

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**FIVE STAR QUALITY CARE – MO., L.L.C., d/b/a ARBOR VIEW
HEALTHCARE & REHABILITATION CENTER,
APPELLANT,**

v.

**BONNIE SUE LAWSON, PUBLIC ADMINISTRATOR,
RESPONDENT.**

DOCKET NUMBER WD69712

DATE: APRIL 7, 2009

Appeal From:

Buchanan County Circuit Court
The Honorable Keith B. Marquart, Judge

Appellate Judges:

Division Two: Lisa White Hardwick, P.J., Victor C. Howard, Judge and Zel M. Fischer, Special Judge

Attorneys:

William E. Erdrich, for appellant.

Jere L. Loyd, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

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HEALTHCARE & REHABILITATION CENTER, RESPONDENT**

v.

BONNIE SUE LAWSON, PUBLIC ADMINISTRATOR, APPELLANT

WD69712

Buchanan County, Missouri

Before Division Two: Lisa White Hardwick, P.J., Harold L. Lowenstein and Victor C. Howard, JJ.

Five Star Quality Care, doing business as Arbor View Healthcare and Rehabilitation Center, brought a breach of contract claim against Bonnie Sue Lawson, the guardian of a resident of Arbor View. Arbor View claimed that Lawson failed to use due care by not promptly applying to become the conservator of the resident in order to ensure the resident's eligibility for Medicaid benefits. The trial court granted judgment in favor of Arbor View, awarding \$16,779.65 for costs Arbor View incurred while providing care to the resident and \$6,597.00 in costs and attorney fees. Lawson appeals.

REVERSED.

Division Two holds:

- (1) Because Lawson's statutory duties as a guardian were owed to her ward rather than to Arbor View, a breach of Lawson's statutory duties did not provide a basis upon which Arbor View could recover the costs of caring for the resident.
- (2) Where Arbor View asserted that Lawson's failure to use due care occurred prior to Lawson's appointment as conservator, Arbor View had not alleged facts showing that Lawson committed a tort during her conservatorship.
- (3) Under a general term in the agreement between Arbor View and Lawson, except as otherwise expressly provided to the contrary, Lawson would not become personally liable on the contract if she used due care. However, a more specific term provided that if the resident's third-party eligibility coverage was denied for any reason, unpaid charges were to be recovered from the resident's assets. Therefore, the more specific provision prevailed and Arbor View's recovery was limited to the assets of the resident.

Opinion by Howard, J.

April 7, 2009

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