

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

**MARK WINTERS, individually,)
and as Plaintiff Ad Litem on behalf)
of Decedent Marjorie Joyce Winters)
and JEFFREY WINTERS, JESSICA)
WINTERS, MATTHEW WINTERS)
and GREGORY WINTERS, By and)
Through their Next Friend and)
Natural Father MARK WINTERS,)
5309 N.W. 59th Terrace)
Kansas City, MO 64151)**

Plaintiffs,

v.

THE CLINIC FOR WOMEN, INC.,

and

NANCY M. McBRIDE, M.D.,

and

ROBERT G. RICCI, D.O.,

and

MEDICAL IMAGING, INC.

Defendants.

**Case No. CV96-16557
Civil F**

**PLAINTIFFS' FIRST AMENDED
PETITION FOR DAMAGES**

COME NOW Plaintiffs Mark Winters, individually, and as Plaintiff Ad Litem on behalf of decedent Marjorie Joyce Winters, and Jeffrey Winters, Jessica Winters, Matthew Winters and Gregory Winters, by and through their Next Friend and Natural Father Mark Winters, and for

their causes of action against defendants state as follows:

PLAINTIFF MARK WINTERS, INDIVIDUALLY, AND AS PLAINTIFF AD LITEM AND NEXT FRIEND

1. Plaintiff Mark Winters at the time of the negligent acts complained of herein and all times mentioned is an individual resident of Kansas City, Jackson County, Missouri, and was the lawfully wedded husband of the decedent, Marjorie Joyce Winters who passed away on May 13, 1997. Mark Winters is therefore the proper party to bring this lawsuit on behalf of the deceased, as if she were living, as he has been appointed by the Court as Plaintiff Ad Litem on behalf of Marjorie Joyce Winters.

PLAINTIFFS JEFFREY WINTERS, JESSICA WINTERS, MATTHEW WINTERS, AND GREGORY WINTERS

2. Jeffrey Winters, Jessica Winters, Matthew Winters, and Gregory Winters, as residents of Kansas City, Jackson County, Missouri and the natural children of the decedent are the proper parties under the Missouri Wrongful Death Statute, RSMo § 537.080, to bring an action for the death of Marjorie Joyce Winters by reason of the carelessness and negligence of the defendants named herein. Pursuant to RSMo § 507.010 *et seq.*, Mark Winters has been duly appointed Next Friend on behalf of Jeffrey Winters, Jessica Winters, Matthew Winters and Gregory Winters in order to allow the children to pursue their Wrongful Death claim.

DEFENDANT THE CLINIC FOR WOMEN, INC.

3. The Clinic for Women, Inc. (hereinafter referred to as “Clinic for Women”) is and was at all times a Missouri Corporation duly organized and existing under the laws of the state of Missouri and engaged in operating a facility where persons afflicted with illness and disease such as those evidenced by Decedent Marjorie Winters are rendered care.

DEFENDANT NANCY M. McBRIDE, M.D.

4. Defendant Nancy M. McBride, M.D. (hereinafter referred to as “defendant McBride”) is and was at all times mentioned a licensed physician in the practice of medicine representing and holding herself out to the public as such, and in particular, to Decedent Marjorie Winters and maintaining her practice at 4400 Broadway, Suite 302, Kansas City, Missouri 64111, as an employee of The Clinic for Women, Inc.

DEFENDANT ROBERT G. RICCI, D.O.

5. Defendant Robert G. Ricci, D.O., (hereinafter referred to as “defendant Ricci”) is and was at all times mentioned a licensed physician, representing and holding himself out to the public, and in particular to Decedent Marjorie Winters, as a specialist in the field of radiology and maintaining his practice at 2001 N.E. Parvin Road, Kansas City, Missouri as an employee of Medical Imaging, Inc.

DEFENDANT MEDICAL IMAGING, INC.

6. Defendant Medical Imaging, Inc. (hereinafter referred to as “defendant Medical Imaging”) is and was at all times mentioned a Missouri corporation and is and was at all times mentioned, during the care of Decedent Marjorie Winters, qualified and authorized to do business in the State of Missouri in conformance with Missouri law and maintained its office and residence in the western portion of Jackson County, Missouri at 2001 N.E. Parvin Road, Kansas City, Missouri 64116.

AGENCY

7. On or about August 1, 1994, and at all times hereinafter mentioned, defendant McBride was acting as the agent, servant and employee or ostensible or apparent agent of defendant Clinic for Women, acting within the course and scope of her agency with said defendant.

