Summary of SC100099, *State ex rel. Clinton No. 1, Inc. v. The Honorable Brandon Baker*
Proceedings originating in the Henry County circuit court
Argued and submitted December 13, 2023; opinion issued March 5, 2024

Attorneys: The nursing home was represented by Ted J. McDonald and Charles D. Miller of McDonald Veon PA in Kansas City, (816) 648-6870, and Teresa Pike Tomlinson of Hall Booth Smith PC in Atlanta, Georgia, (404) 954-5000. The daughter was represented by Jeffery T. Adams of Poague, Wall, Cox & Adams LLC in Clinton, (660) 885-2221, and Adam R. Pulver of Public Citizen Litigation Group in Washington, D.C., (202) 588-1000.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A nursing home seeks a writ of mandamus ordering the circuit court to dismiss a wrongful death lawsuit filed against it after one of its residents died after contracting COVID-19. In a decision written by Judge Robin Ransom and joined by three other judges, the Supreme Court of Missouri quashes its preliminary writ. At this stage in the proceedings, the nursing home has failed to establish it was entitled to immunity under federal law because the wrongful death petition did not allege the resident died as a result of the nursing home's negligence in carrying out a countermeasure related to COVID-19 and the circuit court did not consider the nursing home's affidavit in resolving the motion to dismiss. The nursing home further failed to establish it was entitled to immunity under state law because nothing in the record suggests the nursing home was deployed by the government during the pandemic and the lawsuit alleges the nursing home's recklessness resulted in injury.

Judge Paul C. Wilson concurs in a separate opinion joined by two judges. He writes separately to advocate this Court amend its rules to allow for consideration of matters outside the pleadings in resolving immunity claims at the stage regarding a motion to dismiss.

Facts: In July 2018, Mary Gray became a resident at Clinton No. 1 Inc., a healthcare and rehabilitation center. She contracted with Clinton to have a private room. In November 2020, Clinton placed Gray with a roommate. Gray later contracted COVID-19 and died. Her daughter sued Clinton for wrongful death. The daughter alleged the placement of the roommate exposed Gray to COVID-19 and violated the agreement Gray had for a private room. The daughter further alleged Clinton's actions showed a complete indifference to and conscious disregard for Gray's safety. Clinton moved to dismiss the case, asserting it was entitled to immunity under the federal public readiness and emergency preparedness (PREP) act and two state statutes. Attached to the motion was an affidavit from Clinton's director of nursing and infection control preventionist. In the affidavit, the director explained the facility was divided into COVID-negative and COVID-positive wings, causing roommate assignments to change. Gray was placed with a roommate who tested negative for COVID-19. After briefing and argument, the circuit court overruled the motion to dismiss. Clinton then sought relief. This Court issued a preliminary writ, ordering the circuit court to take no further action other than dismissing the lawsuit. Clinton now seeks the writ be made permanent.

PRELIMINARY WRIT QUASHED.

Court en banc holds: (1) The PREP act does not bar the wrongful death action at this stage of the litigation. Under the PREP act, a covered person is immune from liability for claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure. The petition does not allege Gray died as a result of administering a countermeasure; instead, the daughter alleges Clinton violated its agreement with Gray and COVID procedures by placing Gray with a roommate. To establish COVID testing resulted in Gray's placement with a roommate, credence must be given to the director's affidavit. But the circuit court did not consider the affidavit in ruling on the motion to dismiss. Accordingly, the nursing home currently is not entitled to immunity under the PREP act.

(2) Clinton is not entitled to immunity under section 44.045.1, RSMo. The statute's plain language contemplates a health care provider agrees to be deployed and the state emergency management agency approves such agreement. Clinton fails to demonstrate it agreed to be deployed, the state emergency management agency approved such agreement, or the governor or any state agency acted on such agreement and deployed Clinton.

(3) Clinton is not entitled to immunity under sections 537.1005 and 537.1010, RSMo. These statutes provide liability protection in COVID-19 exposure actions and medical liability actions unless the defendant has engaged in recklessness or willful misconduct. Neither statute would serve to foreclose litigation at this point because the daughter alleges her harm was caused by Clinton's recklessness.

Concurring opinion of Judge Wilson: The author agrees with the principal opinion but writes separately to suggest the Court amend its rules to allow the circuit court to consider matters outside the pleadings, which would permit the earliest possible resolution of immunity claims and other threshold legal matters having nothing to do with the merits of an action.