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CASE NUMBER: 23CV00393
PII COMPLIANT



Court: Johnson County District Court
Case Number: 23CV00393
Case Title: CHRISTOPHER YATES vs. MANDY WHITEHEAD
Type: ORD: Order (Generic) PRETRIAL ORDER

SO ORDERED,

A handwritten signature in blue ink, appearing to be 'RJW', is written above a horizontal line.

/s/ Robert J. Wonnell, District Court
Judge

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

CHRISTOPHER YATES, individually and as)	
Executor of the Estate of Kimberly Yates,)	
)	
Plaintiff,)	
)	Case No. 23CV00393
v.)	Division 6
)	K.S.A. Chapter 60
MANDY WHITEHEAD, LPC.,)	
LORENE CREASSER, APRN,)	
SHAWNEE MISSION MEDICAL CENTER,)	
INC. d/b/a ADVENT HEALTH, and)	
EM SPECIALISTS, P.A.,)	
)	
Defendants.)	

PRETRIAL ORDER

A final pretrial conference was held in this case on the 30th day of April 2025.

1. APPEARANCES

Plaintiff appears by Scott Nutter and Daniel Singer and Jane Rose.

Defendants Whitehead and Shawnee Mission Medical Center appear by Mark Lynch and Kemper Bogle of Simpson Logback Lynch Norris, P.A.

Defendants Lorene Creasser and EM Specialists appear by Matt Klose of Horn Aylward & Bandy, LLC.

2. VENUE; JURISDICTION; PROPRIETY OF PARTIES

There are no objections to jurisdiction, venue, or propriety of parties.

3. PLAINTIFF'S LEGAL THEORIES

On April 11, 2021, Kimberly Yates presented to the Advent Shawnee Mission Medical Center emergency department. She was brought there by her husband, plaintiff Christopher Yates, after he observed her standing on a bench facing an open second story window, the second suicide attempt he had observed in approximately a week.

Kim underwent a triage assessment at Advent performed by Bruce Frazier, RN, who concluded that Kim was at “high risk” for suicide. She was placed in a behavioral health room and was assessed first by defendant Lorene Creasser, an APRN. Nurse Practitioner Creasser requested a behavioral health consult, which was performed by defendant Whithead, a licensed professional counselor.

These assessments revealed a significant amount of findings consistent with and very concerning for suicidality. The records speak for themselves, but they include reports of the past suicide attempts with non-credible explanations of denial from Kim Yates; anxiety; insomnia; increasingly dangerous behavior; decreased appetite; struggles with communication and forming thoughts; reporting being unable to see a forward path and being unable or unwilling to explain further; feeling emotionless; being withholding and guarded; and a recent stroke from that past November.

Notwithstanding these worrisome findings, defendant Whitehead recommended that Kim be discharged home, and defendant Creasser agreed, discharging Kim home that day. The discharge was accompanied by a safety plan that required, among other things, that Kim not be left alone and that the family install screens on the window.

On April 14, 2021, Kim completed a suicide attempt, jumping from the window where Chris had observed her less than three days earlier.

Plaintiff’s standard of care, causation, and damages evidence is spelled out in voluminous detail in a series of expert reports, which are incorporated herein by reference. But in summary form, for purposes of this pretrial order, Plaintiff alleges that Defendants, individually and collectively, negligently:

- (1) Failed to properly assess and diagnose Kim Yates on April 11, 2021;
- (2) Failed to recommend and encourage that Kim Yates be admitted for behavioral health treatment on April 11, 2021;
- (3) Failed to compel admission, if voluntary admission was refused; and
- (4) Failed to sufficiently involve an attending physician, psychologist or psychiatrist in Kim’s care.