8. On or about August 1, 1994, and at all times mentioned, defendant Ricci was acting as the agent, servant and employee or ostensible or apparent agent of defendant Medical Imaging, acting within the course and scope of his agency with said defendant.

VENUE

9. Venue and jurisdiction are proper in this case as defendants McBride and Clinic for Women committed tortious acts in Jackson County, Missouri and are also residents of Jackson County, Missouri.

FACTS OF THE OCCURRENCE

10. On or about August 1, 1994, Decedent Marjorie Winters went to see defendant McBride after discovering a lump in her left breast. Defendant McBride palpated the lump and noted a fullness in the left breast and ordered a mammogram to be performed.

11. On or about August 1, 1994, Decedent Marjorie Winters went to the offices of defendant McBride and Clinic for Women where a mammogram was performed by defendant Medical Imaging. At the time Marjorie Winters underwent the mammography, defendant Medical Imaging performed mammogram procedures for defendant McBride by and through a contract that the two defendants had entered into prior to August of 1994.

12. The mammogram was read and interpreted by defendant Ricci who concluded that

the mammogram was normal and that there was no evidence of any malignant changes in Decedent Marjorie Winters' left breast. Based on this interpretation, defendant Ricci reported to defendant McBride that no further radiological tests or actions were necessary other than future yearly mammograms. Defendant McBride relied on the incorrect interpretation by defendant Ricci and despite the detected lump in Decedent Marjorie Winters' left breast, defendant McBride through her office staff told Decedent Marjorie Winters that no further action would be necessary.

13. Approximately one year later, Decedent Marjorie Winters scheduled an annual medical check up. The lump in decedents breast was still present and at that time she was referred to a surgeon. Decedent Marjorie Winters went to see a physician, Dwight Cashier, M.D., who immediately performed a biopsy and discovered the lump was in fact malignant.

14. Subsequently, Decedent Marjorie Winters had to undergo a mastectomy and chemotherapy due to the fact that the cancer by that point had metastasized to her lymph nodes and her liver. Decedent was also forced to undergo a bone marrow transplant. Due to the fear of death and the embarrassment caused by the loss of her breast, decedent sustained severe emotional pain and suffering.

15. On May 13, 1997, Marjorie Joyce Winters passed away as a result of the misdiagnosed malignant ductal carcinoma.

COUNT I

(Wrongful Death Pursuant to RSMo § 537.080)

COMES NOW Plaintiffs Mark Winters, individually, and as the Natural Father and Next

Friend of Jeffrey Winters, Jessica Winters, Matthew Winters and Gregory Winters, by and through counsel, and for their cause of action for Wrongful Death pursuant to RSMo §§ 537.080 and 537.090 against the defendants, and each of them, allege and state as follows:

16. Plaintiffs hereby incorporate by reference into Count I paragraphs 1 through 15 of Plaintiffs' First Amended Petition as if fully set forth herein.

17. As Plaintiff Mark Winters has at all times hereinafter mentioned been the lawful husband of Decedent Marjorie Joyce Winters, and as Jeffrey Winters, Jessica Winters, Matthew Winters and Gregory Winters are the natural children of decedent, they are the proper parties under Missouri's Wrongful Death Statute to bring this cause of action against defendants.

DEFENDANTS McBRIDE AND CLINIC FOR WOMEN'S ACTS OF NEGLIGENCE

18. Defendant Clinic for Women, by and through their agent, servant, and employee, both actual and ostensible, defendant McBride, and defendant McBride individually, had a duty to possess and use that degree of skill and learning ordinarily used in the same or similar circumstances by members of their profession and the treatment of Decedent Marjorie Winters; that defendant Clinic for Women, by and through their agent, defendant McBride and defendant McBride individually, breached their duty and were guilty of the following acts of negligence by failing to measure up to the standards of due care, skill and practice required by members of their profession to-wit:

- a. In negligently and carelessly failing to timely, properly and correctly diagnose Decedent Marjorie Winters' breast cancer.

- b. In negligently and carelessly failing to take a proper medical history.
- c. In negligently and carelessly failing to do a proper physical exam of Decedent Marjorie Winters.
- d. In negligently and carelessly failing to document the examination, diagnosis and treatment of Decedent Marjorie Winters in accordance with approved medical standards.
- e. In negligently and carelessly failing to assess Decedent Marjorie Winters in accordance with approved medical standards.
- f. In negligently and carelessly failing to assess the lump found in Decedent Marjorie Winters' left breast and to take appropriate steps to intervene or obtain assistance from an appropriate consulting physician in a timely fashion.
- g. In negligently and carelessly failing to recognize the significance of the lump found in decedent Marjorie Winters' left breast in a timely manner and take appropriate steps to intervene or obtain assistance from an appropriate consulting physician.
- h. In negligently and carelessly failing to perform appropriate testing and diagnostic procedures, including an ultrasound of Marjorie Winter's breast and a biopsy of the lump, in a timely manner and take appropriate steps to intervene or obtain assistance from an appropriate consulting physician in a timely fashion.

