

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA****CIVIL CASE NO.:****LISA WILSON,****Plaintiff,****vs.****UNIVERSITY OF ALABAMA HEALTH
SERVICES FOUNDATION, P.C.; CARLA
FALKSON; TINA WOOD; RAVI KUMAR
PALURI; and, MOLLIE DESHAZO,****Defendants.****COMPLAINT****PARTIES**

1. Plaintiff, Lisa Wilson (“Lisa”), is an individual. Lisa is over the age of nineteen (19) years, and is a citizen of Alabama.
2. Defendant, University of Alabama Health Services Foundation, P.C. (“UAHSF”), is a corporate entity. UAHSF’s principal place of business is in Jefferson County, Alabama.
3. Defendant, Carla Falkson (“Dr. Falkson”), is an individual, is over the age of nineteen (19) years, and is a citizen of Alabama. Every word attributed to Dr. Falkson in this complaint was spoken by her as an employee of UAHSF acting within the line and scope of her employment with UAHSF.
4. Defendant, Tina Wood (“Dr. Wood”), is an individual, is over the age of nineteen (19) years, and is a citizen of Alabama. Every word attributed to Dr. Wood in this complaint was spoken by her as an employee of UAHSF acting within the line and scope of her employment with UAHSF.
5. Defendant, Ravi Kumar Paluri (“Dr. Paluri”), is an individual, is over the age of nineteen (19) years, and is a citizen of Alabama. Every word attributed to Dr. Paluri in this complaint was spoken by him as an employee of UAHSF acting within the line and scope of his employment with

UAHSF.

6. Defendant, Mollie DeShazo (“Dr. DeShazo”), is an individual, is over the age of nineteen (19) years, and is a citizen of Alabama. Every word attributed to Dr. DeShazo in this complaint was spoken by her as an employee of UAHSF acting within the line and scope of her employment with UAHSF.

JURISDICTION AND VENUE

7. All of the parties are subject to the jurisdiction of this court. The conduct which prompted this lawsuit occurred in Jefferson County, Alabama, during the months of August, September, and October, 2015.

BACKGROUND

8. End-of-life decisions regarding healthcare can be difficult; of course, for the person whose life is coming to an end, but also for their family members and significant others. Most would agree that such decisions are best made ahead of time, and the “advance directive” was developed as a way to handle end-of-life decisions beforehand. Advance directives “specify the care a person wishes to have if he or she becomes unable to make medical decisions.”¹ Typically, advance directives specify how little or how much life-sustaining care is to be administered, and whether resuscitation is to be attempted. Commonly, an advanced directive contains provisions for a “healthcare proxy,” one who is authorized to make healthcare decisions on behalf of the patient when the patient is no longer competent or is too ill to speak for herself or himself.

9. This civil action is about what happened when a terminally ill person and her healthcare proxy, a mother and daughter, respectively, insisted that the mother’s advance directive be followed.

10. Until the end of 2011, Lisa’s mother, Mrs. Elizabeth Monk Wilson (“Mrs. Wilson”), despite

¹ *Ethics and Advance Planning for End-of-Life Care*, <http://www.aafp.org/about/policies/all/planning-care.html>.

her age of 86 years, enjoyed good health. Mrs. Wilson could travel, drive, keep house, and generally do pretty much as she wanted. All that started to change when Mrs. Wilson was diagnosed with and operated on for colon cancer. Though it was thought that the surgery “got it all,” by mid-2012 it became apparent that it had not. It was decided that another cancer operation was not advisable. Mrs. Wilson began chemotherapy, first managed by Dr. Boris Pasche, and then under the direction of Dr. Wood. By the summer of 2015, Mrs. Wilson had grown frail, and could get around only with assistive devices. But, according to Dr. Wood, Mrs. Wilson’s cancer had not spread to other parts of her body.

