

Strickland v State of New York
2014 NY Slip Op 33971(U)
May 12, 2014
Court of Claims
Docket Number: 120654
Judge: Frank P. Milano
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STATE OF NEW YORK COURT OF CLAIMS

**SELENA STRICKLAND as
Administratrix of the Estate of
LEONARD STRICKLAND,**

Claimant,

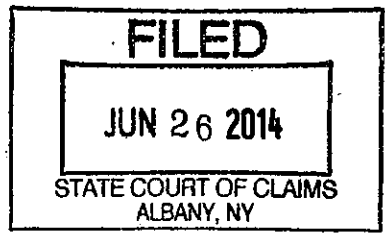
**DECISION AND
ORDER**

-v-

THE STATE OF NEW YORK,

**Claim No. 120654
Motion No. M-84358**

Defendant.



**BEFORE: HON. FRANK P. MILANO
Judge of the Court of Claims**

APPEARANCES:

**For Claimant:
STEIN SCHWARTZ CHESIR & ROSH, LLP
By: Ronald B. Groman, Esq.**

**For Defendant:
HON. ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
By: Michael C. Rizzo, Esq.
Assistant Attorney General**

Defendant moves to strike the claimant's amended bill of particulars, or, in the alternative, to dismiss the amended claim's purported cause of action for medical malpractice based upon defendant's failure to provide proper emergency medical care to decedent Leonard Strickland (Strickland). Defendant argues that the Court lacks jurisdiction over the purported cause of action for failure to provide proper emergency medical care to Strickland because the

amended claim fails to comply with the substantive pleading requirements of section 11 (b) of the Court of Claims Act. Claimant opposes defendant's motion.

The amended claim states that on October 3, 2010, at Clinton Correctional Facility, inmate Strickland was beaten by correction officers, causing "fatal injuries resulting in his wrongful death."

The amended claim alleges causes of action for wrongful death and for personal injuries and conscious pain and suffering of decedent Leonard Strickland, caused by defendant's negligence in failing "to take necessary and appropriate measures for the safety, security and control of inmates including the Decedent," and in inflicting an "unnecessary and unreasonable beating" on decedent. The amended claim further alleges medical malpractice in that defendant "failed to remove Decedent from the facility to a psychiatric hospital where he would receive appropriate treatment required for his said mental condition; and failed to prescribe and cause to be prescribed and administered proper and appropriate treatment and medication rather than administer, unreasonable and unwarranted beating."

The claimant/administratrix was appointed on September 8, 2011 and the amended claim was filed on January 5, 2012. According to this Court's prior Decision and Order, filed April 30, 2013, the claimant served discovery requests on defendant dated January 24, 2012, May 3, 2012 and May 22, 2012, respectively. Defendant complied with some of claimant's discovery requests but refused to provide certain other items, contending that they were protected from disclosure by confidentiality and/or privilege.

The discovery requests included a demand that defendant provide to claimant a DVD/videotape depicting the conclusion of the alleged assault and the response of defendant's

correction officers and medical personnel. The defendant failed to comply with claimant's discovery demand with respect to the DVD/videotape and claimant moved for production of the DVD/videotape and certain other demanded items. The Court viewed the DVD/videotape, found that it was relevant and ordered, in its April 30, 2013 Decision and Order, that it be disclosed to claimant.

Claimant's attorney received the DVD/videotape on May 3, 2013 and, between July 29, 2013 and September 30, 2013, deposed several of defendant's employees "who were involved in the incident and actions and treatment thereafter."

On December 2, 2013, claimant filed an amended bill of particulars stating, inter alia, that defendant was negligent in "failing to obtain proper medical personnel with appropriate knowledge and training to properly and timely perform CPR and administer other medical treatment to decedent, to enable necessary breathing and prevent his heart and other bodily organs from failing thereby causing death; [and] in failing to contact emergency medical services in a timely and prompt manner." The amended bill of particulars further alleges that defendant failed "to use proper equipment including but not limited to an Automated External Defibrillator and an Artificial Manual Breathing Unit, to resuscitate" Strickland.

This motion ensued. Defendant argues that the amended claim fails to set forth the nature of the purported cause of action alleging that defendant failed to provide timely and proper emergency medical care to Strickland, as is required by Court of Claims Act § 11 (b), thus depriving the Court of jurisdiction over such a cause of action.

