

FILED
COURT OF CLAIMS
OF OHIO

2013 AUG -2 AM 11:00

**IN THE COURT OF CLAIMS
STATE OF OHIO**

MELANIE LEMAY
518 St. Louis Street
Toledo, Ohio 43605

Plaintiff

PATRICK LEMAY
518 St. Louis Street
Toledo, Ohio 43605

Plaintiff

vs.

UNIVERSITY OF TOLEDO MEDICAL
CENTER
3000 Arlington Avenue
Toledo, Ohio 43614

Defendant

Case No.

2013-00451

Assigned to:

COMPLAINT

Vesper C. Williams II
Ohio Supreme Court #0026022
4643 Sylvania Avenue
Toledo, Ohio 43623
(419) 882-0601

Attorney for Plaintiffs

Now comes the Plaintiffs Melanie Lemay and Patrick Lemay by and through their undersigned attorney and for their Complaint against the University of Toledo Medical Center states as follows:

1. This Court has subject matter jurisdiction under the provisions of Chapter 2743 of the Ohio Revised Code.
2. The Plaintiffs at all times relevant to this case have been a resident of Lucas County, Ohio.

3. At all times relevant to this case Defendant University of Toledo Medical Center is a corporation set up in the State of Ohio to operate a College of Medicine and Hospital, and is an entity and/or instrumentality of the State of Ohio.

4. The University of Toledo Medical Center was the employer of the Plaintiff Melanie Lemay at all times relevant to this suit.

5. Plaintiff Melanie Lemay was hired on or about January 21, 1983, as a nurse at Medical College of Ohio now known as University of Toledo Medical Center. Plaintiff's employment at the University of Toledo Medical Center was governed by the laws of the State of Ohio and a Contract of Employment arising out of a Collective Bargaining Agreement between Plaintiff's Union AFSCME 2415 and the University of Toledo Medical Center.

6. On August 10, 2012, the Plaintiff Melanie Lemay was working along with a part time Nurse, Judith K. Moore, on a live kidney transplant. Plaintiff approached Nurse Moore to receive a status report on the operation so she could relieve her while she was taking her lunch break. Nurse Moore told plaintiff that the donor kidney was out and Dr. Rees, the surgeon in charge of the transplant procedure, was cleaning the kidney. Nurse Moore failed to log out of the system when she left the room, and Plaintiff was unsuccessful logging into the system so the entries made by the Plaintiff thereafter were being entered under Nurse Moore's Chart. When the Plaintiff entered the operating room the donor kidney had been removed and was being cleaned by the operating physician and then Dr. Rees placed the kidney in a slush machine and said not to turn the slush machine on. When Nurse Moore returned from her lunch break she did not approach the Plaintiff for a status report on the transplant or the patient. The Plaintiff left the operating room to obtain some materials requested by the operating physician and then returned to doing her charting. While Plaintiff was charting Nurse Moore removed items from the operating room and accidentally disposed of the kidney. Plaintiff did not see or know that Nurse Moore removed items from the room. Plaintiff was subsequently put on administrative leave pending an investigation by the Defendant. The Nurse Moore resigned her position.

7. Six days after the event, the Defendant implemented new policies with respect to breaking down operating rooms and transferring responsibility.

8. On September 12, 2012, the Defendant discharged Plaintiff Melanie Lemay for

violating policies with respect to communication, logging out, and for failing to stop the other nurse from removing items from the operating room prior to the conclusion of the procedure. Defendant stated to Plaintiff Melanie Lemay and others that she violated ORC 124.34(A) by failing to provide good behavior and efficient service and specifically exhibited gross neglect of duties.

9. Plaintiff Melanie Lemay filed an application for unemployment benefits beginning September 23, 2012 with Ohio Department of Job and Family Services.

10. On November 19, 2012, the Director disallowed Plaintiff's application based upon reports of the incident finding that she was discharged from employment with University of Toledo for just cause in connection with work

11. On December 17, 2012 the Plaintiff filed an appeal.

12. On December 17, 2012 the Ohio Department of Job and Family Services transferred jurisdiction to the Unemployment Compensation Review Commission.

13. On February 19, 2013, after two telephonic hearings with several witness, the Unemployment Compensation Review Commission ruled the Plaintiff was discharged by the Defendant without just cause in connection with work.

COUNT ONE

14. Plaintiffs reincorporates by reference all the allegations and averments contained in this Complaint as though they were fully rewritten.

15. Defendant did not follow its own policy that was in place on August 10, 2012, when they terminated Plaintiff without just cause in connection with her employment. Plaintiff was just six months away from having been employed by Defendant for 30 years, and being eligible for full retirement benefits.

16. Defendant did not follow the rules of progressive discipline agreed upon between the Defendant and AFSCME 2415 when they terminated Plaintiff without just cause.

17. That Plaintiff's termination was motivated by Defendant's need to deflect its responsibility for the inadequate policies that were in place on August 10, 2012, and to uphold the public image of its kidney transplant program.

18. As a direct and proximate result of the wrongful discharge and malicious

breach of contract committed by the Defendant, Plaintiff has suffered damages including but not limited to, loss of income, loss of retirement benefits, loss of health insurance benefits, and severe depression.

COUNT TWO

19. Plaintiff's reincorporates by reference all the allegations and averments contained in this Complaint as though they were fully rewritten.

20. Defendant has provided information and written reports to The Blade newspaper and other media outlets, including local television stations and social media, subjecting the Plaintiff Melanie Lemay to public scrutiny and to take the public eye from the Defendant's responsibility in this matter.

21. Plaintiff has spent much of the time following her termination seeking employment but once they Google her name she does not get a call back for an interview.

22. As a direct and proximate result of the wilful and wanton actions committed by the Defendant, its employees and/or agents, Plaintiff has suffered from defamation, slander and libel. Further, Plaintiff has suffered damage to her reputation and been exposed to public shame and disgrace affecting her daily life. She suffers from negligent and/or intentional emotional stress and suffers mental pain and depression. Plaintiff was treated by a licensed independent worker until her health insurance benefits expired and she did not have the means to continue treatment.

23. As a direct and proximate result of Defendant University of Toledo Medical Center's conduct, Plaintiff has suffered and will continue to suffer economic and non-economic damages, including but not limited to the loss of salary, loss of health insurance and retirement benefits, and other terms, privileges, and conditions of employment for which Defendant University of Toledo Medical Center is liable.

COUNT THREE


24. Plaintiff's reincorporates by reference all the allegations and averments contained in this Complaint as though they were fully rewritten.

25. As a direct and proximate result of the negligence of the Defendant, its employees and/or agents, Plaintiff Patrick Lemay, husband of Plaintiff Melanie Lemay, sustained a loss of

the services, society, companionship, cooperation, affection, aid, comfort and spousal consortium from Plaintiff Melanie Lemay.

WHEREFORE Plaintiffs respectfully request that they be awarded damages in excess of \$25,000.00 as to Count One, Count Two and Count Three of this Complaint for damages as stated above including compensatory damages, pain and suffering, additional medical expenses and treatment, sever and permanent mental and emotional distress, wage losses, spousal consortium and other costs of this action together with punitive damages and any other relief that this Court deems just and appropriate.

Respectfully submitted,


Vesper C. Williams II