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IN THE EIGHTEENTH JUDICIAL DISTRICT OF THE STATE OF KANSAS
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

COPY
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KS

BY

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CALVIN L. KLAASSEN, as Special Administrator
of the Estate of MILDRED V. KLAASSEN, deceased,
and CALVIN L. KLAASSEN, Individually as
Representative Heir at Law of MILDRED V.
KLAASSEN, Deceased,

Plaintiffs,

-vs-

ROBERT C. NELSON, O.D.; and
WICHITA FAMILY VISION CLINIC, P.A.

Defendants.

Case No. 08 CV 2127

JURY TRIAL DEMANDED

Pursuant to K.S.A. Chapter 60.

PETITION

COMES NOW the plaintiff, CALVIN L. KLAASSEN, as Special Administrator of the Estate
of MILDRED V. KLAASSEN, deceased; and CALVIN L. KLAASSEN, Individually, and on behalf
of the Heirs at Law of MILDRED V. KLAASSEN, Deceased, and alleges:

GENERAL ALLEGATIONS

I. Plaintiff CALVIN L. KLAASSEN is the Special Administrator of the Estate of
Mildred V. Klaassen, deceased, and brings this action on behalf of the Estate for the injuries and
damages endured by decedent prior to her death. Plaintiff CALVIN L. KLAASSEN, as the
Representative Heir at Law and son of MILDRED V. KLAASSEN, deceased, also brings this action
for the wrongful death of MILDRED V. KLAASSEN on behalf of himself and the other heirs at law.
Other heirs at law include Myron Klaassen, son; Duane K. Klaassen, son; and Sandra J. Beck,

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daughter. Plaintiff CALVIN L. KLAASSEN resides in Butler County, Kansas. The decedent, prior to her death, resided in Sedgwick County, Kansas.

2. Defendant ROBERT C. NELSON, O.D. is an optometrist licensed in the state of Kansas. Defendant resides in Kansas and practices optometry at defendant Wichita Family Vision Clinic, P.A.. Service of process may be obtained by serving defendant Nelson at 437 N. Tyler, Wichita, Kansas 67212.

3. Defendant WICHITA FAMILY VISION CLINIC, P.A. (hereinafter "defendant Wichita Family Vision") was and is a professional association organized, existing, and doing business under the laws of the state of Kansas, with a place of business at 437 N. Tyler, Wichita, Kansas 67212, and is commonly referred to as Wichita Family Vision Clinic. Service of process may be made by serving defendant Wichita Family Vision Clinic's registered agent, Robert C. Nelson, 437 N. Tyler, Wichita, Kansas 67212.

4. At all times material hereto, defendant ROBERT C. NELSON, O.D. was a licensed practicing optometrist, practicing at WICHITA FAMILY VISION. At all times material and in January and February of 2007, an optometrist/patient relationship existed between decedent, MILDRED V. KLAASSEN and defendants NELSON and his agents at WICHITA FAMILY VISION CLINIC, P.A..

5. The Court has jurisdiction over this matter.

6. This cause of action arose in Sedgwick County, Kansas, therefore, this Court has proper venue.

7. The matter in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs.

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8. Defendant NELSON provided optometry care and treatment to decedent from approximately 1999 through February of 2007.

9. On or about February 19, 2007, decedent Mildred Klaassen was being treated by her optometrist, Robert C. Nelson, O.D., defendant, at his office, Wichita Family Vision Clinic, P.A. During this office visit, defendant dilated decedent's eyes as part of the examination. Prior to leaving defendant's office and going outside into the sunlight, defendant Dr. Nelson negligently and wrongfully failed to provide decedent Mildred Klaassen with the necessary dark sunglasses to protect her dilated pupils as she exited the Wichita Family Vision Clinic and stepped outside, nor was any other type of assistance given to decedent. As a result of defendants' failure, decedent was unable to see the steps and curbs causing her to trip, fall, fracture her ankle and sustain other injuries and damages.

10. Defendants' carelessness, negligence and wrongful acts caused or contributed to cause decedent Mildred Klaassen to suffer severe and permanent personal injuries, which caused or contributed to cause her wrongful death on July 20, 2007.

11. From February 19, 2007, until the time Mildred Klaassen died on July 20, 2007, decedent endured physical injuries, pain, suffering, loss of enjoyment of life and mental anguish; all caused or contributed to cause as a direct result of the negligence of the defendants as alleged herein.

