

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10 CVS _____

COUNTY OF ORANGE 2010 JUN 20 AM 11:17

MALINDA FRALEY and DAVID FRALEY, Co-Administrators of the Estate of ATLAS FRALEY,

Plaintiffs,

v.

JAMES GRIFFIN, in his individual capacity; JAMES GRIFFIN, in his official capacity as a Paramedic with Orange County Emergency Services; ORANGE COUNTY EMERGENCY SERVICES, a department of ORANGE COUNTY, NORTH CAROLINA; and ORANGE COUNTY, NORTH CAROLINA,

Defendants.

**COMPLAINT WITH
INTERROGATORIES, REQUEST FOR
PRODUCTION OF DOCUMENTS AND
REQUEST FOR ADMISSIONS
ATTACHED**

(JURY TRIAL DEMANDED)

Plaintiffs, Malinda Fraley and David Fraley, in their capacity as Co-Administrators of the Estate of Atlas Fraley, complaining of the Defendants, James Griffin, in both his individual and official capacities; Orange County Emergency Services, a department of Orange County, North Carolina; and Orange County, allege as follows:

SUMMARY OF ALLEGATIONS

This is a wrongful death action brought on behalf of the Estate of Atlas Fraley. Atlas, a minor, died within hours of being left home alone by Orange County EMS worker James Griffin.

PARTIES AND JURISDICTION

1. Atlas Fraley ["Atlas Fraley" or "Atlas"] died on August 12, 2008 at the age of 17. He is survived by his parents, Malinda and David Fraley.
2. Malinda Fraley ["Malinda Fraley" or "Malinda"] and David Fraley ["David Fraley" or "David"] are residents of Orange County, North Carolina.
3. The Orange County Clerk of Superior Court has appointed and qualified Malinda and David Fraley as Co-Administrators of the Estate of Atlas Fraley, who died intestate.

4. Acting in their fiduciary capacity, Malinda and David Fraley file this action pursuant to Chapter 28A of the General Statutes of North Carolina, including section 28A-18-2, within two years of the death of Atlas Fraley.

5. Upon information and belief, Defendant James Griffin ["Defendant Griffin"] is a resident of Alamance County, North Carolina.

6. Upon information and belief, Defendant Orange County Emergency Services ["Defendant Orange County EMS"] is an agency and department of Orange County, North Carolina and holds itself out as "the agency dedicated to ensuring the appropriate and efficient response to emergencies throughout Orange County."

7. Upon information and belief, Defendant Orange County, North Carolina ["Defendant Orange County"] is a county duly organized and created under the laws of the State of North Carolina.

8. Upon information and belief, Defendant Orange County EMS is comprised of three divisions: the Telecommunications Division responsible for taking and dispatching 911 calls; the Fire Marshal's Division; and the Emergency Medical Services ["EMS"] Division.

9. Upon information and belief, at all times complained of herein, Defendant Griffin was employed as an Emergency Medical Technician-Paramedic ["paramedic"] in the EMS Division of Defendant Orange County EMS.

10. As a paramedic with Defendant Orange County EMS, Defendant Griffin was a public employee and as such is personally liable for the damages proximately caused by the negligence he committed within the course and scope of his agency and employment with Defendant Orange County EMS.

11. Defendant Griffin is being sued both in his individual capacity and in his official capacity. By suing Defendant Griffin in his individual capacity, Plaintiffs seek to hold Defendant Griffin personally liable for his own negligence by recovering damages directly and personally from Defendant Griffin individually. By suing Defendant Griffin in his official capacity, Plaintiffs seek to recover damages from Defendant Orange County, North Carolina, the public entity that employed Defendant Griffin as a paramedic in its Orange County Emergency Services EMS Division and for which Defendant Griffin was acting as an employee and agent at all times complained of herein.

12. Upon information and belief, at the time of the negligence complained of herein, Defendants were covered by a policy of liability insurance pursuant to N.C.G.S. § 153A-435.

13. Upon information and belief, at the time of the negligence complained of herein, Defendant Orange County EMS and Defendant Orange County were participants in a local government risk pool pursuant to N.C.G.S. § 58-23-1 *et seq.*, namely the North Carolina Association of County Commissioners Liability and Property Pool, and Defendants have waived any governmental immunity up to their liability coverage via this local government risk pool in the amount of \$6,000,00.00 (six million dollars).

