

**IN THE CIRCUIT COURT OF HOLMES COUNTY, MISSISSIPPI**

**ESTATE OF LUNZO DOTSON, BY AND THROUGH  
THE ADMINISTRATRIX, HATTIE CHAMBERS**

**PLAINTIFF**

**V.**

**CIVIL ACTION NO.: 2009-0289**

**UNIVERSITY HOSPITAL NURSING CENTER  
DURANT A/K/A HOLMES COUNTY LONGTERM  
CARE AND JOHN DOE**

**DEFENDANTS**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This cause of action was tried before the Court<sup>1</sup> on December 11-12, 2017 without a jury pursuant to the Mississippi Tort Claims Act (“the MTCA”), and pursuant to Miss. Code Ann. §11-7-13 (2001).

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<sup>1</sup> The makeup of “The Court” changed considerably over the long course of this case. On July 22, 2009, Plaintiff filed this suit pursuant to the Mississippi Tort Claims Act in the Circuit Court of Holmes County, Mississippi. The Honorable Jannie Lewis-Blackmon was appointed as presiding judge. Judge Lewis-Blackmon later recused herself on August 12, 2016 on the cusp of motion hearings. Senior status Judge Breland Hilburn was then appointed by the Mississippi Supreme Court on August 31, 2016, ruled on the pending motions and subsequently soon thereafter retired. The Honorable Mills E. Barbee was then appointed as Special Judge on February 13, 2017. This matter was set for a non-jury trial with Special Judge Barbee sitting as both the finder of fact and presiding judge on December 11, 2017. The matter was tried for two days with the parties resting on December 12, 2017. Special Judge Barbee took the matter under advisement, and on December 15, 2017, he ordered the parties to submit separate Findings of Fact and Conclusions of Law. The parties submitted their respective Findings and Conclusions to Special Judge Barbee in June of 2018, but the Court did not issue a final judgment for almost two years. On February 24, 2020, Special Judge Barbee recused himself from this matter still without having issued a final judgment or disposition. The undersigned was then appointed as Special Judge on March 3, 2020. Subsequently, the undersigned held a status conference with counsel for the parties on March 19, 2020, and all parties entered an *Agreed Order* to allow the record to stand “as is” without another non-jury trial, in whole or part, and agreed that the undersigned would complete the litigation by issuing *Findings of Fact and Conclusions of Law* and a *Final Judgment* on the trial of this matter based upon the current record and all documents, proof, evidence and testimony included therein.

The December, 2017 Trial proceeded solely against the University Hospital Nursing Center Durant a/k/a Holmes County Longterm Care (“UMMC”)<sup>2</sup> for vicarious liability related to the alleged negligent acts or omissions of the nurses who cared for the deceased, Lunzo Dotson, at UMMC.

The Court, having thoroughly reviewed the pleadings on file, the transcript of the bench trial which included the testimony from the witnesses produced by both sides, having reviewed the relevant documents and depositions introduced into evidence, having heard all the arguments of counsel, and being otherwise fully apprised in the premises presented, hereby sets out its findings of fact and conclusions of law, pursuant to Rule 52 of the Mississippi Rules of Civil Procedure as follows:

I. **PLAINTIFF’S BURDEN OF PROOF.**

This is a case sounding in medical negligence. Plaintiff’s case focused on the nursing care provided to Mr. Dotson. Plaintiff alleged that Mr. Dotson died because he became dehydrated and malnourished because the nurses at UMMC did not provide him with sufficient food and fluids in the months leading up to his death. Plaintiff also alleged that Mr. Dotson suffered a pressure injury on his heel due to an alleged failure to turn and reposition Mr. Dotson.

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<sup>2</sup> By stipulation the parties agreed that the facility in question was a nursing home owned and operated by the University of Mississippi Medical Center, and as such the Defendant will be referred to as “UMMC” as it was during trial.

UMMC argued that Mr. Dotson died due to cardiac arrest and pneumonia, which was complicated by several medical conditions Mr. Dotson had related to the fact that he was at the end of his life. UMMC also argued that Mr. Dotson developed a small bruised area on his heel, but that this was unavoidable due to his medical condition. UMMC argued that Mr. Dotson was turned and repositioned when he was not moving himself, and all other precautions to prevent pressure ulcers were used.