11. On August 2, 2015, Mrs. Wilson fainted. Lisa called 911, and Mrs. Wilson was taken by ambulance to UAB Hospital. At the time of Mrs. Wilson’s admission, Mrs. Wilson had, and had had for some years, what is sometimes called a “full measures” advance directive.² Mrs. Wilson’s full measures advance directive was one in which Mrs. Wilson exercised her right to instruct her caregivers to use all available means to preserve her life.³ The advanced directive designated Lisa as Mrs. Wilson’s “Healthcare Proxy.”⁴ As such, Lisa agreed to instruct healthcare providers to follow Mrs. Wilson’s wishes in the event Mrs. Wilson became “too sick to speak for”⁵ herself.

12. Dr. James Posey was Mrs. Wilson’s attending oncologist upon her admission to the hospital. During Dr. Posey’s time as Mrs. Wilson’s attending physician, Mrs. Wilson underwent testing. Up until August 13th, no one had told either Mrs. Wilson or Lisa that further chemotherapy, or any other attempts to treat the cancer, were futile. No one had told them that Mrs. Wilson’s death was imminent.

13. Dr. Falkson apparently rotated onto the attending service when Dr. Posey rotated off, which was sometime around August 13th. When Dr. Falkson became Mrs. Wilson’s attending physician,

² Elizabeth M. Wilson, *Advance Directive for Health Care (Living Will and Health Care Proxy)*, June 22, 2006.

³ *Id.*, pp. 1 – 2.

⁴ *Id.*, p. 3.

⁵ *Id.*, p.2.

Dr. Falkson became the physician of a woman who had no idea her cancer had become untreatable. Dr. Falkson became the physician of a woman who had no idea she was about to die. Dr. Falkson became the physician of a woman who still wanted to live, and who had exercised her right to require medical providers to preserve her life. Dr. Falkson also became the physician of a woman whose daughter, as her mother's healthcare proxy, insisted that her mother's right to die, on her mother's own terms, be respected.

MATERIAL ALLEGATIONS OF FACT

14. a) August 13th was the first time Dr. Falkson spoke to Mrs. Wilson, or to Lisa. Upon entering Mrs. Wilson's room, Dr. Falkson's first words to Lisa were, "Get out of that chair so I can sit down!" Dr. Falkson's first words to Mrs. Wilson, delivered within Mrs. Wilson's personal space:

I'm Dr. Falkson. You're eaten up with colon cancer which is spreading and partially blocked your colon. You are going to die soon. You have lived your life. Accept your death.⁶

Mrs. Wilson received these words with looks of shock and fear. It pained Lisa to see her mother so treated.

b) Lisa, bewildered as to why Dr. Falkson had addressed Mrs. Wilson as she had, requested that Dr. Falkson step into the hall. The idea that Mrs. Wilson's death would be "soon" was foreign to Mrs. Wilson and Lisa, and Lisa attempted to get an explanation. But, Dr. Falkson would hear none of it. Interrupting, Dr. Falkson said to Lisa:

Don't you understand what I just said? Your mother is dying and we need to send her home. She is 89—let her die. She has lived her life and needs to let go and die. Our time and treatments will be wasted on her. She simply needs to die. She needs to accept it.

⁶ Every statement quoted or described in this complaint and attributed to a defendant was witnessed by Lisa. Except for the statements described in ¶14. b), above, and ¶ and 29. b), below, every statement quoted or described in this complaint and attributed to a defendant was witnessed by Mrs. Wilson. Mrs. Wilson appeared -- by the direction in which she was looking, facial expressions, body language, and utterances -- to have heard every such statement. Lisa witnessed Mrs. Wilson apparently hearing and reacting to all such statements. And, at varying times subsequent to such statements, Mrs. Wilson made statements to Lisa which affirmed that Mrs. Wilson had heard such statements.

You need to accept it. We need to get her out of here and quit wasting everybody's time.

c) Lisa was disgusted and distressed, but she responded by informing Dr. Falkson that Mrs. Wilson had an advance directive which rejected “DNR⁷ status,” which required full measures to sustain Mrs. Wilson's life, and which appointed Lisa as her mother's healthcare proxy. Lisa insisted that Dr. Falkson honor Mrs. Wilson's advance directive. Dr. Falkson walked away without acknowledging any obligation to follow the advance directive.