Many departures from the standard of care fall under the umbrella of one or more of the claims above, including, but not limited to failure to discount Kim’s non-credible explanations for past suicide attempts; failure to properly credit Chris Yates’ information; failure to review and rely upon the prior triage assessment; failure to appropriately consider the relevance of Kim Yates’ stroke; and compounding those failures by providing a safety plan that was impossible to adhere to and that only underscores why Kim should have been admitted. In addition to this negligence,

defendant Advent failed to preserve the video account of Kim’s time at the hospital on April 11. Plaintiff will argue that the jury should infer that this constitutes the erasure of evidence that would have confirmed the inadequacy of Defendants’ assessment and disposition.

Plaintiff’s evidence is that had admission to behavior health been recommended and encouraged on April 11, 2021, Kim would have agreed to it. But failing such agreement, involuntary commitment was both indicated and appropriate, and would likewise have resulted in provision of the care she needed. Had Kim been admitted rather than discharged, her improvement from her stroke would have continued, her mental health crisis would have abated, she would not have completed suicide, and her life would have returned to “pre-stroke” conditions.

As a direct and proximate result of the negligence described herein, Kimberly Yates suffered pain, disability, disfigurement, mental anguish, loss of enjoyment of life, and death. Her heirs, husband Chris and children Zachary and Megan, also sustained wrongful death damages, including loss of Kim’s earnings, savings, stock options, household production, care, advice, counsel, consultation, attention, and guidance. Plaintiff’s damages are itemized as follows:

Past and Future Economic Damages, including <i>Wentling</i> damages and funeral expenses:	\$11,811,073.09 ¹
Past and Future Non-Economic Damages:	\$3,000,000.00
Survival Action Non-Economic Damages:	<u>\$3,000,000.00</u>
Total Amount of Damages Claimed:	\$17,811,073.09 ²

4. DEFENDANTS’ LORENE CREASSER APRN, EM SPECIALIST, P.A., MANDY WHITEHEAD, LPC, & SHAWNEE MISSION MEDICAL CENTER, INC., D/B/A ADVENT HEALTH’S LEGAL THEORIES

¹ Plaintiff’s economic expert may provide updated present value figures reflecting discount rates closer in time to trial, and Plaintiff reserves the right to amend this number on that basis. The number above reflects damages broken down into several categories of loss, as described in William Rogers’ expert report.

² Plaintiff reserves the right to ask the jury to award any amount up to the totals reflected in this damages section, depending on what the evidence at trial demonstrates.

Defendants APRN Lori Creasser and LPC Mandy Whitehead met the standard of care in all respects during their care and treatment of Kim Yates and did not cause or contribute to cause injury or damage to Ms. Yates.

Kim Yates presented to Advent Shawnee Mission emergency room on April 11, 2021. She was brought to the emergency room by her husband and plaintiff Christopher Yates. Ms. Yates had previously suffered a stroke in her right basal ganglia on November 19, 2020, that had left her with left-handed weakness and discoordination. Neurology had recommended as needed Ativan for management of anxiety. She was discharged home on November 22, 2020.

Following the November 19 stroke, Ms. Yates returned to work briefly before seeking, and receiving, a medical leave of absence from her employment in January of 2021 for eight to twelve weeks.

On January 29, 2021, Ms. Yates presented for an office visit at her primary care providers office with Margaret Naylor, NP for stroke follow-up. During the visit, Ms. Yates reported issues with anxiety post stroke and some resultant insomnia as she had not slept well since December of 2020. She continued to have issues with the left hand when it came to handwriting and typing. She took the as needed Ativan that was prescribed by Dr. Hastings at time of discharge from the hospital. NP Naylor further documented that Ms. Yates felt like a different person since her stroke.

Another primary care provider, Arlene O'Shea ARNP, saw Ms. Yates for insomnia and anxiety on February 25, 2021. Ms. Yates reported that she had tried and failed Benadryl, melatonin, and trazodone. Ms. Yates was previously started on temazepam along with hydroxyzine three times daily for anxiety; however, she reported feeling sedated with the hydroxyzine. She was referred to social worker Richard Archer, LSCSW for cognitive behavioral therapy for anxiety and insomnia. Ms. Yates was offered an antidepressant but was reluctant to start this medication.

