("Robinson") ("Plaintiffs")

("County Defendants") E.R., et al.,

Plaintiffs, v.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI

SOUTHEASTERN DIVISION

No. 1:18CV148 RLW MID-AMERICA

et al.,

Defendants. MEMORANDUM AND ORDER This matter is before the Court on Defendant Mid-America Transplant Motion to Dismiss Pursuant to Rule 12(b)(6) or, in the Alternative, for More Definite

Pursuant to Rule 12(e). (ECF No. 7) The motion is fully briefed and ready for disposition. For the reasons set forth below, the Court grants Defendant's motion.

I. Background This case stems from the alleged lack of treatment and subsequent death of Michael Robinson while in the custody of the Pemiscot County Jail. (Compl. 31, ECF No. 1) Robinson suffered from diabetes and required insulin shots. (Id. 29) Robinson's surviving family members allege that Pemiscot County and certain individual employees of the Pemiscot County Jail

denied medical treatment which resulted in Robinson's death in violation of several Constitutional rights and Missouri law.



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On United States Specific to the present motion to dismiss, Robinson was transported to the Pemiscot Memorial Hospital Emergency Intake Center and admitted. (Id. at 54) Robinson was placed on life support with elevated glucose levels and a body temperature of degrees. (Id. at 55, 58) Attempts to revive Robinson were unsuccessful. (Id. at 58) Robinson was then transferred to Francis Memorial Hospital in Cape Girardeau, Missouri to confirm whether any brain activity could be detected. (Id. at

No brain activity was detected, and Robinson's family consented to take Robinson's body off life support. (Id. at 61)

Because Robinson was an organ donor, a team of organ transplant specialists from Defendant Mid-America Transplant Services arrived Francis and determined that Robinson's organs had too much deterioration and were not suitable for organ donation. (Id. at 62-63) In their Complaint filed August 15, 2017, 1

Plaintiffs allege that negligently failed to comply with the Anatomical Gift Act, Mo. Rev.

194.210, et seq. (Id. at 138-142) Plaintiffs claim that have acted reasonably to avoid, or foresee, the risk that said DEFENDANTS ... would expose reasonably foreseeable persons, such as plaintiffs, to reasonably foreseeable risks of harm or (Id. at Plaintiffs further allege that breached its duty of care by not acting reasonably by to timely communicate the nature and scope of organ harvesting it proposed to perform on Mr. Robinson; failing to

1 Plaintiffs originally filed their Complaint in the Eastern Division of the Eastern District of Missouri. June 15, 2018, District Judge Henry E. Autrey granted Defendants' Motion to Transfer the



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Case to the Southeastern Division, at which time the case was reassigned to this Court. (ECF No. 23)

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801, 806 2008) obtain timely family consent; failing to timely engage in harvesting procedures; and failing to otherwise observe the standard of care pertaining to Plaintiffs' interests under Mo. Rev. 194.210 et seq." 141) Plaintiffs contend that these breaches of duty were the proximate and actual causes of injury to the Plaintiffs and seek for loss of love, services, companionship, comfort, instruction, guidance, counsel, training, and support." (Id. 142)

December 1, Defendant filed a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, or in the alternative for a more definite statement under Rule 12(e). asserts that Plaintiffs have failed to state a claim under the and that the claims asserted against in Plaintiffs' Ninth Claim for Relief are too vague to enable to respond.

II. Legal Standards A complaint must be dismissed under Federal Rule 12(b)(6) for failure to state a claim upon which relief can be granted if the complaint fails to plead facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*,

544, allegations must be enough to raise a right to relief above the speculative level Id. at 555. Courts must liberally construe the complaint in the light most favorable to the plaintiff and accept the factual allegations as true. *Schaaf v. Residential Funding Corp.*, 517 F.3d 544, 549 (8th Cir. (stating that in a motion to dismiss, courts accept as true all factual allegations in the complaint); *Eckert v. Titan Tire Corp.*, 514 F.3d (8th Cir. (explaining that courts should liberally construe the complaint in the light most favorable to the plaintiff).