The plaintiff in a medical negligence action has the burden to prove “(1) the existence of a duty by the defendant to conform to a specific standard of conduct for the protection of others against an unreasonable risk of injury; (2) a failure to conform to the required standard; and (3) an injury to the plaintiff proximately caused by the breach of such duty by the defendant.” *Handy v. Madison County Nursing Home*, 192 So. 3d 1005, 1009 (¶ 15)(Miss. 2016)(citing *Hubbard v. Wansley*, 954 So.2d 951, 956–57 (Miss.2007) (citing *Drummond v. Buckley*, 627 So.2d 264, 268 (Miss.1993)). Expert testimony is necessary to prove these elements. *Id.* (citing *Hubbard*, 954 So.2d at 957). “When proving these elements in a medical malpractice suit, expert testimony must be used. Not only must this expert identify and articulate the requisite standard that was not complied with, the expert must also establish that the failure was the proximate cause, or proximate contributing cause,

of the alleged injuries.” *Id.* (citing *Hubbard*, 954 So.2d at 957 (quoting *Barner v. Gorman*, 605 So.2d 805, 809 (Miss.1992))).

The present case is a wrongful death action. Thus, the Plaintiff had the burden of proving through expert testimony that either nurses or medical staff at the nursing home operated by UMMC in Durant, Mississippi failed to meet the minimum standard of care for treating Mr. Dotson, and that this alleged failure was the proximate cause of his death, ostensibly through dehydration and malnutrition. As a survival type claim, the Plaintiff also had the burden of proving that the alleged pressure ulcer on Ms. Dotson’s foot was an injury proximately caused by some negligence on the part of UMMC’s nurses.

The Court finds that the expert testimony offered by the Plaintiff was simply not as credible or persuasive as that offered by UMMC. The Court is convinced based on the preponderance of the credible evidence that: (1) Mr. Dotson was provided with proper food and fluids; (2) the bruise on his heel was not caused by negligence; and (3) that his death was caused by pneumonia and cardiac arrest brought on by his underlying co-morbidities rather than any negligence on the part of UMMC. For the reasons stated below, the Court finds that the Plaintiff failed to meet her burden of proof and that judgment should be entered in favor of UMMC.

## II. Plaintiff's Expert Witnesses.<sup>3</sup>

By agreement of the parties, as noted in footnote one(1) above, the undersigned sits as the fact finder in this bench trial, and as such, the Court has had the opportunity to carefully review the transcript from the trial of all the witnesses who testified live at trial, and the opportunity to review the testimony offered by deposition. “In a bench trial, when the trial judge sits as the finder of fact, he [or she] has the sole authority for determining the credibility of witnesses.” *Mississippi Dept. of Wildlife, Fisheries, and Parks v. Webb*, 2015-CT-00578-SCT, 2018 WL 1323824, at \*3 (citing *City of Jackson v. Brister*, 838 So. 2d 274, 279 (¶ 19) (Miss. 2003 (citing *Yarbrough v. Camphor*, 645 So.2d 867, 869 (Miss. 1994))). Further, “A circuit court judge sitting without a jury is accorded the same deference with regard to his findings as a chancellor, and “his findings are safe on appeal where they are supported by substantial, credible, and reasonable evidence.” *Sumrall v. Singing River Health System*, 189 So. 3d 661, 664 (¶10)(Miss. App. 2015)(quoting *City of Jackson v. Brister*, 838 So.2d 274, 277–78 (¶ 13) (Miss.2003) (quoting *Maldonado v. Kelly*, 768 So.2d 906, 908 (¶ 4) (Miss.2000)).” The substantial, credible, and reasonable evidence relied upon by the Court is as follows:

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<sup>3</sup> The Plaintiff's lay witnesses consisted of family members who expressed their grief and personal beliefs that UMMC should have provided better care to Mr. Dotson. The Court understands that the loss of any life is difficult and heart-breaking. The Court offers its condolences to Mr. Dotson's family. However, these witnesses were not qualified to render opinions about the standard of care or whether it was breached by any employee of UMMC.