On March 24, 2021, Ms. Yates saw Richard Archer, LSCSW (licensed specialist clinical social worker in KS engaging in the practice of clinical social work, including the diagnosis and treatment of mental health disorders) with reported continued intense levels of anxiety, ruminating negativity, and panic-like events. She reported an inability to function at times because of heightened anxiety and thoughts filled with negativity and catastrophizing thoughts.

On April 7, 2021, LSCSW Richard Archer had a telehealth visit with Ms. Yates and documented her mood as primarily blunted with periods of heightened levels of anxiety. Archer documented that Ms. Yates had no suicidal ideation and no self-harming behaviors.

On April 11, 2021, Kimberly Yates entered Advent Health Shawnee Mission emergency department at 12:50PM and assigned to be seen by Lorene Creasser, APRN at 13:15. Prior to NP Creasser's Assignment, Nurse Bruce Frazier completed an initial intake/triage assessment. A screening version of the Columbia Suicide Severity Rating Scale (C-SSRS) was also administered with husband Chris Yates providing responsive information. Ms. Yates was placed on suicide precautions by nursing staff the entire time she was in the emergency department.

Following initial triage, NP Creasser went and visited with Mr. and Ms. Yates. NP Creasser documented a chief complaint of insomnia with anxiety and depression for 3 months status post stroke. Chris Yates reported two episodes of suicidal gestures in the past one week. In particular, he claimed that he had found his wife standing facing an open window on the second floor of their home and was concerned she was going to jump out the window. Ms. Yates denied that was the case and reported that this was just to look outside the window. On exam, Ms. Yates further denied suicidal ideations.

Behavioral Health (BH) assessment was ordered at 13:18 by NP Creasser. Ms. Yates was evaluated by BH provider Mandy Whitehead, LPC. Ms. Yates shared that she felt that there was an over-reaction by her husband and that she was not suicidal. Ms. Yates reported no prior mental health history or diagnosis. LPC Whitehead performed a thorough assessment of Ms. Yates using the CSSRS and obtained all information relevant to her assessment. She asked Ms. Yates about the incidents that had been related by Mr. Yates, and Ms. Yates responded with explanations that denied suicidal intent or action. Ms. Yates and her husband shared that she had a long-scheduled two-hour appointment with a psychologist, Dr. William Oakley the following day on April 12, 2021, who specialized in treatment of mental health and anxiety. Ms. Yates expressed a desire to keep and see that doctor the following day. Ms. Yates continued to deny suicidal ideation while in the emergency department. However, without the knowledge of either NP Creasser, LPC Whitehead, or any other member of the emergency department staff, Mrs. Yates was, while in the emergency department, telling her husband that she was attempting to fool the providers into sending her home and attempting to enlist her husband in those efforts. Neither Ms. Yates nor Mr. Yates shared this information with either NP Creasser, LPC Whitehead, or any member of the emergency department staff. Based on the information she had received from Mrs. Yates, LPC Whitehead assessed Ms. Yates as low risk for suicide. Based on

that assessment, LPC Whitehead determined that there was no basis on which to hold Ms. Yates in the emergency department and that she could be discharged home with a safety plan. Had Ms. Yates been truthful about her suicidal thoughts and plans, and/or had Mr. Yates informed anyone in the emergency department that his wife was telling him she was attempting to fool the providers, Ms. Yates would likely have been deemed high risk, and efforts to admit her to an appropriate facility for further evaluation and treatment would have ensued.

A safety plan was established with behavioral health LPC Whitehead and Ms. Yates. Ms. Yates was also instructed to return to Advent Shawnee Mission if her symptoms worsen or situation changes.