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MTS MTS, However, the allegations show on the face of the complaint there is some insuperable bar to relief, dismissal under Rule 12(b)(6) is appropriate." *Benton v. Merrill Lynch & Co.*, 524 F.3d 866, (8th Cir. (citation omitted). Courts not bound to accept as true a legal conclusion couched as a factual allegation.'" *Ashcroft v. Iqbal*, 556 662, 678 (quoting *Twombly*, at 555). When considering a motion to dismiss, a court can by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of *Id.* at 679. Legal conclusions must be supported by factual allegations to survive a motion to dismiss. *Id.*

In addition, under Federal Rule of Civil Procedure 12(e), party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a Fed. R. Civ. 12(e). 12(e) is not designed to remedy an alleged lack of detail, rather, the Rule is intended to serve as a means to remedy unintelligible *Resolution Trust Corp. v. Fiala*, F. 962, 977 (E.D. Mo. 1994). However, when a fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite [statement] under Rule 12(e) before responding.'" *Whitehead v. City of St. Louis*, No. 4:09CV483 WL 4430699, at *1 (E.D. Mo. Nov. 24, (quoting *Swierkiewicz v. Sorema NA.*, 534 512

III. Discussion Defendant first argues that the Ninth Claim for Relief, which is the only count against should be dismissed under Rule 12(b)(6) because Plaintiffs have

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See Stat. § UAGA "to failed to state a claim under the Plaintiffs respond that they have sufficiently that breached its duty of care under the thereby injuring Plaintiffs. The Court finds that Plaintiffs have failed to state a plausible claim under the

The facts taken from Plaintiffs' Complaint state that did not harvest Robinson's organs because they were too deteriorated. (Compl. 62-63, 141) The specific provisions of the cited by Plaintiffs refer to conducting a reasonable examination to ensure the medical suitability of an organ that could be the subject of an anatomical gift. Mo. Rev. 194.265.3. Plaintiffs' own pleading demonstrates that

conducted such examination and determined that the organs were not suitable for donation. 2

(Compl. 63) Further, Plaintiffs' response in opposition appears to claim that the donor body parts were improperly removed in violation of the Nothing in Plaintiffs' Complaint indicates any removal of donor body parts.

Finally, while Plaintiffs assert that they have stated a claim for negligent failure to comply with the the Court finds that Plaintiffs merely provide threadbare conclusions that do not rise to the level of a plausible cause of action. plaintiffs obligation to provide the 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will 2 The Court finds that very little case law exists regarding the interpretation of the However, in *Schembre v. Mid-America Transplant Ass'n*, the Missouri Court of Appeals found that had duty to follow the requirements set forth under the in order to complete a valid organ donation." 135 527, 531 (Mo. Ct. App. Defendant asserts, and the Court agrees, that the applies to compliance procedures a procurement organization must follow when it decides to procure an organ donation,



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not when it fails to procure such donation. Mo. Rev. 194.214 (the

applies an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made") (emphasis supplied).

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1030 2011) not do." Twombly, at 555. Here, Plaintiffs provide no factual allegations to support their claim that violated the Indeed, the only facts presented by Plaintiffs is that arrived at Francis and called a family member to inform her that it was unable to salvage Robinson's organs because they were too deteriorated. (Compl.

62-63) Plaintiffs then jump to the conclusion that these acts constituted a breach of

duty of care under the (Compl. 141) Even the most liberal construction of Plaintiffs' claim demonstrates a failure to state a plausible claim for relief. Therefore, the Court concludes that dismissal under Rule 12(b)(6) is warranted.

Although Plaintiffs vigorously assert that they have sufficiently stated a cause of action for violation of the as a last ditch effort to save their claim against Plaintiffs request in their concluding paragraph that the Court grant Plaintiffs leave to provide a more definite statement. However, the Court notes that Plaintiffs have not filed a proper motion for leave to amend, nor have they submitted a proposed amended complaint. order to preserve the right to amend the complaint, a party must submit the proposed amendment along with its motion." Clayton v. White Hall Dist., 778 F.2d 457, (8th Cir.1985). Eighth Circuit has repeatedly held that district courts do not abuse their discretion in denying leave to amend where the plaintiff did not file a motion for leave to amend and submit a proposed amended complaint, and merely asked for leave to amend in its response to a motion to dismiss." Tracy v. Cardinal Glennon Children's Hosp., No. 4:15-CV-1513 WL at *16 (E.D. Mo. July 12, (citations omitted); see also Minneapolis Firefighters' Relief Ass'n v. MEMC Elec. Materials, Inc., 641F.3d1023,



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(8th Cir. (stating that while

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leave to amend should be freely granted under Fed. R. Civ. P. 15, requesting leave to amend in the event of dismissal is insufficient). Because Plaintiffs have failed to follow this critical procedural step, their request is denied.

Accordingly, IT IS HEREBY ORDERED that Defendant Mid-America Transplant Services' Motion to Dismiss Pursuant to Rule 12(b)(6) or, in the Alternative, for More Definite Statement Pursuant to Rule 12(e) (ECF No. 7) is GRANTED and Plaintiffs' cause of action against Defendant Mid-America Transplant Services is DISMISSED for failure to state a claim. A separate of Dismissal accompanies this Memorandum and Dated this 31st day of August,

RONNIE L. WHITE UNITED STATES DISTRICT JUDGE