

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

**GLENN R. WAITE, individually and as
Personal Representative of Harriet I.
Waite, Deceased,**

Plaintiff,

vs.

ANNE HIPPE, et al.,

Defendants.

Case No. CI99-590

**ORDER AND
JUDGMENT OF DISMISSAL**

DATE OF HEARING: June 13, 2000.

DATE OF RENDITION: July 3, 2000.

DATE OF ENTRY: Date of filing by court clerk (§ 25-1301(3)).

TYPE OF HEARING: Telephone conference call (per Rule 12-3D(2) upon special permission).

APPEARANCES:

For plaintiff: plaintiff pro se.

For defendants:

A. Hippe: Richard A. Douglas without defendant.

R. Hippe, Empson,
Kortum, & Gless: Charles E. Lowe, Assistant Attorney General, without defendants.

Carpenter, S.I.M.G.,
Mangana, Packard,
Himes, & O'Holleran: Mark E. Novotny without defendants.

Novotny: defendant pro se.

R.W.M.C. & Chaloupka: James A. Snowden with defendant Chaloupka.

Snowden: defendant pro se.

SUBJECT OF HEARING: The following pleadings:

1. respective demurrers to plaintiff's fourth amended petition filed by defendants:

- A. Snowden on 3/6/00;
- B. R.W.M.C. on 3/6/00;
- C. A. Hippe on 3/8/00;

- D. Chaloupka on 3/9/00;
 - E. Carpenter, S.I.M.G., Novotny, Mangana, Packard, Himes, O'Holleran on 3/9/00; and,
 - F. R. Hippe, Empson, Kortum, & Gless on 3/10/00;
2. plaintiff's motion for summary judgment filed on 4/27/00;
 3. motions for continuance of summary judgment hearing filed by defendants:
 - A. Carpenter, S.I.M.G., Novotny, Mangana, Packard, Himes, O'Holleran on 5/3/00;
 - B. A. Hippe on 5/17/00; and,
 - C. R. Hippe, Empson, Kortum, & Gless on 5/23/00.

PROCEEDINGS: Refer to "Order" rendered on June 13, 2000.

FINDINGS: The court finds:

1. The demurrers should be sustained on the particular grounds stated in the "Order" section.
2. Because it is clear that no reasonable possibility exists that amendment will correct the defects, leave to amend must be denied. *Nebraska Beef v. Universal Surety Co.*, 9 Neb. App. 40, ___ N.W.2d ___ (2000).
3. The court is not satisfied that the plaintiff has met his burden to show that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the plaintiff is entitled to judgment as a matter of law. *Philpot v. Aguglia*, 259 Neb. 573, ___ N.W.2d ___ (2000).
4. The motions for continuance are moot.

ORDER AND JUDGMENT: IT IS ORDERED AND ADJUDGED that:

1. The demurrer of defendant James A. Snowden is sustained upon all stated grounds.
2. The demurrer of defendant Regional West Medical Center is sustained upon all stated grounds.
3. The demurrer of defendant Anne Hippe is sustained upon the grounds stated in paragraphs 2, 3, 5, 6, 7, and 8 thereof, and the first and last sentences of paragraph 9 thereof.
4. The demurrer of defendant Robert Chaloupka is sustained upon all stated grounds.
5. The demurrer of defendants W. Scott Carpenter, M.D., et al., is sustained upon the grounds stated in paragraphs 2, 4, 5, 6, 7, 8, 9, 10, 11, and 12 thereof.

6. The demurrer of defendants Robert O. Hippe, et al., is sustained upon the grounds stated in paragraphs 1, 3, 4, and 5 thereof.

7. Leave to file a further amended petition is denied.

8. The plaintiff's motion for summary judgment is denied.

9. The respective motions of various defendants for continuance of hearing on the plaintiff's motion for summary judgment are denied as moot.

10. JUDGMENT of dismissal is entered dismissing the plaintiff's Fourth Amended Petition with prejudice at plaintiff's cost.

11. Any and all requests for attorneys' fees are denied.

Signed in chambers at Ainsworth, Nebraska, on July 3, 2000.
DEEMED ENTERED upon the date of filing by the court clerk.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 20____ by ____.
- Note the decision on the trial docket as: [date of filing] Signed "Order and Judgment of Dismissal" entered sustaining demurrers on particular grounds, denying leave to amend petition, denying motion for summary judgment, denying motions for continuance, dismissing petition with prejudice at plaintiff's cost, and denying requests for attorneys' fees.
Done on _____, 20____ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge