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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: PASSAIC COUNTY

DAISY WOODFORK,
Administrator *Ad*
Prosequendum
of the Estate of
Juanita R. Wester,
Deceased, and
MICHAEL R. WESTER,

Docket No.:

Civil Action

Plaintiffs,

v.

MICHAEL WESTER,
LINDA PALMISANO, and
ROBERT WESTER,

COMPLAINT AND JURY DEMAND

Defendants.

Plaintiff, DAISY WOODFORK, Administrator *ad Prosequendum* of the Estate of Juanita Wester, deceased, residing at 151 Hatler Road, Fort Leonard Wood, Missouri; and Plaintiff, MICHAEL R. WESTER, residing at 51 Oxford Street, Haledon, Passaic County, New Jersey, by way of Complaint against Defendants MICHAEL WESTER, LINDA PALMISANO, and ROBERT WESTER, herein say:

FIRST COUNT

Intentional wrongful death

- I. Plaintiffs DAISY WOODFORK and MICHAEL R. WESTER are the natural children of Decedent Juanita Wester.
- II. On or about April 15, 2008, Letters of Administration *ad Prosequendum* were issued by the Ocean County, New Jersey Surrogate Jeffrey W. Moran to Plaintiff Daisy Woodfork, pursuant to court order, for the purpose of prosecuting a claim of next of kin and dependents of Decedent Juanita Wester.
- III. Said Decedent is survived by her two children, Plaintiffs Daisy Woodfork and Michael R. Wester, both currently adults.
- IV. At the time of Decedent Juanita Wester's death, a homicide which occurred on or before November 20, 1998, Decedent's children, Plaintiffs Daisy Woodfork and Michael R. Wester, were minor children and were dependent upon Decedent. Plaintiffs have sustained pecuniary loss resulting from the death of their mother, Decedent Juanita Wester.
- V. This action is brought under the Wrongful Death and Survival Act, N.J.S.A. 2A:31-1 *et seq.*
- VI. This action is commenced more than two years after the death of Decedent, as provided in N.J.S.A. 2A:31-3, which allows a wrongful death action to be brought after two years from Decedent's death and at any time, because the death of Decedent resulted from murder, for which the Defendant Michael Wester was convicted on or before March 28, 2002.

- VII. On or about November 20, 1998, Decedent, a resident of 16 Charles Avenue, Manchester, Ocean County, New Jersey, was found dead in the trunk of a vehicle, located at Morris Street west of Grand Street in Paterson, Passaic County, New Jersey.
- VIII. On November 20, 1998, Medical Examiner James H. Kaye, D.O. signed a Certificate of Death of Juanita Wester stating that the immediate cause of Decedent's death was asphyxia, strangulation by other.
- IX. On February 8, 2002, Defendant Michael Wester, spouse of Decedent Juanita Wester, was convicted by a criminal trial jury of murdering Decedent on November 18, 1998, in Ocean County, New Jersey. On or about March 28, 2002, said Defendant was sentenced to a prison term of life, with a 30 year parole ineligibility. He is serving in a New Jersey State Prison facility.
- X. On or about November 18, 2002, Defendant Michael Wester did willfully, maliciously, and intentionally assault Plaintiffs' Decedent, without justification and without provocation.
- XI. As a direct and proximate result of the willful, malicious and intentional acts of said Defendant, Plaintiffs' Decedent was caused to sustain mortal injuries which proved fatal, all to the pecuniary damage, injury, and economic loss to Plaintiffs' Decedent's dependents and heirs at law.

XII. The actions of Defendant Michael Wester were willful and wanton, and Plaintiffs are entitled to an award of punitive damages.

WHEREFORE, Plaintiffs demand judgement against Defendant Michael Wester, on this count for compensatory and punitive damages, together with interest, counsel fees, and costs of suit.

SECOND COUNT

Negligent wrongful death

- I. Plaintiffs repeat and make a part hereof the allegations contained in each previous paragraph as if same were more fully set forth at length herein.
- II. Defendant Michael Wester had a duty to Plaintiffs' Decedent, including but not limited to the following:
 - A. To refrain from any acts, including the acts of unpermitted or negligent touching of Plaintiffs' Decedent, which could result in injury or death to Decedent.
 - B. To protect and safeguard Plaintiffs' Decedent and to prevent further injury or death to Decedent, once having caused her injury and placing her in a state of helplessness or in such condition that Decedent was unable to protect and safeguard herself from further injury or death.
 - C. To seek and obtain medical care and treatment, including but not limited to emergency medical

treatment for Plaintiffs' Decedent, once having caused Decedent's injury and placing her in a state of helplessness or in such condition that Decedent was unable to care for herself.

III. Defendant Michael Wester was negligent in that he breached said duties to Plaintiffs' Decedent as follows:

- A. Defendant Michael Wester did negligently and carelessly engage in the assault and battery of Plaintiffs' Decedent through the unpermitted touching of Decedent, which did result in injury and death to Plaintiffs' Decedent.
- B. Defendant Michael Wester did negligently and carelessly fail to protect and safeguard Plaintiffs' Decedent, and to prevent further injury or death to her, once having caused her injury and placing her in a state of helplessness or in such condition that Decedent was unable to protect and safeguard herself from further injury or death.
- C. Defendant Michael Wester failed to seek and obtain medical care and treatment, including but not limited to emergency medical treatment for Plaintiffs' Decedent, once having caused Decedent's injury and placing her in a state of helplessness or in such condition that Decedent

was unable to protect and safeguard herself from further injury or death.

- IV. In the event the conduct of Defendant Michael Wester may be deemed to be intentional, nevertheless and notwithstanding such determination, the nature and extent of the injuries sustained that ultimately resulted in the death of Plaintiffs' Decedent, were unintended.

WHEREFORE, Plaintiffs demand judgment against Defendant Michael Wester for compensatory damages, together with interest, counsel fees, and costs of suit.

THIRD COUNT

Pain and suffering

- I. Plaintiffs repeat and make a part hereof the allegations contained in each previous paragraph as if same were more fully set forth at length herein.
- II. As a result of the aforementioned actions on the part of Defendant Michael Wester, Plaintiffs' Decedent was caused to live in great pain from the time of the incident until the time of her death. During that time, Decedent endured great pain and suffering, and loss of enjoyment of life.

WHEREFORE, Plaintiffs demand judgment against Defendant Michael Wester for compensatory damages, together with interest, counsel fees, and costs of suit.

FOURTH COUNT

Joinder of persons needed for just adjudication

- I. Plaintiffs repeat and make a part hereof the allegations contained in each previous paragraph as if same were more fully set forth at length herein.
- II. Plaintiffs' action against Defendants LINDA PALMISANO and ROBERT WESTER, siblings of Defendant Michael Wester, is brought pursuant to R. 4:28-1, joinder of persons needed for just adjudication. In the absence of Defendants Linda Palmisano and Robert Wester, complete relief cannot be accorded among parties to this action, specifically Plaintiffs Daisy Woodfork and Michael R. Wester.
- III. Defendant Michael Wester did inherit and receive money from the Estate of Lillian Wester, his mother, who died on or about February 10, 2007.
- IV. According to the written statements of Michael Halkias, Esq., the lawyer who handled the Estate of Lillian Wester, and according to the written statements of Linda Palmisano, Defendants Linda Palmisano and Robert Wester are the co-executors of Lillian Wester's estate.
- V. According to the accounting of the assets and expenses of the Estate of Lillian Wester prepared by the aforesaid attorney for the estate, on June 13, 2007, the total deposit of assets into the PNC Bank Estate Checking Account of Lillian Wester, Dec'd, Linda

Palmisano and Robert Wester, Co-Executors, account number 6400 6010 80335697691, was \$328,306.76. After disbursements, including commission to the estate's co-executors and attorney fees, Defendants Linda Palmisano and Robert Wester, were, on June 13, 2007, in a position to distribute the sum of \$294,000.00 to the heirs of the estate, of which Defendant Michael Wester is one.

VI. On or after June 13, 2007, Defendants Linda Palmisano and Robert Wester released to Defendant Michael Wester the sum of \$42,000.00 as Defendant Michael Wester's partial share of Lillian Wester's estate.

VII. On the one year anniversary of Lillian Wester's death, on or about February 10, 2008, Defendants Linda Palmisano and Robert Wester were in a position to distribute the sum of \$9,816.48 between the heirs of Lillian Wester's estate, of which Defendant Michael Wester is one, which was held from earlier distribution in the event any estate debts were exposed up to one year after Lillian Wester's death.

VIII. Plaintiffs demand that a constructive trust be imposed on all assets to which Defendant Michael Wester has or may claim, including but not limited to his inheritance from his mother, Lillian Wester.

IX. Plaintiffs demand that an Order to Show Cause be issued as to why Defendants Michael Wester, Linda Palmisano, and Robert Wester, should not be enjoined

from disbursing or in any way causing the depletion of the amount of \$42,000.00 or greater, which Defendant Michael Wester inherited from the Estate of Lillian Wester.

WHEREFORE, Plaintiffs demand judgment against Defendants Linda Palmisano and Robert Wester for compensatory damages, together with interest, counsel fees, and costs of suit.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues of the within Complaint.

DESIGNATION OF TRIAL COUNSEL

Plaintiffs hereby request the Court to record that Ann M. Pompelio, Esq. is hereby designated as trial counsel.

CERTIFICATION UNDER RULE 4:5-1

Plaintiffs hereby certify that the within controversy is not the subject of any other action pending in court or arbitration proceeding, except for the Order to Show Cause, which is filed simultaneously with this Complaint. Plaintiffs know of no other parties who should be joined in this action.

Dated: April 22, 2008

Ann M. Pompelio

Attorney for Plaintiffs