Mr. Dotson's death certificate lists his cause of death as "cardiopulmonary arrest," and it lists the primary contributing factor as "right lower lobe pneumonia." *See Death Certificate* which was placed into evidence as Exhibit 3. Also listed as a contributing factor is severe malnutrition and dehydration. *Id.* However, Mr. Dotson's treating physician, Dr. Frank Brown, was designated by the Plaintiff as an expert, and testified at trial via deposition. Dr. Brown is the physician who actually completed and signed Mr. Dotson's Death Certificate, and he testified that Mr. Dotson died because he developed pneumonia which caused cardiopulmonary arrest. *See Deposition of Frank Brown, M.D.* at pp. 13-15; 38-39, which was placed into evidence as Exhibit 29.

The Court finds Dr. Brown's testimony credible and persuasive. He treated Mr. Dotson in the days leading up to Mr. Dotson's death, and was not sued in the lawsuit, which was evidence of his independence. With regard to the cause of death, Dr. Brown testified as follows:

Question: ... Tell me, what is the cause of death of Lunzo Dotson on October 9, 2008?

Answer: Immediate cause of death, cardiorespiratory arrest.

Question: Okay. That means the heart stopped. I'm talking about what was the cause - - what was the cause of his death.

Answer: Cardiorespiratory arrest.

Question: Due to what?

Answer: Heart and lungs stopped.

Question: Due to what?

Answer: It's not due to - - heart and lungs stopped.

Question: Okay.

Answer: Then the Death Certificate asks, "contributing."

Question: Okay. Due to or as a consequence of?

Answer: Right lower lobe pneumonia.

Question: Okay. And then that was due to or as a consequence of?

Answer: Severe malnutrition and dehydration.

Answer: Okay. All right. And when you indicated severe malnutrition and dehydration, what did you base that upon?

Question: The physiology of his liver functions and the physiology of his renal function.

*Id.* at p. 13.

Dr. Brown also testified:

Answer: The Death Certificate, the first line says "Immediate Cause of Death: Cardiorespiratory arrest."

Question: (by Mr. Boone) His heart stopped. Everybody's heart stops when they die.

Answer: Right, unless you're shot or in trauma.

Question: Okay.

Answer: So that's natural. Then it asks "Contributing Causes." In the order that you susp - - and it is a probability of what you thought, but in his case, right lower lobe pneumonia is the - - the second thing that's listed, which caused him to die, and then the third one, the malnutrition and dehydration as we've talked about related to the liver and the kidney contributes because in any major insult to the body is a major effect on when it's the heart and the lung, so those were contributing to his death because he came in the same way in 2006 with the same malnutrition and dehydration, and it did not affect him, but as - - again, as I say, it's a continuing for someone that's - - you know, who's elderly as their system goes down.

And that's how we monitor or that's how the family doctor monitors the patient's progression through renal disease or liver disease, whatever the etiology may be, and that's how we list the Death Certificate.

And they only give you so many spaces, because you can keep listing what they call co-morbid conditions which is what somebody has, but all of them don't necessarily contribute at that time, but the more you have that are major does affect people's major insult.

In this case, it was the pneumonia, the hypoxia that he had, and the fact that he was going down respiratory wise and needed respiratory support and needed to be on a ventilator, but his advanced directive was a DNR. So it was pneumonia that was listed as the second one.

Question: It was the pneumonia that was - -

Answer: Caused the cardiorespiratory.

Question: Okay. And how does the malnutrition and dehydration fit in?

Answer: Because the - - the lungs needs all the - - the protein and the - - the fluids that it can get. The other two major systems, the liver and kidneys, already were having a strain on them. He just had other systems going out when he had hypoxia on, and hypoxia is something that's immediate. Just like, you know, oxygen needs to go to every place, and it was - - didn't have enough. I mean, it just contributed to it because it didn't have any reserve left.

*Id.* at pp. 37-39.