15. Over the next eight days, never once did Dr. Falkson relent. In one exchange, Dr. Falkson told Mrs. Wilson, “The cancer is eating you up and you need to immediately sign a DNR.” Mrs. Wilson replied “No, I have an advance directive and want to live as long as possible.” Instead of acknowledging Mrs. Wilson's rights, Dr. Falkson persisted:

I know what is best for you. When you code, the resuscitation attempt will break your ribs violently and cause you great pain and suffering. Why do you want to go through a violent procedure instead of dying? What is wrong with you? Your life is over. Quit fighting your death.

Mrs. Wilson appeared frightened, and later told Lisa that Dr. Falkson only seemed to care about her death instead of her life. Lisa was saddened that Dr. Falkson was causing her mother to suffer, but all she could do was console Mrs. Wilson.

16. When Dr. Falkson next consulted with her patient, Dr. Falkson's words continued to demonstrate that her will, and not the will of her patient, was paramount:

Why don't you want to go home and die? What's wrong with you? Why do you want to die here? We don't want you here! You are just taking up valuable bed space and wasting expensive treatments. You are old and have lived your life. Why can't you accept that and quit wasting our resources? You are occupying a bed that we could use for someone whose life is not over. Stop being so incredibly selfish!

⁷ The acronym for “do not resuscitate.” DNR means to not attempt to revive a person using any means, such as cardio-pulmonary resuscitation, etc., in the event of respiratory or cardiac arrest.

Dr. Falkson's words left Mrs. Wilson in tears and Lisa heartsick.

17. The next day, Dr. Falkson asked Mrs. Wilson, "Are you ready to quit being selfish and sign a DNR?" When Mrs. Wilson refused, Dr. Falkson again verbally attacked: "Who do you think you are? Even God wants you dead! Why are you fighting Him?"

These words produced physical symptoms in both Mrs. Wilson and Lisa.

18. During another visit to her patient, Dr. Falkson told Mrs. Wilson:

You are eaten up with cancer and are trying to prolong the inevitable. Do you want to suffer in a code and live with more pain, or do you want to let me help you die? Death will end your suffering. You need to die. Why don't you want to be with God now? What is wrong with you?

By the time Dr. Falkson left the room, Mrs. Wilson was trembling in fear; and Lisa, made queasy by Dr. Falkson's words, was even more upset at the sight of the effect of Dr. Falkson's words on Mrs. Wilson. Mrs. Wilson told Lisa that all Dr. Falkson kept dwelling on and stressing was how she would suffer if she didn't submit to her will and accept a DNR with no further medical treatment. Mrs. Wilson said, "They just want me dead. All they care about is how soon they can make me die. Please don't let them kill me!" Lisa promised her mother that she would protect her and fight for her rights.

19. Dr. M. Garrett Hurst, who said he was referred to Mrs. Wilson by Dr. Falkson, visited Mrs. Wilson three times over a four day span. Dr. Hurst said Dr. Falkson asked him to "interview" Mrs. Wilson "for admission to the palliative wing of the hospital." Mrs. Wilson immediately informed Dr. Hurst that she remained comfortable with her advanced directive, including her refusal to accept DNR status. Nonetheless, Dr. Hurst continued to attempt to persuade Mrs. Wilson to agree to be transferred into the part of the hospital which was known as "palliative care." Admission into the palliative care unit required acceptance of DNR status.

20. a) Soon after Dr. Hurst's last visit with Mrs. Wilson, Dr. Falkson entered Mrs. Wilson's room and announced:

Medicare will no longer pay the thousands of dollars a day for your bills because I told them that you do not need to be hospitalized. I am discharging you today.

b) Mrs. Wilson protested, and Lisa asked Dr. Falkson whether the discharge decision could be appealed. Dr. Falkson replied, "No, absolutely not. I've already notified Medicare." Lisa then reminded Dr. Falkson that Mrs. Wilson was so sick that an ambulance would be required to get Mrs. Wilson home. Dr. Falkson shot back:

If that's what it takes to get her out of here, then that's what I will do. Hire home health care if you want anything else. Your mother is not our problem anymore. We're done here. Good-bye!

c) Mrs. Wilson and Lisa were horrified. Tears flowed. Both felt Dr. Falkson actually wanted Mrs. Wilson dead. Mrs. Wilson and Lisa also believed the discharge was Dr. Falkson's maneuver around Mrs. Wilson's advance directive and was calculated to hasten Mrs. Wilson's death.