Ms. Yates was ultimately discharged with a safety plan developed with her by LPC Whitehead which was appropriate for how she was assessed by LPC Whitehead. Consistent with the safety plan, Ms. Yates met with William Oakley, Psy. D., on the following morning, April 12, 2021, via telehealth visit. Mr. Yates was in attendance for the majority of the time per the records of Dr. Oakley. Patient reported her stroke had resulted in her having limited use of her left hand for typing and writing. Ms. Yates reported that she was left-handed and had a difficult time keeping up with the demands of her high-powered job to rehabilitate her hand. Ms. Yates reported anxiety related to the stroke as well as the fear of being unable to perform her job well post-stroke. Neither Ms. Yates nor Mr. Yates informed Dr. Oakley that they had been in the emergency department the previous day with concerns for suicide, nor was any of the history that had concerned Mr. Yates and caused him to bring his wife to the emergency department related to Dr. Oakley. In fact, Dr. Oakley's notes reflect that current suicidal ideation and/or plan was denied. Dr. Oakley's diagnosis was generalized anxiety disorder and adjustment disorder with mixed anxiety and depressed mood. Patient was given recommendations, goals, treatment plan and homework by Dr. Oakley. A follow up appointment was made for April 19, 2021. Had Ms. Yates or Mr. Yates informed Dr. Oakley that she had been considering suicide, had attempted suicide multiple times, and had been in the emergency department the previous day for these reasons, Dr. Oakley's diagnosis would have been different and efforts to see that Ms. Yates received appropriate treatment would have ensued.

On April 14, 2021, Johnson County MED-ACT received a call at 1054 regarding patient falling from roof into the backyard. Ms. Yates' mother-in-law reported that Ms. Yates became upset this morning and went to an upstairs bedroom. Her mother-in-law further reported that she saw Ms. Yates climb out the upstairs bedroom window and onto the roof. Construction workers next door reported they witnessed Ms. Yates jump from the roof of the house. Ms. Yates' death occurred

three days after care and treatment at Advent Shawnee Mission and two days after she was evaluated and treated by Dr. William Oakley.

5. STIPULATIONS

a. The medical records and bills, employment records, and tax documents previously produced in this matter are business records under K.S.A. 60-460(m), but the parties reserve the right to object to the contents of these documents on any other basis, including relevance and hearsay within a document.

b. Copies of exhibits may be used in lieu of originals.

c. Overlays, image projections, and other forms of enlargements or enhancements, that do not distort listed exhibits, may be permitted without further foundation, as long as the original or original copy is also produced for comparison.

d. The witness exclusion rule will be applied at trial. Witnesses (other than parties) will be excluded from the trial until after their testimony has been completed so that they cannot hear the testimony of other witnesses.

e. The parties have stipulated to the admission of the following exhibits:

1 None

f. The following factual matters are undisputed:

1. Kim Yates first presented to Advent Shawnee Mission emergency department on April 11, 2021.

2. Kim Yates was evaluated by APRN Creasser and LPC Whitehead on April 11, 2021.

g. The following legal issues are undisputed:

1. The law of Kansas applies to all issues in this case.

2. This lawsuit was timely filed.

6. AMENDMENTS TO PLEADINGS

None.

7. ISSUES OF FACT

These are the disputed issues of fact (or mixed questions of fact and law) that must be resolved at trial:

- a. Whether Defendant(s) were negligent in their care and treatment of Kimberly Yates.
- b. Whether any such negligence caused or contributed to cause the damages alleged.
- c. The nature and extent of the damages caused by Defendants' alleged negligence.
- d. Whether Ms. Yates' failure to inform/efforts to mislead either NP Creasser, LPC Whitehead, or any of the Advent Shawnee Mission Emergency Department staff on April 11, 2021 of her true suicidal intent, plan, and efforts caused or contributed to cause her death and the damages alleged.³
- e. Whether Plaintiff, Chris Yates, failure to alert the health care providers at Advent Shawnee Mission of his wife's attempts to mislead the health care providers about her true mental state and suicidality caused or contributed to cause Ms. Yates' death and the damages alleged.
- f. Whether Ms. Yates' failure to inform Dr. Oakley on April 12, 2021, of her true suicidal intent, plan, and efforts caused or contributed to cause her death and the damages alleged.
- g. Whether Mr. Yates' failure to advise Dr. Oakley of Ms. Yates' suicidality and the ED visit on April 11, 2021, is an intervening event that caused or contributed to cause Ms. Yates' death and the damages alleged.
- h. Whether hospitalization and/or treatment of Ms. Yates on either April 11 or April 12, 2021 would have prevented her death and the damages alleged.