Dr. Brown explained that Mr. Dotson did have malnutrition and dehydration when he was in the hospital in the days before he died, but he also explained that it was caused by the fact that Mr. Dotson was in end-stage renal failure, which means that his liver and kidneys could not process the food and fluids he was being given by UMMC. *Id.* at pp. 13-38. When asked what caused Mr. Dotson's malnutrition and dehydration, Dr. Brown specifically said, "His liver, it was the problem the reason he was malnourished and dehydrated." *Id.* at p. 34. When asked what caused Mr. Dotson's death, Dr. Brown testified under oath as the doctor who filled out the death certificate that the cause of death was cardiopulmonary arrest cause by pneumonia and hypoxia. The Court finds that the malnutrition and dehydration listed on the death certificate were the result of Mr. Dotson's organs shutting down as a part of the end-of-life issues Dr. Brown was explaining.

Plaintiff then called nurse Betty Land adversely in an attempt to prove that Mr. Dotson was not given food and fluids properly. Ms. Land was a nurse who



worked at the nursing home during Mr. Dotson's stay there. She testified extensively about the medical records, and Mr. Dotson's care. Medical records called "ADLs", an acronym for "activities of daily living" documented Mr. Dotson's food and fluid intake. These records were extensively explained by Ms. Land. *See Trial Transcript* at pp. 154-175. Ms. Land's testimony refuted rather than proved the Plaintiff's case. Ms. Land explained the medical records generated during Mr. Dotson's care, and proved that Mr. Dotson was provided proper food and fluids while he was a resident at the nursing home. *See Trial Transcript* at pp. 169-175. Ms. Land also explained the medical records documenting the fact that Mr. Dotson was turned and repositioned according to doctor's orders to prevent pressure ulcers. *Id.* The Court found Ms. Land's testimony very persuasive, and her testimony was corroborated by the medical records.

Plaintiff also offered the testimony of a retained expert, Dr. Richard Dupee, who testified via deposition. He testified that a patient cannot become dehydrated or malnourished if the patient is given sufficient food and fluids. In other words, his opinion was that the only way a patient such as Mr. Dotson could become malnourished and dehydrated is by being denied food and fluids. *See Deposition of Richard Dupee, M.D.* at pp. 23-25; 31-32; 35-37; 41; 46-48; 53; and 55, which was placed into evidence as Exhibit "30". This opinion is contrary to the medical facts of the case. Mr. Dotson medical records clearly document the many nurses and

healthcare aids giving Mr. Dotson proper food and fluids. Again, as explained by Ms. Land, the food and fluid given to Mr. Dotson at UMMC was documented in the ADLs. *See Trial Transcript* at pp. 154-175. The ADLs are contained in Exhibit 1, and are found at bates numbers DOTSON 792 through DOTON 849.

These documents show not only that food and fluid was given to Mr. Dotson, but they record the percentage of the food and fluid he took in at each meal. They show that sometimes Mr. Dotson ate and drank well, and other times he did not. Plaintiff attempted to argue that this meant the records were inconsistent and unreliable. However, the Court finds that the opposite is true. The records appear to reflect the contemporaneous documentation of Mr. Dotson's food and fluid intake, and the fact that he sometimes ate and drank more on some occasions than he did on others is reasonable and expected. In other words, it would be suspect if the records reflected that an elderly man with diagnosed swallowing difficulty and dementia always ate 100% of his food and drank 100% of his fluids. Again, Ms. Land took the Court through these records, and the Court finds her explanation of the records very credible. The documented medical facts as explained by Ms. Land and others prove that Mr. Dotson was provided adequate food and fluids.

Dr. Dupee did not adequately address the medical records, which over and over again, documented that Mr. Dotson was cared for properly<sup>4</sup>. Rather, he simply dismissed the records as “false” with little or no proof that this was the case. *See Deposition of Richard Dupee, M.D.*, which was admitted into evidence as Exhibit 30, at p. 81. Again, the Court heard from Betty Land, and received the deposition testimony of UMMC nurses, Jan Maddux (in evidence as Exhibit 32) and Evelyn Saulsbury (in evidence as Exhibit 33). These nurses were credible and the Plaintiff did nothing to prove that any of Mr. Dotson’s medical records were false other than offer argument and suggestion. Further, Ms. Land explained that the nursing home is subjected to an extensive system of “checks and balances” done by both state and federal agencies, which look for falsified records and other problems. *See Trial Transcript* at pp. 166-167. Plaintiff produced no evidence that any of these agencies had ever found any falsified records at this nursing home.