21. Mrs. Wilson was discharged that day, August 21st, and transported to her home. She remained there until August 28th. Although Mrs. Wilson, during her hospitalization, had received practically all of her daily hydration intravenously, Mrs. Wilson received intravenous hydration at home only twice during that entire week. When Lisa asked the home health caregivers to give Mrs. Wilson more "IV fluids," Lisa was told doing so would require a doctor's order, and Dr. Tina Wood, Mrs. Wilson's UAB oncologist, had not ordered additional IV fluids. Lisa telephoned Dr. Wood several times over the next few days. Every time, Lisa left a message for Dr. Wood which requested that Dr. Wood order IV fluids for Mrs. Wilson. These calls were ignored for days.

22. A week after Mrs. Wilson's discharge from the hospital, Dr. Wood personally telephoned

Lisa. The phone's speaker feature was activated by Lisa when she answered the call, and, after Lisa said "Hello," both Mrs. Wilson and Lisa heard Dr. Wood yell: "What is wrong with you? Your Mother is dying. Let her die and get it over with. She is better off dead. Let her die now!" Then, Dr. Wood "hung up." Mrs. Wilson was reduced to tears; Lisa was too, but she was more concerned that Dr. Wood's inaction would hasten Mrs. Wilson's death even though Mrs. Wilson still wished to live.

23. Determined to get Mrs. Wilson help, Lisa then called Medicare. Lisa learned that Medicare had never denied payment for Mrs. Wilson's care, and would not deny Mrs. Wilson any treatment medically necessary for Mrs. Wilson to live. Immediately after talking with the Medicare representative, Lisa called the home health care agency and asked for Mrs. Wilson's pre-admission. Lisa was told, and Mrs. Wilson heard, that Dr. Wood had informed the agency that Mrs. Wilson was not to be re-admitted unless she signed a DNR. Sensing Mrs. Wilson was dangerously dehydrated, and frustrated and infuriated at Dr. Wood's refusal, Lisa contacted 911 and had Mrs. Wilson taken to the UAB emergency room. Mrs. Wilson was re-admitted to UAB Hospital's oncology service.

24. Dr. Paluri first saw Mrs. Wilson on August 29th. Dr. Paluri, without introducing himself, began his interaction with his new patient, Mrs. Wilson, by telling her, "You are dying. You don't belong here." Lisa told Dr. Paluri that the fact that Mrs. Wilson had been re-admitted proved him wrong. Dr. Paluri, shaking his head from side to side, responded:

Nobody understands death and dying like we do in oncology, and nobody is better at helping patients die than we are. Generalists don't appreciate death like we do. We are much better at getting patients to accept their death and die -- the sooner the better.

"Why do they want to kill me?" asked Mrs. Wilson. Lisa replied, "Because they are heartless

and ruthless.” Dr. Paluri’s words gave Lisa the creeps.

25. The next day, Dr. Paluri told Mrs. Wilson he was going to decrease the frequency of laboratory testing of her blood from daily to every two or three days. When Lisa questioned Dr. Paluri about this, Dr. Paluri turned to Mrs. Wilson and said, “You are dying. Do you really think your death needs monitoring.” Mrs. Wilson shook with indignation and responded, “My life needs monitoring. I’m still alive!” This exchange caused Lisa to feel guilt for not being able to protect Mrs. Wilson from such cruelty.

26. About a week later, Lisa returned to Mrs. Wilson’s room after fetching ice for a cold cloth for her mother. As she entered the room, Lisa saw Dr. Paluri, bending over Mrs. Wilson, “in her face,” and saying: “You need to die, you selfish old woman. Look at what you are putting your daughter through.” Seeing her mother frozen in fear, Lisa raised her voice and told Dr. Paluri to leave and never come back. Lisa then asked the nurse manager to have Dr. Paluri removed from attending Mrs. Wilson.