RULE 9(j) CERTIFICATION

14. Plaintiffs incorporate by reference the earlier paragraphs of this Complaint.

15. Plaintiffs object to the requirements of N.C.G.S. § 1A-1, Rule 9(j) on the basis that it denies Plaintiffs their rights of due process of law, of equal protection under the law, of the right to open courts, and of the right to a jury trial in violation of the United States and North Carolina Constitutions, and further, that Rule 9(j) is an unconstitutional violation of Amendment VII and Amendment XIV of the United States Constitution and Article I, Sections 18, 19 and 25 of the North Carolina Constitution.

16. Plaintiffs additionally object that Rule 9(j) is inapplicable to Plaintiffs' Complaint because this Complaint is not a "complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11." This is not a medical malpractice case and none of the Defendants are "health care providers" as defined by N.C.G.S. § 90-21.11 because none of the Defendants are licensed or otherwise registered or certified pursuant to Chapter 90.

17. Without waiving these objections, it is hereby certified, pursuant to N.C.G.S. § 1A-1, Rule 9(j), that the medical care provided by Defendants has been reviewed by persons who are reasonably expected to qualify as expert witnesses under Rule 702 of the North Carolina Rules of Evidence and who are willing to testify that the medical care did not comply with the applicable standard of care.

STATEMENT OF THE CLAIM

18. Plaintiffs incorporate by reference the earlier paragraphs of this Complaint.

19. On August 12, 2008:

a. Atlas Fraley was a student at Chapel Hill High School and played on the school's football team.

b. At approximately 1:46 p.m., having returned home from football practice, Atlas Fraley called 911.

i. Atlas Fraley stated to the 911 operator "Yes this is an emergency. . . . I am having full body cramps. I think I need an IV or something. . . . My body is hurting all over. I just came from football practice and I think I need an IV or something."

ii. At 1:46 p.m., the 911 call log entry includes "Full body cramps" and "Hurting all over just came from football practice."

iii. The 911 operator dispatched a unit designated "Medic2" to the Fraley home at 1:46 p.m., and instructed Atlas to stay on the line.

iv. Thereafter, Atlas Fraley asked the 911 operator, "Is someone on their way?" and the telecommunicator replied, "They have been notified and there is someone on the way."

v. At approximately 1:48 p.m., the 911 operator asked Atlas "So you are having cramps throughout your body. Or where are the cramps coming from?" and Atlas Fraley replied, "Throughout my body."

vi. Thereafter, the 911 operator asked Atlas to gather any medications he might be taking, to which Atlas responded "I mean the only thing I am on is Albuterol for my asthma." The 911 operator then asked Atlas "Are you having problems with your asthma right now?" to which Atlas Fraley replied "No. I think I am just dehydrated and need an IV."

vii. At 1:49 p.m., the 911 call log entry includes "Thinks he needs IV because he is dehydrated."

viii. During the 911 call, in response to the 911 operator's questions, Atlas stated that he was 17 years old, that his parents were at work, and that no one was with him at home.

ix. The 911 operator ended the call at approximately 1:49 p.m..

c. At approximately 1:54 p.m., Medic2 arrived at the Fraley home.

i. Medic2 was a Paramedic Initial Response Vehicle ("IRV") operated by Defendant Griffin. Records from the call indicate that Defendant Griffin operated Medic2 alone, and that he was the only emergency responder to respond or be dispatched to Atlas Fraley's 911 call.

ii. On information and belief, Defendant Griffin, as an IRV paramedic, was supposed to be trained to provide advanced assessment and treatment to patients and was authorized to order emergency transport of patients to hospitals by

ambulances operated by the EMS Division of Defendant Orange County Emergency Services and staffed by Orange County EMS Division emergency medical technicians ("EMTs").

d. According to EMS records, Defendant Griffin arrived at Atlas Fraley's home at 1:54 p.m. and discharged Atlas Fraley at 2:10 p.m., some 16 minutes later.

e. According to the Patient Care Report completed by Defendant Griffin:

i. Defendant Griffin was aware that Atlas was 17 years old, that he took Albuterol, and that he had a past medical history of asthma.