Court of Claims Act § 11 (b) provides that:

“The claim shall state the time when and place where such claim arose, the nature of same, the items of damage or injuries claimed to have been sustained and, except in an action to recover damages for personal injury, medical, dental or podiatric malpractice or wrongful death, the total sum claimed.”

A claim against the State is permissible only as a result of the State’s waiver of sovereign immunity and the statutory requirements conditioning suit must therefore be strictly construed (Kolnacki v State of New York, 8 NY3d 277, 280 [2007]). The Kolnacki court noted that the requirements of section 11 (b) are “substantive conditions upon the State’s waiver of sovereign immunity” (quoting Lepkowski v State of New York, 1 NY3d 201, 207 [2003]) and that the failure to satisfy any of the conditions is a jurisdictional defect (Kolnacki, 8 NY3d at 281). The Kolnacki decision stresses that “nothing less than strict compliance with the jurisdictional requirements of the Court of Claims Act is necessary” (Kolnacki, 8 NY3d at 281).

The standard of review in assessing whether a claim complies with section 11 (b) as to adequately stating the nature of the claim is well-settled:

“What is required is not absolute exactness, but simply a statement made with sufficient definiteness to enable the State to be able to investigate the claim promptly and to ascertain its liability under the circumstances. The statement must be specific enough so as not to mislead, deceive or prejudice the rights of the State. In short, substantial compliance with section 11 is what is required Conclusory or general allegations of negligence that fail to adduce the manner in which the claimant was injured and how the State was negligent do not meet its requirements” (Heisler v State of State of New York, 78 AD2d 767, 767-768 [4th Dept 1980]; see Cendales v State of New York, 2 AD3d 1165, 1167 [3d Dept 2003]; Sega v State of New York, 246 AD2d 753, 755 [3d Dept 1998], lv denied 92 NY2d 805 [1998]).

The Court has carefully reviewed the amended claim and finds that claimant has substantially complied with the substantive pleading requirements of section 11 (b) of the Court of Claims Act with respect to the allegations asserting that the defendant’s “delay and failure to

obtain competent and timely emergency medical care . . . for the injuries inflicted” on Strickland caused or contributed to his death.

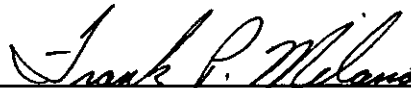
The interaction between Strickland and defendant’s employees on the morning of October 3, 2010, including both the physical confrontation and the medical care given to Strickland after the confrontation, comprise a single, continuing event. The critical facts and circumstances underlying that event were sufficiently stated and described in the amended claim so as “to enable the State to be able to investigate the claim promptly and to ascertain its liability under the circumstances” (Heisler, 78 AD2d at 767). Significantly, claimant acted promptly to amplify the pleadings after viewing the DVD/videotape of the event and deposing defendant’s employees.

The Court further finds that the allegations of the amended claim were “specific enough so as not to mislead, deceive or prejudice the rights of the State” (Heisler, 78 AD2d at 767) and notes that defendant claims no prejudice from service and filing of the amended bill or particulars. The incident has been thoroughly investigated by defendant and others and defendant has had access to the Department of Correctional Services Unusual Incident Report, the New York State Police Investigation Report, the DVD/videotape, and decedent's medical and mental health records.

Finally, claimant has not filed a note of issue/certificate of readiness and defendant may seek further disclosure regarding the allegations contained in the amended bill of particulars, if it so chooses.

The defendant's motion to strike the claimant's amended bill of particulars or, in the alternative, to dismiss the amended claim's cause of action for medical malpractice based upon defendant's failure to provide proper emergency medical care to Strickland, is denied.

Albany, New York
May 12, 2014



FRANK P. MILANO
Judge of the Court of Claims

Papers Considered:

1. Defendant's Notice of Motion, filed December 9, 2013;
2. Affidavit of Michael C. Rizzo, sworn to December 9, 2013, and annexed exhibits;
3. Affirmation of Ronald B. Groman, dated February 18, 2014, and annexed exhibits;
4. Reply Affidavit of Michael C. Rizzo, sworn to February 20, 2014, and annexed exhibits;
5. DVD, Exhibit D.