FIRST CLAIM

Optometrist Negligence

Decedent MILDRED V. KLAASSEN'S estate and heirs at law incorporate the above allegations, paragraphs one through eleven (1-11) and, in addition, state:

12. In the course of defendants' optometry care and treatment, on or about February 19, 2007, defendant Robert C. Nelson, O.D. was negligent, careless and deviated from standard

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approved optometry practice and was otherwise negligent and careless in his care, treatment, diagnosis, evaluation, management, examination and post-eye dilation care and follow up of decedent MILDRED V. KLAASSEN, including but not limited to the following:

- a. failing to give decedent protective sunglasses after the eye dilation procedure;
- b. failing to foresee that without protective sunglasses decedent's vision would be markedly impaired which greatly increased her risk of falling;
- c. failing to warn decedent that she needed protective sunglasses post-eye dilation procedure;
- d. failing to assist decedent, who was an elderly 87 year old female, safely out of defendants' premises post-eye dilation procedure, especially since no protective sunglasses were provided;
- e. failing to use reasonable care to ensure safe premises for elderly patients with treatment induced visual impairments to safely exit the building and parking lot.
- f. failing to implement policies and procedures to assure that all patients who have undergone eye dilation procedures like decedent's have been given protective sunglasses; been instructed on a safe exit pathway and assisted in safely exiting the premises.

13. Defendant NELSON was otherwise negligent in his care and treatment of decedent MILDRED V. KLAASSEN and as a direct result of the negligence and malpractice of defendant NELSON, decedent MILDRED V. KLAASSEN sustained severe and permanent injuries which caused and contributed to cause her death on July 20, 2007.

14. On or about February 19, 2007, defendant WICHITA FAMILY VISION CLINIC through its agents were negligent, careless and deviated from standard approved optometry practice and were otherwise negligent and careless in their care, treatment, evaluation, management, and post

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eye dilation care and follow up of decedent MILDRED V. KLAASSEN, including but not limited to the following:

- a. failing to give decedent protective sunglasses after the eye dilation procedure;
- b. failing to foresee that without protective sunglasses decedent's vision would be markedly impaired which greatly increased her risk of falling;
- c. failing to warn decedent that she needed protective sunglasses post eye dilation procedure;
- d. failing to assist decedent, who was an elderly 87 year old female, safely out of defendants' premises post eye dilation procedure.
- e. failing to use reasonable care to ensure safe premises for elderly patients with treatment induced visual impairments to safely exit the building and parking lot.
- f. failing to implement policies and procedures to assure that all patients who have undergone eye dilation procedures like decedent's have been given protective sunglasses; been instructed on a safe exit pathway and assisted in safely exiting the premises.

15. As a direct result of defendant WICHITA FAMILY VISION CLINIC's negligence, as hereinbefore alleged, decedent MILDRED V. KLAASSEN sustained severe and permanent injuries which caused and contributed to cause her death on July 20, 2007.

WHEREFORE, decedent Mildred V. Klaassen's estate prays for judgment against these defendants in an amount in excess of seventy-five thousand dollars (\$75,000.00), together with her costs incurred herein and any other relief the Court deems just and equitable.

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SECOND CLAIM

Survivorship

Plaintiff CALVIN L. KLAASSEN, as the Special Administrator of the Estate of Mildred V. Klaassen, deceased, incorporates all allegations contained in the above paragraphs one through fifteen (1-15) and, in addition, alleges and states:

16. As a result of the personal injury of decedent Mildred V. Klaassen, her Estate has sustained damages for, but not limited to: expenses for the care of the deceased caused by the injury; funeral expenses; decedent's pain and suffering, loss of consortium; other non-pecuniary damages and pecuniary damages.

17. As a further result of the injuries and death of decedent Mildred V. Klaassen, her estate has sustained damages in excess of seventy-five thousand dollars (\$75,000.00).

WHEREFORE, decedent Mildred V. Klaassen's estate prays for judgment against the defendants in an amount in excess of seventy-five thousand dollars (\$75,000.00), and for costs incurred herein.

THIRD CLAIM

Wrongful Death

Plaintiff CALVIN L. KLAASSEN, as the Representative Heir at Law of MILDRED V. KLAASSEN, deceased, along with the other heirs at law, incorporate each and every material allegation of paragraphs one through seventeen (1-17), and in addition, allege and state:

18. As a direct result of defendants' negligence, which caused or contributed to cause the premature and wrongful death of Mildred V. Klaassen, Calvin L. Klaassen, individually and as a representative heir at law of Mildred V. Klaassen, deceased, along with the other heirs at law have sustained damages for decedent's wrongful death, including *Wentling* damages and other damages,

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not limited to, mental anguish, loss of society, comfort, companionship, attention, services, advice, counsel, maternal support, and other pecuniary and non-pecuniary damages.

19. As a further result of the wrongful death of Mildred V. Klaassen, her heirs at law have sustained damages in excess of seventy-five thousand dollars (\$75,000.00).

WHEREFORE, Plaintiff CALVIN L. KLAASSEN, as the Representative Heir at Law of MILDRED V. KLAASSEN, deceased, along with the other heirs at law pray for damages against these defendants in an amount in excess of seventy-five thousand dollars (\$75,000.00), together with costs incurred herein and any other relief the Court deems just and equitable.

Elizabeth Dudley of Hutton & Hutton Law Firm, L.L.C., notifies the Court and the parties, pursuant to K.S.A. 7-108, of its attorney's lien in this action.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

Respectfully submitted,

HUTTON & HUTTON Law Firm, L.L.C.

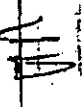


Elizabeth Dudley, #21582
Attorneys for Plaintiff

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