ii. Atlas rated his pain at 7 on a scale of 1 to 10.

iii. Atlas complained of muscle cramping in his arms, legs and abdomen.

iv. Atlas indicated that he just returned home from his high school football practice.

v. Atlas "asked specifically for an 'IV' to make the cramps stop."

vi. Atlas "kept asking how long before the cramps would subside."

vii. Atlas Fraley's blood pressure was 134/102 while standing, and heart rate was 92 beats per minute while standing.

viii. Orthostatics were not performed (serial measurements of blood pressure and pulse taken with the patient in the supine, sitting and standing positions, the results of which are used to assess possible volume depletion).

ix. No ECG (electrocardiogram) was performed.

x. Defendant Griffin did not take Atlas Fraley's temperature.

xi. Atlas Fraley's cramping kept him from standing still or sitting still long enough to have orthostatics and an electrocardiogram performed.

xii. No treatment was provided.

xiii. Defendant Griffin did not order or recommend that Atlas Fraley be transported by ambulance to a hospital.

xiv. Defendant Griffin contends that he "tried to call both of patient's parents at their work but was unable to reach either (called David Frayley [sic] at 336-[XXX-XXXX] and Malinda Frayley [sic] at 919-[XXX-XXXX])."

xv. Defendant Griffin contends that "After being unable to reach either of the patient's parents I decided to let the patient sign the declination form."

xvi. Defendant Griffin contends that he instructed Atlas "to continue drinking water and Gatorade and continue to work out his cramps" and "to hydrate well while practicing and playing his football games."

20. Defendant Griffin made the decision to leave Atlas Fraley at home alone.

21. At 2:10 p.m., some 16 minutes after he arrived at the Fraley home, Defendant Griffin had Atlas Fraley sign page three of the Patient Care Report, acknowledging discharge instructions, which included the following:

a. The preprinted information stated "You have not been evaluated by a doctor. If you don't have a doctor, you can call UNC Healthlink at (919) 966-7890."

b. The preprinted information then stated "You should see a doctor as indicated:" and had choices to check for "Immediately"; "Within 4 hours"; "Within 24 hours"; or "Within ___ days." Defendant Griffin left all of these unchecked.

c. The preprinted information then stated "The patient is being released to:" and had choices to check for "Family Member"; "Guardian"; "Law Enforcement Officer" or "Other:_____." Defendant Griffin chose and checked the box for "Other" and filled in "self" so that Atlas Fraley was being released to "Other: Self"

d. The preprinted information then stated "Follow the instructions (printed on this form) indicated:" and had choices to check for "Universal"; "Abdominal Pain"; "Head Injury"; "Extremity Injury"; "Back Pain"; "Insect Bites/Sting"; "Vomiting/Diarrhea"; "Fever"; "Respiratory Distress"; and/or "Wound Care." Defendant Griffin chose and checked the box for "Universal" instructions as follows:

i. "You have not received a complete medical evaluation. See a physician as soon as possible."

ii. "If at any time after you have taken any medication, you have trouble breathing, start wheezing, or get hives or a rash, or have any unexpected reaction, call 911 immediately."

iii. "If your symptoms worsen at any time, you should see your doctor, go to the Emergency Department or call 911."

22. At an unknown time, Defendant Griffin signed the Patient Care Report.

23. At 2:16 p.m., Defendant Griffin was back "at base."

24. The number cited for David Fraley on the Patient Care Report was his cell phone number in use at that time.

25. David Fraley's cell phone records for the number cited in the Patient Care Report show no record of a call received on his cell phone from Defendant Griffin on August 12, 2008.

26. David Fraley did not receive a phone call nor a voice mail message from Defendant Griffin on August 12, 2008.

27. The number cited for Malinda Fraley on the Patient Care Report was her direct office phone number in use at that time.

28. Malinda Fraley was at her office all afternoon on August 12, 2008 and she never received a phone call nor voice mail message from Defendant Griffin.

29. Had Defendant Griffin contacted either of Atlas Fraley's parents, they would not have permitted Defendant Griffin to leave their minor son alone at home with an unresolved medical emergency.