27. Later in the day, Dr. Paluri came back to Mrs. Wilson’s room. To Mrs. Wilson and Lisa, Dr. Paluri proudly announced: “You did not get me removed. I am a UAB doctor and I know exactly what I am doing. I give the orders here.”

28. The next day, Lisa asked Dr. Paluri if he would treat his mother like he was treating Mrs. Wilson. Dr. Paluri answered:

No, she would not be hospitalized. There would be none of this bother. I would make her embrace her death. Like I told your mother, she would be better off dead. I would see to it.

Dr. Paluri then left the room. Mrs. Wilson, trembling and sobbing, expressed her fear of her physicians:

These doctors just want me dead. All they talk about is my death – day in and day out. Every day, they rub my nose in my death.

They say I'm in denial about my death. Well, I say they're in denial about my life. I'm still alive!

Mrs. Wilson was so frightened of Dr. Paluri that, during the remainder of Dr. Paluri's visits, she would pretend to be asleep whenever "Dr. Death," as she called him, entered Mrs. Wilson's room. Lisa felt helpless.

29. Mrs. Wilson first met Dr. DeShazo on September 22, 2015. Dr. DeShazo immediately "started in" on Mrs. Wilson:

You will code at any time. Many of your ribs will be broken and will probably puncture your lungs. If you survive, you will suffer terribly. Tell your daughter you love her and sign a DNR.

Mrs. Wilson, for the "umpteenth" time, teared up at her doctor's words. Lisa told Dr. DeShazo "You should be ashamed" for talking to Mrs. Wilson as she had done. Lisa told Dr. DeShazo that she was Mrs. Wilson's healthcare proxy; that she had a durable power of attorney from Mrs. Wilson; and that she insisted that Dr. DeShazo honor Mrs. Wilson's legal rights. Mrs. Wilson said, "They just want me dead. All they care about is how soon they can make me die. Please don't let them kill me!" Lisa promised her mother that her efforts to protect her and fight for her rights would continue.

30. a) The following day, Dr. DeShazo entered Mrs. Wilson's room and demanded of Lisa:

Show me a copy of your mother's advance directive. I can't find it.
If you have any legal authority to be here, you better show me a copy
or you're out of here.

Lisa reached into her handbag, found a copy of Mrs. Wilson's advance directive, handed it to Dr. DeShazo, and asked Dr. DeShazo if she would also like a copy of the power of attorney. Dr. DeShazo then said: "No, the health care proxy overrides it anyway. If you really love your mother, sign the DNR for her and we can end all this!" Mrs. Wilson sobbed, "I want my daughter

with me. Please!" Lisa instructed Dr. DeShazo to stop intentionally upsetting Mrs. Wilson and told Dr. DeShazo, "If you don't have the decency to be kind, step outside with me for whatever else you want to say."

b) Dr. DeShazo took Lisa across the hall into a conference room, and summoned a person to take notes. After Lisa asked if she needed a witness and Dr. DeShazo telling her "No," Lisa asked Dr. DeShazo to stop abusing Mrs. Wilson. Dr. DeShazo denied Lisa's charges, and Lisa left the room.

c) Lisa then called a "patient advocate," who seemed to sympathize with Lisa. The patient advocate reported to Lisa that "they" had been repeatedly advised that Mrs. Wilson had every legal right to be in the hospital and receive treatment. Lisa told the patient advocate that, "It was beyond the pale for a physician to intentionally upset a patient who had been having chest pains and elevated cardiac enzymes." The patient advocate said, "I completely agree. I'll make some more calls."