Dr. Dupee’s opinion that a patient must be denied food and fluids in order to become dehydrated and malnourished is also contrary to authoritative medical literature. UMMC actually moved to strike Dr. Dupee’s opinions prior to trial based on the medical literature, but the Court denied that motion preferring to weigh the

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<sup>4</sup> The ADLs which documented, *inter alia*, the nutrition and hydration history of Mr. Dotson were updated several times each day, were detailed and were completed by a significant number of *different* nurses and aids, making it highly unlikely, if not nearly impossible that the information on the charts was fabricated or sloppily recorded.

credibility of Dr. Dupee's testimony rather than striking it prior to trial<sup>5</sup>. Dr. Dupee produced no journal articles or other authoritative texts or materials supporting his assertion that the only way a patient can become malnourished or dehydrated is by being denied adequate food and fluids. However, UMMC produced articles that prove that Dr. Dupee's testimony is not consistent with medical science and is contrary to the facts in this case. *See Articles marked for identification* as Exhibits 8-25. Those articles clearly establish that malnutrition and dehydration, as they were with Mr. Dotson, can be caused by the kidney and liver dysfunction we all face at the close of our lives, as well as advanced dementia itself, which the Court finds based on the medical records and expert testimony that Mr. Dotson had.

Dr. Dupee's opinions were based on nothing more than his own *ipse dixit* and his belief that the only way one can become dehydrated is through denial of food and fluids. This belief was proven objectively false by UMMC via the above mentioned journal articles, which were corroborated by UMMC's expert, Dr. Kelly, and the treating physician Dr. Brown. Dr. Dupee could not point to specific medical

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<sup>5</sup> Prior to trial, and after the Defendant's original *Motion to Strike* was denied by the court, the Defendant filed an additional *Motion in Limine to Strike Testimony of Plaintiff's Expert Dr. Dupee*, and the Plaintiffs filed a *Motion to Strike Defendant's Expert Opinions and to Strike Articles Proposed by the Defendant*. The court then entered an *Order Regarding Pretrial Motions*, stating *inter alia* that "...the court will take the parties' pretrial motions to strike under advisement, and rule upon them after all the evidence and testimony has been received." (see Order of December 8, 2017). The court hereby rules that neither motion is well-taken and accordingly denies same.

facts or authoritative texts or journals supporting his theory. Instead, he essentially accused UMMC's many nurses of either gross negligence in record-keeping or intentionally falsifying records. This Court declines to believe that these nurses did either.

This Court is not obligated to consider expert opinion testimony which is based on mere *ipse dixit*, speculation or conjecture. See *Miss. Transp. Comm'n v. McLemore*, 863 So. 2d 31, 37 (¶13) (Miss. 2003) and *Rebelwood Apts. RP, LP v. English*, 48 So. 3d 483, 495 (¶51) (Miss. 2010)(citing *APAC-Miss., Inc. v. Goodman*, 803 So. 2d 1177, 1185 (Miss. 2002) (“[t]he facts upon which the expert bases his opinion must permit reasonably accurate conclusions as distinguished from mere guess or conjecture.”) (citation omitted)). Because Dr. Dupee's opinion that the records were false was based on his own unsupported dogmatic opinion, and because his criticisms of UMMC nurses were not consistent with the documented medical facts and other medical expert testimony, this Court finds that the Plaintiff failed to meet her burden of proof in this case and judgment in favor of UMMC is appropriate.

### **III. UMMC'S EXPERT WITNESSES**

UMMC cross-designated Dr. Brown as a treating physician expert, and Ms. Land was also qualified and accepted as an expert in nursing at trial. As indicated above, the Court found the testimony of these witnesses more credible than that of

Dr. Dupee, and ultimately, that their testimony, as corroborated by the medical records, refuted the Plaintiff's *prima facie* case. Additionally though, UMMC offered three experts who individually, and especially collectively, proved that the care given to Mr. Dotson met or exceeded the standard of care. The Court found these experts more credible than Dr. Dupee. The Court also noted that while their opinions were not identical, their opinions were consistent even though the experts were from different disciplines.