30. On August 12, 2008, at approximately 6:30 p.m.:

a. Malinda and David Fraley returned home together from work and found their son Atlas on the living room floor, unresponsive and not breathing.

b. David Fraley immediately began CPR while Malinda Fraley called 911.

31. At approximately 6:33 p.m., Malinda Fraley called 911.

a. At 6:33 p.m., the 911 call log entry includes "17 year old, male, unconscious, not breathing. Cardiac or respiratory arrest/death. Not breathing at all."

b. At 6:34 p.m., an Orange County EMS paramedic was dispatched to the Fraley Home, arriving at 6:43 p.m..

c. The Orange County EMS Patient Report includes "17 year old male found on living room floor without signs of life. Death on arrival." Also noted was "skin cool, mottled, rigor mortis setting in."

d. The Orange County EMS Patient Report indicates that the Fire Department started CPR on arrival, that no shock was given, and that upon ALS arrival, all resuscitative effort was ceased.

32. At the time of Atlas Fraley's death, he was 17 years old, with a life expectancy of at least 59.8 more years.

33. On August 22, 2008, the Medical Director for Orange County Emergency Services, Jane H. Brice, M.D., M.P.H., wrote to Defendant Griffin and terminated his paramedic privileges in Orange County. Dr. Brice's letter to James Griffin included the following:

a. "In response to concerns about your EMS response to XXXX on August 12, 2008, I have reviewed the appropriate documentation as well as the findings of the peer review panel. It is my opinion that you violated Orange County protocols in your care of this patient."

b. "As a result, I am, as of this date, terminating your paramedic practice privileges in Orange County and referring this case to the North Carolina State Office of EMS for disciplinary review."

34. On or about August 26, 2008, a lawyer representing Defendant Griffin wrote to Orange County Medical Services, and requested information regarding Defendant Griffin's response to Atlas Fraley's 911 call on August 12, 2008, including "That 'specific conduct be identified, or the specific criteria in the referenced protocol and policies be clarified.'"

35. On August 27, 2008, a lawyer in the Orange County Manager's Office wrote to the lawyer for Defendant Griffin in response to the letter of August 25, 2008. The Orange County attorney indicated, on behalf of Defendant Orange County, that "During the Peer Review your client informed the committee that he was operating under the 'heat related emergency' Protocol (Hyperthermia Protocol #55). Based on that information below you will find a detailed list of the protocol violations that include, but may not be limited to" and then outlined the following violations by Defendant Griffin:

- a. Protocol 14 – Universal Patient Care. “Patient vital signs were either not taken or not repeated in accordance with Protocol 14.”
- b. Protocol 55 – Hyperthermia. “Patient vital signs were not taken as required by Protocol 55.”
- c. Protocol 55 – Hyperthermia. “Did not follow the disposition section of the Hyperthermia protocol.”
- d. Policy 19 – Referral Policy. “All patients evaluated and not transported by Orange County EMS must be provided with an appropriate referral. A complete and thorough medical evaluation of the patient was not done.”
- e. Policy 19 – Referral Policy. “All patients evaluated and not transported by Orange County EMS must be provided with an appropriate referral. Did not document an appropriate time frame in which the patient should see a physician.”
- f. Policy 19 – Referral Policy. “All patients evaluated and not transported by Orange County EMS must be provided with an appropriate referral. Released a minor patient to ‘self’ and did not successfully contact the patient’s legal guardian. (See also Policy 19, section 3, 5, and 9).”
- g. Policy 19 – Referral Policy. “All patients evaluated and not transported by Orange County EMS must be provided with an appropriate referral. Did not contact Medical Control or the patient’s physician. (See Policy 17, Section 7).”
- h. Policy 9 – Documentation of the Patient Care Report. “A patient care report form will be completed accurately and legibly to reflect the patient assessment, patient care and interaction between the OCEMS and the patient. Did not document the Emergency Medical Dispatch (EMD) card number on patient care report and complete an examination of the patient as required by the hyperthermia protocol.”
- i. Policy 7 – Disposition. “A provider should err on the side of patient safety and assume an implied request for evaluation if the patient is not legally competent. A minor is not legally competent ‘due to age.’”
- j. Policy 18 – Protocol Adherence. “Protocols are treatment guidelines that provide a framework for patient care. Deviations from established protocols should be documented and discussed with the Medical Director at the earliest convenience. Failed to document the deviation from established protocol.”