- i. In negligently and carelessly failing to initiate appropriate medical intervention including a timely transfer to an appropriate specialist.
- j. In negligently and carelessly failing to provide proper attendance, care and observation in a timely manner.
- k. In negligently and carelessly relying on defendant Ricci's incorrect, inaccurate, and incomplete diagnostic interpretation of the mammogram taken on August 1, 1994, and failing to read the mammogram films herself.
- l. In failing to have appropriate office procedures to receive and review negative mammogram results and to discuss such results with patients such as Marjorie Winters.
- m. In negligently and carelessly failing to perform and measure up to the required standards of care and skill required and observed by members of her profession and in further particulars presently unknown to the plaintiffs but which are verily believed will be disclosed upon proper discovery procedures during the course of the within litigation.

DEFENDANTS RICCI AND MEDICAL IMAGING'S ACTS OF NEGLIGENCE

19. Defendant Medical Imaging, by and through their agent, servant, and employee, both actual and ostensible, defendant Ricci, and defendant Ricci individually, had a duty to possess and use that degree of skill and learning ordinarily used in the same or similar circumstances by members of their profession and the treatment of Decedent Marjorie Winters;

that defendant Medical Imaging, by and through their agent, defendant Ricci, and defendant Ricci individually, breached their duty and were guilty of the following acts of negligence by failing to measure up to the standards of due care, skill and practice required by members of their profession to-wit:

- a. In negligently and carelessly failing to correctly diagnose Decedent Marjorie Winters' condition of ductal carcinoma.
- b. In negligently and carelessly failing to report the existence of an abnormal mass on the mammogram.
- c. In negligently and carelessly failing to take appropriate steps to intervene or obtain assistance from an appropriate consulting radiologist.
- d. In negligently and carelessly failing to instruct defendant McBride to order a repeat mammogram to determine the etiology of the abnormal findings of a lump found in decedent's left breast.
- e. In negligently and carelessly failing to instruct defendant McBride to order a biopsy to determine the etiology of the abnormal findings of a lump found in decedent's left breast.
- f. In negligently and carelessly failing to instruct defendant McBride to perform more definitive testing to determine the etiology of the abnormal findings of the aforementioned lump.
- g. In negligently and carelessly failing to inform and advise both Decedent

Marjorie Joyce Winters and Plaintiff Mark Winters of the statistical likelihood that a false negative reading in the testing could and would result.

- h. In negligently and carelessly failing to perform to measure up to the required standard of care and skill required and observed by members of their profession and of other particulars presently unknown to the plaintiffs but which are verily believed will be disclosed upon proper discovery procedures during the course of the within litigation.

DECEDENT'S INJURIES

20. As a direct and proximate result of the carelessness and negligence of the defendants, and each of them, jointly and severally, as set forth above, Decedent Marjorie Winters received the following severe, permanent, devastating and progressive injuries directly leading to her death, to-wit: As a direct and proximate result of the defendants' aforementioned acts, the cancer was allowed to grow and spread with attendant metastasis, inevitably spreading to her liver and lymph nodes. Decedent was forced to endure severe pain and suffering, additional surgeries and medical procedures, including but not limited to a mastectomy, intense and extensive chemotherapy and bone marrow transplantation, all that would not have been required given a proper timely diagnosis. Furthermore, decedent's condition progressively worsened without appropriate medical treatment leading directly and proximately to her agonizing death.

21. **As a further direct and proximate result of defendants' carelessness and**

negligence, and each of them, the decedent was caused to suffer great mental pain and suffering prior to her death.

PLAINTIFFS JEFFREY WINTERS, JESSICA WINTERS, MATTHEW WINTERS, AND GREGORY WINTERS' DAMAGES

22. As a direct and proximate result of the carelessness and negligence of the defendants, and each of them, as alleged above, plaintiffs have been forced to expend monies for decedent's medical treatment prior to her death, funeral and burial expenses and other expenses the amount of which is presently unknown with exactitude by the plaintiffs; plaintiffs have been forever deprived of the decedent's services, consortium, comfort, companionship, instruction, guidance, counsel, training and support and has forever lost the benefits derived from any past and future income provided by the decedent.