For example, UMMC called a board certified physician in internal medicine named Dr. Robert Kelly, who also had special board certification in geriatric medicine. He explained the end-of-life problems of Mr. Dotson very thoroughly, and his testimony was consistent with that of Dr. Brown. *See Trial Transcript* at pp. 275-289. Dr. Kelly explained how Mr. Dotson's actual lab values for creatine, BUN, and other tests related to hydration and nutrition supported his opinions that UMMC provided Mr. Dotson with proper food and fluids. *Id.* Dr. Kelly testified that he provided the above-mentioned authoritative articles and literature (Exhibits 8-25 for identification) to support his opinions, and he explained those articles at trial. *See Trial Transcript* at pp. 289-295. Again, Dr. Dupee was unable to provide any such support for his opinions.

Ultimately, the Court finds Dr. Kelly's explanation of Mr. Dotson's cause of death to be more persuasive and more credible than Dr. Dupee's. Dr. Kelly

explained that Mr. Dotson became disabled because of several severe strokes, and then he developed organic brain disease, dementia, end-stage renal failure, end-stage stroke, kidney and liver dysfunction, and a host of other related ailments, all of which led to his body's inability to withstand the pneumonia he developed in the days before his death. *See Trial Transcript* at pp. 275-289. In addition to the authoritative literature he provided, Dr. Kelly based his opinions on the facts documented in Mr. Dotson's medical records, and specifically referred to those records during his testimony. *Id.* For those reasons, the Court accepts Dr. Kelly's opinions as the true explanation of Mr. Dotson's death, and rejects those of Dr. Dupee.

UMMC also called nurse Lou Ann Alexander as an expert witness at trial. She offered opinions related to the standard of care for both providing food and fluids, and also for turning and repositioning and other care related to UMMC's efforts to prevent Mr. Dotson from developing pressure ulcers. Ms. Alexander testified that she has been a long-term care nurse for 37 years. *See Trial Transcript* at p. 346. Ms. Alexander's testimony was credible, tied directly to specific facts documented in the medical records, and consistent with the testimony of all the other experts, with the exception of Dr. Dupee. *See Trial Transcript* at pp. 345-175. She explained the standard of care expected of those nurses and took the Court through the medical records explaining how the UMMC nurses complied with the standard of care. *See Trial Transcript* at pp. 352-391.

Throughout her testimony, Ms. Alexander said that the standard of care was met and took the Court to the specific records documenting the fact that care consistent with the standard of care was given. *Id.* This is true with regard to providing food and fluids, and with regard to preventing pressure ulcers. *Id.* She also explained that the nurses complied with the orders given to them by the physicians and showed the Court where that was documented in the records. *See Trial Transcript* at pp. 375-175. Ms. Alexander's opinions were also supported by objective facts, such as a chart documenting Mr. Dotson weight on certain dates. He was put on a 1800 calorie a day diet by his physicians when he was first placed at the nursing home because he was diabetic and overweight at 248 pounds, at a height of only 5' 7". *Id.* at p. 369. Despite being on this diet, he never reached his ideal lower body weight, but his weight stabilized within a few pounds at around 195 in the months before he died. *Id.* at p. 368. Obviously, if he was not being fed, his weight would have continued to drop.

Plaintiff did not call a nurse expert, and instead relied on Dr. Dupee for opinions related to the nursing standard of care. Again, Dr. Dupee accused the nurses at UMMC of falsifying or grossly maintaining the medical records, which he had to do because the nurses documented in the records that they did provide Mr. Dotson with proper food and fluids. Ms. Alexander explained that the objective evidence proved that the nurses' entries were accurate. For example, she pointed



out that Mr. Dotson's weight remained stable; the lab work that was done at the facility, just a couple of weeks before his last hospitalization showed BUN and creatinine within normal limits which indicates that he was well hydrated; and a hemoglobin A1C test was done which checked Mr. Dotson's glucose over the one month period before his death showed that his glucose level was maintained appropriately during that time. *Id.* at p. 365. Based on objective verification like this and the other reasons articulated above, Ms. Alexander's testimony was more credible than Dr. Dupee's testimony.