k. Policy 18 – Protocol Adherence. “Protocols are treatment guidelines that provide a framework for patient care. Deviations from established protocols should be documented and discussed with the Medical Director at the earliest convenience. Failed to discuss the deviations with medical control.”

l. Policy 18 – Protocol Adherence. “Protocols are treatment guidelines that provide a framework for patient care. Deviations from established protocols should be documented and discussed with the Medical Director at the earliest convenience. Failed to report the issue to his supervisor.”

m. Policy 24 – Transport. “Individuals served by OCEMS will be evaluated and furnished transportation (if indicated or requested) in the most timely and appropriate manner for the situation. Protocol 55, hyperthermia indicated that the proper disposition for the patient was transport. Patient was not transported or referred to an alternative transport provider.”

36. According to an October 24, 2008 interview of Jane Brice, M.D. in her capacity as Orange County EMS Medical Director by North Carolina Department of Health and Human Services, “Dr. Brice decided to terminate Mr. Griffin’s EMS practice privileges in Orange County. She said the sum of violation of multiple protocols and procedures make her decide to terminate Mr. Griffin’s EMS practice privileges in Orange County. Dr. Brice said she had never had a paramedic violate so many protocols/policies at once. When asked about terminating other paramedics’ EMS practice privileges since becoming EMS Medical Director, Dr. Brice said she had never before, in her role as EMS Medical Director, terminated an individual’s practice privileges.”

37. On August 12, 2008, Defendant Griffin had with him a cell phone issued by Defendant Orange County Emergency Services [“the Orange County EMS cell phone”].

38. Defendant Griffin stated in an October 13, 2008 interview with the North Carolina Department of Health and Human Services that he used the Orange County EMS cell phone on August 12, 2008 to attempt to contact Atlas Fraley’s parents, and that “he reached voice mail messages for both parents but did not leave a message with either.”

39. On October 21, 2008, the North Carolina Department of Health and Human Services requested that Orange County provide a copy of the August 12, 2008 phone records for the phone Mr. Griffin said he used in attempting to contact patient Atlas Fraley’s parents on that date.

40. According to the North Carolina Department of Health and Human Services, when it closed its investigation on March 20, 2009, Defendant Orange County had failed to provide the requested cell phone records.

41. Defendant Griffin stated in an October 13, 2008 interview with the North Carolina Department of Health and Human Services that a medical student was riding with him as an observer on August 12, 2008 ["the medical student"]; that in response to Atlas Fraley's request for an IV, this medical student advised Defendant Griffin that it was not necessary because Atlas could hydrate himself; and that Defendant Griffin agreed with this and did not plan to start an IV.

42. Defendant Griffin stated in an October 13, 2008 interview with the North Carolina Department of Health and Human Services that the medical student submitted a written statement to Defendant Orange County EMS, but that Defendant Orange County EMS refused to allow Defendant Griffin to review the statement.

43. On or about May 22, 2009, the North Carolina Department of Health and Human Services issued its findings, which included "Evidence to support violation of Orange County EMS protocols."

COUNT ONE: NEGLIGENCE

44. Plaintiffs incorporate by reference the earlier paragraphs of this Complaint.

45. Defendant Griffin was negligent in his care and treatment of Atlas Fraley in one or more of, but not limited to, the following particulars, in that he:

a. Failed to possess the degree of professional learning, skill and ability which other health care providers, similarly situated, ordinarily possess;

b. Failed to exercise reasonable care and diligence in the application of his knowledge and skill for the benefit of Atlas Fraley;

c. Failed to furnish emergency medical services to Atlas Fraley in accordance with the standards of practice among members of emergency medical services personnel with similar training and experience situated in similar communities at the time of Atlas Fraley's treatment;

d. Failed to accurately and properly assess Atlas Fraley's medical condition;

e. Failed to perform orthostatics;

f. Failed to perform an electrocardiogram;