23. As a further direct and proximate result of defendants' carelessness and negligence, and each of them, the decedent was caused to suffer great mental pain and suffering prior to her death, all to plaintiffs' damage in an amount which plaintiffs at this time are unable to state with exactitude.

WHEREFORE, Plaintiff Mark Winters, as the Natural Father and Next Friend of Jeffrey Winters, Jessica Winters, Matthew Winters, and Gregory Winters pray judgment against the defendants, and each of them, jointly and severally, acting by and through the other, for such damages for the Wrongful Death of Marjorie Joyce Winters as are fair and reasonable, together with any and all costs herein incurred and expended and for such other relief as this Court may deem just and proper.

COUNT II

(Lost Chance of Recovery, Survival Action)

COMES Now Plaintiff Mark Winters, Plaintiff Ad Litem on behalf of Decedent Marjorie Joyce Winters, pursuant to the authority granted to him by Missouri Revised Statutes §§ 537.020 and 537.021 and the Missouri Supreme Court opinion in Wollen v. DePaul Health Center, 828 S.W.2d 681 (Mo. banc. 1992), hereby brings this action on behalf of the decedent, as if she were bringing this lawsuit for her damages, and pleading alternatively alleges and states as follows:

24. Paragraphs 1 through 23 of Plaintiffs' First Amended Petition, exclusive of the prayer in Count I, are hereby incorporated by reference into Count II as if fully set forth herein.

25. At the time decedent was seen by defendants McBride and Ricci, she suffered from a lump in her left breast which required treatment and, if treated promptly, carried with it a statistically significant chance of full or partial recovery.

26. The defendants named herein failed to diagnose or adequately treat decedent's condition of a lump in her left breast and were negligent in the particular respects set forth above.

27. The negligence of the defendants in this case, fully set forth above, directly and proximately caused, or directly and proximately contributed to cause, Decedent Marjorie Winters to lose any chance of recovery.

28. Such lost chance of recovery was material and resulted in Decedent Marjorie Winters' developing extensive ductal carcinoma with metastasis to her lymph nodes and liver with all resulting damages as set forth more completely below. Said damage would not have

been sustained, or would have been minimized, had defendants not been negligent.

DECEDENT MARJORIE WINTERS' INJURIES

29. As a direct and proximate result of the carelessness and negligence of the defendants, and each of them, acting by and through the other, Decedent Marjorie Winters received the following severe, permanent and progressive injuries to wit:

- a. Decedent developed ductal carcinoma with metastasis to her liver and lymph nodes causing her pain, suffering and disability;
- b. The lump in decedent's left breast progressed from a minor, treatable condition with a probability of full recovery to a metastatic cancerous condition which required Decedent Marjorie Winters to undergo a mastectomy, extensive chemotherapy and bone marrow transplantation;
- c. Decedent was forced to endure great pain, suffering and mental anguish;
- d. Decedent suffered weakness, lethargy, and the loss of her ability to enjoy life;
- e. Decedent suffered lost income due to an inability to work and/or a decrease in her earnings capacity;
- f. Decedent's life expectancy and quality of life was greatly reduced;
- g. Defendant's negligence caused the decedent to suffer loss of life and limb on May 13, 1997.

WHEREFORE, Plaintiff Mark Winters as Plaintiff Ad Litem on behalf of Decedent Marjorie Winters prays judgment against the defendants, and each of them, jointly and severally, for such sums as are fair and reasonable, together with any and all costs herein incurred and expended and for

such other relief as the Court may deem just and proper.

COUNT III

(Loss of Consortium)

COMES NOW Plaintiff Mark Winters, individually, by and through counsel, and for his cause of action for loss of consortium against the defendants, alleges and states as follows:

30. Paragraphs 1 through 29 of Plaintiffs' First Amended Petition, exclusive of the prayers for relief in Counts I and II, are hereby incorporated by reference into Count III as if fully set forth herein.

31. Plaintiff Mark Winters is, and was at all times mentioned, the lawful husband of Decedent Marjorie Winters.

PLAINTIFF MARK WINTERS' DAMAGES

32. As a direct and proximate result of the negligence and carelessness of the defendants, jointly and severally, and each of them, and of the damages sustained by Marjorie Winters, plaintiff Mark Winters has been deprived of plaintiff Marjorie Winters valuable services and support, as well as her comfort, society, companionship, consortium, love, affection, advice and counsel.

33. Plaintiff Mark Winters has been obligated for medical and nursing bills and expenses due to his wife's condition. Plaintiff Mark Winters' wife has suffered an untimely and agonizing death due to defendants' negligence.

Attorney for Plaintiff