31. The very next day, September 24th, Lisa learned that Dr. DeShazo planned to have Mrs. Wilson discharged from the hospital the following day, a Friday. The person who told her about Dr. DeShazo's plan also told Lisa that if Lisa did not immediately lodge an appeal, Mrs. Wilson would be discharged. Lisa appealed what Mrs. Wilson called her "death discharge." Friday morning, three people who said they were with "utilization management" showed up in Mrs. Wilson's room. These people presented Lisa discharge papers for Lisa to sign on Mrs. Wilson's behalf. Lisa informed the utilization management people that their documentation was incorrect; that she refused to sign the papers; and that the planned discharge was already on appeal. Lisa also informed the threesome that she knew Mrs. Wilson could not be discharged while the appeal was pending. The utilization management representatives left Mrs. Wilson's room. Around 9:30

Saturday morning, September 26th, Lisa received a call about the appeal from a representative of KEPRO⁸. Lisa was told:

The independent physician hired by Medicare reviewed Mrs. Wilson's medical record and ruled against the hospital discharge. Your mother is too sick to be discharged.

Lisa was also instructed by KEPRO's representative that Lisa should immediately contact KEPRO if there were any further efforts to discharge Mrs. Wilson. For over a week following this foiled discharge attempt, physician communications with Mrs. Wilson and Lisa were minimal and, thankfully, void of overt hatefulness.

32. On October 6, 2015, Dr. DeShazo returned to Mrs. Wilson's room and delivered this greeting: "I'm surprised you're still here. You should have been dead over a month ago."

33. The next day, Dr. DeShazo asked Mrs. Wilson, "Still want to live?" Mrs. Wilson said "Yes." Dr. DeShazo asked Lisa, "Still want her to live?" Lisa said "Yes." Dr. DeShazo muttered "Pathetic," and left the room. Mrs. Wilson questioned that her desire to live a little longer was selfish. In tears, she cried: "I never meant to be such a heavy burden for you. I have become too much trouble and you will be better off when I'm gone." Lisa did her best to reassure her mother, but both hearts had been broken feeling they had disappointed each other. Mother and daughter held each other and sobbed. That Dr. DeShazo's words had caused Mrs. Wilson to doubt Lisa's commitment to Mrs. Wilson's wishes profoundly saddened Lisa to the degree that Lisa had to run to the restroom and throw up.

34. Mrs. Wilson died on October 9, 2015. Mrs. Wilson knew it was time. Lisa knew it was time. At the time of Mrs. Wilson's death, resuscitation was neither requested nor attempted. Mrs.

⁸ KEPRO is the federally designated Medicare quality improvement organization. Among its duties are to consider and rule on discharge appeals filed by or on behalf of Medicare beneficiaries.

Wilson's ribs were not violently broken. Her lungs were not punctured.

CAUSES OF ACTION

35. The conduct of Drs. Falkson, Wood, Paluri, and DeShazo was intentional or reckless; was extreme and outrageous; was unacceptable in a civilized society; was the cause of Lisa's emotional distress and physical injury; and resulted in emotional distress so severe that no reasonable person should be expected to endure it. For these reasons, this is an action under Alabama law for the tort of outrage, and for the tort of the intentional infliction of emotional distress. In this suit, UAHSF is vicariously liable for the conduct of Drs. Falkson, Wood, Paluri, and DeShazo.

DAMAGES

36. On the basis of the foregoing, Plaintiff requests that the jury selected to hear this case render a verdict for the Plaintiff and against Defendants, separately and severally; that it assess fair and reasonable compensatory damages, as is required by law; and that it assess punitive damages in the amount of Ten Million Dollars (\$10,000,000.00), or in any amount, higher or lower, which the jury deems fit under the law of the state of Alabama, plus the costs of court.

s/Tom Dutton

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JURY DEMAND

Plaintiff hereby demands a trial by struck jury for all issues involved in this case.

s/Tom Dutton

REQUEST FOR SERVICE

Pursuant to ARCP 4(h), Defendants have agreed to service of this Complaint via email service to the attorney for defendants using the CM/ECF system.

s/Tom Dutton

Tom Dutton ASB-2059-U50T
Attorney for Plaintiff

DEFENDANTS TO BE SERVED VIA THE CM/EDF SYSTEM AS FOLLOWS:

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