8. ISSUES OF LAW

These are the disputed issues of law that must be resolved by the court:

- a. Plaintiff reserves the right to renew his motion on the topic of the agency relationship between defendants Creasser and Advent and/or to ask to the jury to reach the issue, as appropriate.
- b. The parties anticipate motions in limine that will raise certain evidentiary issues.

9. DISCOVERY

Discovery has formally closed, though additional depositions of family members and/or Plaintiff's rebuttal expert may be forthcoming, subject to the Court's ruling on pending issues.

³ Similar to Plaintiff's footnote no. 2, Defendants reserve the right to withdraw any/all comparative fault claims in advance of trial.

10. WITNESSES AND EXHIBITS

- a. All exhibits shall be marked by the court reporter or by counsel with exhibit stickers by no later than five days before the trial date. Plaintiff will use numbers 1-199 and Defendants will use numbers 200- on. The parties shall exchange copies of exhibits at or before that date.
- b. The parties will exchange and file their final witness lists by no later than one week before the trial date.
- c. Witnesses and exhibits listed by one party may be called or offered by the other party.
- d. Compliance with the provisions of this section of the Pretrial Order shall be required in all cases except by agreement of counsel or upon order of the Court or in proper rebuttal.

11. MOTIONS

- a. Defendants' Joint Motion to Exclude Plaintiff's Expert, Sebastian Koch, M.D., is pending.
- b. The parties anticipate filing motions in limine and trial briefs.

12. JURY INSTRUCTIONS

- f. The parties shall file all joint stipulated jury instructions by (21 days prior to the Final Argument Conference date). If a party requests additional jury instructions that are not agreed to, they shall also be filed by (21 days prior to the Final Argument Conference date)

The parties shall confer in an attempt to arrive at an agreed set of jury instructions. The parties are encouraged to submit a single set of proposed instructions, which would include, in separate sections, (a) all instructions agreed upon by all parties, (b) all instructions proposed only by plaintiff, and (c) all instructions proposed only by defendant.

If the parties are unable to submit instructions jointly, then each party should submit proposed jury instructions one week in advance of trial (or as otherwise ordered by the court).

Proposed instructions should provide a brief listing of the applicable authority. When Pattern Instructions for Kansas are modified, that should be noted. Objections to jury instructions should be filed by the beginning of the trial.

Unless otherwise directed by the court, a chambers copy of the proposed instructions should be provided to the judge along with an electronic version of the proposed instructions in either Word or WordPerfect.

13. OTHER

The parties shall submit any motion in limine on or before (21 days prior to Final Argument Conference date). Responses shall be filed on or before (7 days prior to Final Argument Conference date). ***May 13 is the initial deadline.***

Any party wishing to submit a deposition in lieu of live testimony shall file the deposition designation, and basis or reason for why the deposition will be used in lieu of live testimony on or before (21 days prior to Final Argument Conference date). Any response, counter-designation or objection shall be filed by (7 days prior to Final Argument Conference date).

Plaintiff will have a total of 1,185 minutes of trial time. Defendants shall have a total of 1,185 minutes of trial time allocated 592 minutes each, absent a re-allocation agreement by defendants. This includes all speaking time except the final instruction conference and closing arguments.

14. TRIAL

- a. Trial will be to a 12-person jury.
- b. Trial is set for June 9, 2025, and is expected to take 8.0 days.

15. SETTLEMENT PROSPECTS

The parties have all expressed interest in mediation, which is scheduled to take place May 8, 2025, with John Tongier serving as mediator.

IT IS SO ORDERED and this Pretrial Order shall supersede the pleadings and control the future course of this action unless modified to prevent substantial injustice.

ROBERT J. WONNELL

District Judge, Division 6