Finally, UMMC called registered dietician and diabetes counselor, Kathy Warwick. Ms. Warwick explained how the various disciplines, including the nurses, dieticians, and physicians work together in a nursing home to care for the residents, and she testified that UMMC's nursing home did this for Mr. Dotson. *See Trial Transcript* at pp. 418-420. She explained that because Mr. Dotson suffered from strokes and dementia, he may eat well one day, and not do so the next. *Id.* at p. 425. She explained that this is why the nurses' notes document the fact that Mr. Dotson ate 100% of his meals sometimes or needed assistance eating on some days but did not on other occasions. *Id.* at p. 426. Ms. Warwick also discussed the same lab values relied upon by Dr. Kelly and Ms. Alexander and explained how those values show that Mr. Dotson was properly cared for at the nursing home. *Id.* at pp. 428-438. Her opinions were both logically consistent with, and corroborative of, the

opinions of Dr. Brown, Dr. Kelly, Nurse Land, and Nurse Alexander. Plaintiff offered no dietician expert. Ms. Warwick's opinions further solidify the Court's opinion that Mr. Dotson was cared for properly by UMMC.

### **CONCLUSION**

The Court finds that the opinions of Plaintiff's sole expert, Dr. Dupee, were not supported by the documented medical facts. Further, his opinion that the only way Mr. Dotson could have become malnourished and dehydrated at the time of his death is via denial of adequate food and fluids is contradicted by authoritative medical literature to which he had no response. The Court also finds that there is no evidence that any of UMMC's nurses "falsified" the records related to Mr. Dotson's care. With that fact unproven and more logical and objectively proven explanations for Mr. Dotson's lab values, medical course, and ultimately his death in the record, the Court finds that the Plaintiff failed to establish a breach in the applicable standard of care, and failed to prove that anything UMMC's nurses did or allegedly failed to do was the proximate cause of Mr. Dotson's death or any discomfort from a pressure sore developing on his heel.

Accordingly, the Court finds that based on a preponderance of the credible evidence in this case, the nurses at the nursing home operated by UMMC in Durant, Mississippi met the requisite standard of care while treating Mr. Dotson, and that the cause of Mr. Dotson's heel bruise and death were not the proximate result of any act

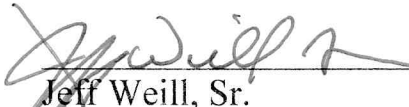
or omission on the part of UMMC or its employees. Rather, Mr. Dotson died of complications associated with his co-morbidities including dementia, end-life stroke, organic brain disease, pneumonia, hypoxia, and cardiac arrest. As Dr. Kelly explained, Mr. Dotson's decline and death were simply the natural progression of his disease processes. His decline and death were not caused by negligence or the failure of anyone to provide him with food, fluids, or proper nursing care.

The law requires expert proof of negligence and proof that this negligence was the proximate cause of death before a plaintiff may recover damages for wrongful death. Here, the more credible witnesses and the preponderance of the credible evidence proved that Mr. Dotson died of natural causes unrelated to any negligence. In fact, the preponderance of the credible evidence, especially when the credibility of the expert witnesses was carefully assessed by the Court, proved the nurses and staff at the nursing home committed no negligence. Rather, they provided care which met or exceeded the applicable standard of care.

**THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED** that judgment should be entered in favor of UMMC with each party responsible for its own expenses; and further, as noted in footnote 5 above, the Defendant's *Motion in Limine to Strike Testimony of Plaintiff's Expert Dr. Dupee* and the Plaintiffs' *Motion to Strike Defendant's Expert Opinions and to Strike Articles Proposed by the Defendant* are both hereby DENIED.

A full and final judgment and disposition of all claims pending in this matter in favor of UMMC will be separately entered.

**SO ORDERED AND ADJUDGED** this the 6<sup>th</sup> day of May, 2020.

  
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Jeff Weill, Sr.  
Special Judge