- g. Failed to take Atlas Fraley's temperature;
- h. Failed to order emergency transport by ambulance to a hospital for medical evaluation and treatment by physicians of Atlas Fraley's unresolved medical emergency;
- i. Failed to order additional medical evaluation and treatment or summon additional emergency medical services personnel to the scene despite being unable to conduct necessary medical tests due to Atlas Fraley's medical condition which prevented him from standing still or sitting still long enough to have the tests performed;
- j. Failed to contact Atlas Fraley's parents but instead attempted to have Atlas Fraley, a minor, consent to Defendant Griffin's plan not to provide any medical treatment for Atlas Fraley's unresolved medical emergency, despite Atlas Fraley's legal inability as a minor to so consent;
- k. Left Atlas Fraley, a minor, at home alone and without informing his parents, a guardian, or other responsible adult, with an unresolved medical emergency;
- l. Failed to release Atlas Fraley, a minor with an unresolved medical emergency, into the care of his parents, a legal guardian, law enforcement, or physicians in a hospital;
- m. Gave Atlas Fraley improper discharge instructions;
- n. Upon information and belief, allowed a medical student, unlicensed as a physician or health care provider in this State, to participate in treatment decisions for a medical emergency; and
- o. Otherwise failed to exercise reasonable care in the evaluation and treatment of Atlas Fraley.

46. Defendant Griffin's negligent acts and omissions, as described herein, were performed within the course and scope of his agency and employment with Defendant Orange County EMS, a department of Defendant Orange County, North Carolina.

47. Defendant Griffin's negligence is imputed to Defendant Orange County EMS and Defendant Orange County pursuant to the doctrine of *respondeat superior*, and Defendants Orange County EMS and Orange County are liable for damages proximately caused by Defendant Griffin's negligence both vicariously -- via *respondeat superior* -- and as a result of Plaintiffs' official capacity claim against Defendant Griffin.

48. Atlas Fraley's death was directly and proximately caused by the negligence of Defendants.

49. Atlas Fraley's death was a direct and proximate result of the negligence of Defendants. Had Defendants properly evaluated, treated and transported Atlas Fraley to a hospital, he more likely than not would have survived.

50. As a direct and proximate result of the negligence of Defendants, Malinda Fraley and David Fraley, in their representative capacity as Co-Administrators of the Estate of Atlas Fraley, are entitled to recover of these Defendants, jointly and severally, actual damages as provided by law, in an amount to be determined by the jury.

51. By reason of the wrongful death of Atlas Fraley, Malinda Fraley and David Fraley, in their representative capacity as Co-Administrators of the Estate of Atlas Fraley, have been damaged and are entitled to recover of Defendants, jointly and severally, a lump sum sufficient to compensate the Estate for expenses for medical expenses incident to Atlas Fraley's August 12, 2008 death; compensation for Atlas Fraley's pain and suffering; reasonable funeral expenses; the present monetary value of the decedent Atlas Fraley to his parents, including but not limited to compensation for the loss of his services, protection, care and assistance; and society and companionship, security, comfort and kindly offices, in an amount to be determined by the jury.

JURY TRIAL DEMAND

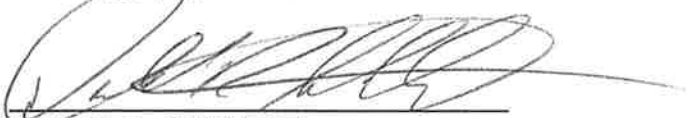
PLAINTIFFS HEREBY DEMAND A JURY TRIAL ON ALL ISSUES OF FACT SO TRIABLE

WHEREFORE, the Plaintiffs Malinda Fraley and David Fraley, Co-Administrators of the Estate of Atlas Fraley, pray that they have and recover from Defendants, jointly and severally, as follows:

1. Compensatory damages in an amount to be determined by the jury, but in any event, to the extent Rule 8(a)(2) of the North Carolina Rules of Civil Procedure is applicable, in an amount in excess of Ten Thousand Dollars (\$10,000.00);
2. The costs of this action, including interest and reasonable attorneys' fees as provided by law; and,
3. Any other relief which the Court deems equitable, just and proper.

This the 27th day of January, 2010.

TWIGGS, BESKIND, STRICKLAND
& RABENAU, P.A.

A handwritten signature in black ink, appearing to read 'Donald R. Strickland', written over a horizontal line.

Donald R. Strickland
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