

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

TRINA DIBRILL, A Disabled Person, By) No. ED97467
Her Next Friend ANNGINETTE WHEELER,)
Appellant,)
vs.) Appeal from the Circuit Court of
St. Louis County
NORMANDY ASSOCIATES, INC. d/b/a) Honorable Tommy W. DePriest, Jr.
NORMANDY NURSING CENTER, KERRY)
KAUFMANN, CLARA MAYES and)
SANTONIO MCCOY, Respondents.) Filed: October 30, 2012

Trina Dibrill (Plaintiff) by her next friend and mother, Annginette Wheeler, appeals the trial court judgment in favor of Normandy Nursing Center, Kerry Kaufmann, and Clara Mayes (Defendants). Plaintiff claims the trial court: (1) erred by dismissing with prejudice her petition on the grounds of failure to state a claim upon which relief can be granted; and (2) abused its discretion by denying her motion for leave to amend the petition.

AFFIRMED IN PART, REVERSED IN PART.

Division Four Holds: The trial court erred in dismissing with prejudice Plaintiff's counts of negligence per se, negligent hiring, and negligent supervision because Plaintiff's petition pleaded sufficient facts to withstand a motion to dismiss. The trial court also erred in dismissing with prejudice Plaintiff's request for punitive damages because the petition fairly informed Defendants of the nature of the demand. However, the trial court properly dismissed with prejudice Plaintiff's count of breach of fiduciary duty because Plaintiff failed to support her claim with factual averments demonstrating the existence of a fiduciary relationship. Additionally, the trial court properly dismissed with prejudice Plaintiff's claim that Defendants were vicariously liable for Plaintiff's injuries under a theory of respondeat superior because Plaintiff did not allege that the employee assaulted her "in furtherance of" Defendants' business or interests and pleaded no factual allegations supporting her allegations that, at the time of the assault, employee was acting in the course and scope of his employment. Finally, we hold that the trial court did not abuse its discretion in denying Plaintiff's motion for leave to amend her claims of breach of fiduciary duty and respondeat superior and introduce two additional causes of action.

Opinion by: Patricia L. Cohen, J.
Lawrence E. Mooney, P.J., and Kurt S. Odenwald, J., concur.

Attorney for Appellant: James C. Robinson

Attorney for Respondents: Teresa D. Bartosiak

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