

CAUSE NO. 2019534246

TITA SENEЕ GRAVES,

Plaintiff,

v.

NAAG PATHOLOGY LABS, PC,
DR. EVAN WILLIAM MATSHES, and
DR. SAM ANDREWS,

Defendants.

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IN THE 72ND DISTRICT COURT

IN AND FOR

LUBBOCK COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION AND REQUEST FOR DISCOVERY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, TITA SENEЕ GRAVES, Plaintiff herein, complaining of Defendant NAAG PATHOLOGY LABS, PC, et al, and for cause of action would respectfully show unto this Court the following:

I. DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level III of Tex. R. Civ. P. 194.

II. PARTIES

2. Plaintiff TITA SENEЕ GRAVES (hereinafter “Plaintiff” or “Ms. Graves”) is an individual who resides at 1510 Rear County Rd 7360, Lubbock, Texas 79423.

3. National Autopsy Assay Group, PC (hereinafter “Defendant NAAG” or “NAAG”) is a professional corporation doing business in the State of Texas. They are incorporated in California and their principal place of business is in San Diego, California. This defendant may be served

with process through its registered agent, CAPITOL CORPORATE SERVICES, INC., at 206 E 9TH ST, STE 1300, AUSTIN, TX 78701.

4. Dr. Evan Matshes (hereinafter “Defendant Matshes” or “Dr. Matshes”) is an individual who resides in San Diego County, California, and may be served at his office at 6540 Lusk Blvd Suite c262, San Diego, CA 92121.

5. Dr. Sam Andrews (hereinafter “Defendant Andrews” or “Dr. Andrews”) is an individual who resides in Texas. He can be served at his office in Lubbock at 4434 S Loop 289, Lubbock, TX 79414.

III. JURISDICTION AND VENUE

6. This Court has personal jurisdiction over the parties. All the parties are either individual residents of the State of Texas, are doing business in Texas, have sufficient minimum contacts with the State of Texas, and/or have purposefully availed themselves of the laws and markets of the State of Texas so as to not offend traditional notions of fair play and substantial justice.

7. This Court is the proper venue to hear this lawsuit pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) because the events giving rise to this lawsuit occurred in Lubbock County, Texas.

8. As required by Tex. R. Civ. P. 47(b), Plaintiff’s counsel states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Tex. R. Civ. P. 47(c), Plaintiff seeks monetary relief over \$1,000,000. The amount of monetary relief actually awarded, however, will ultimately be determined by a jury. Plaintiff also seeks prejudgment and post-judgment interest at the highest legal rate.

IV. FACTS

9. This is an employment case. Ms. Graves was employed by Lubbock County and worked in the Medical Examiner's Office until she was fired on January 17, 2019. The Defendants induced Lubbock County to terminate Plaintiff's employment because she reported suspicious and potentially illegal activity within the medical examiner's office.

10. Ms. Graves is 56 years old, was raised in Abernathy, and has lived in Lubbock since she was 18 years old. She went to South Plains College to qualify as an x-ray tech and went on to work at Covenant Imaging for 28 years. Her dream was to work in the Medical examiner's Office, so when a job opening was posted in 2015, she applied with the County and was hired. The Lubbock County Medical Examiner's Office was staffed with Lubbock County Employees who worked under the direction of the contracted Medical Examiner.

11. Ms. Graves worked under Medical Examiner Dr. Natarajan until Lubbock County replaced him in August 2018 with a contract interim Medical Examiner, National Autopsy Assay Group "NAAG", from San Diego, CA. The NAAG contract Medical Examiner was pathologist Dr. Andrews, who held a Texas Medical License. Dr. Andrews was to fly into Lubbock periodically and perform autopsies.

12. Immediately after NAAG took over the contract, NAAG began to make changes at the Lubbock Medical Examiner's Office. Apparently, Lubbock County allowed the contract medical examiner to fire the Lubbock County employees who worked in the medical examiner's office. The managerial director Honey Smith was fired immediately, and Office Manager Neil Kilcrease

quit within a week. Frank Garcia, Catrina Beights and Kayla Shoenhals were all fired the same day, Kayla by text, in late August.

13. In August 2018, Dr. Matshes, a Pathologist with NAAG, came to Lubbock with the new interim Medical Examiner Dr. Andrews and explained to the staff that NAAG was starting a new protocol and a new technique for autopsies involving infants and young children. Dr. Matshes stated that he wanted to collect more tissue from those autopsies than had been done in the past, because he needed that tissue for his “research.”

14. Dr. Matshes gathered the staff to watch as he performed two autopsies on infants. The new protocol required the removal of the children’s brain, eyes, spinal cord, posterior neck, including vertebra, and the heart and lungs, which Dr. Matshes demonstrated on both children. Dr. Matshes stated that he was acting as a “tech”, not a doctor, since was not licensed to practice medicine in Texas. Dr. Matshes made the incisions and removed the organs himself, while Dr. Andrews observed along with the staff.

15. One of the autopsies was a suspected case of child abuse from Odessa. The other infant autopsy that day was a case where an infant had died after medical care in UMC hospital from burns suffered in a house explosion in Midland. There was no need for such tissue to determine the cause of the burn death.

16. Ms. Graves, and the other staff were disturbed by the autopsies of the infants. The unnecessary harvesting of body parts for a Pathologist’s personal research interests seemed wrong. An autopsy performed by a physician who was not licensed in Texas seemed wrong. Ms. Graves took 3 or 4 pictures as evidence that Dr. Matshes was performing the autopsy as an unlicensed

physician. She sent those to another pathologist, Dr. Pustilnik in Houston for his advice. Ms. Graves was familiar with Dr. Pustilnik because he had done some contract work in Lubbock in the past, and Ms. Graves knew him to be a professional and ethical physician, and she wanted his advice and assistance about reporting this information to the appropriate agencies. Ms. Graves deleted the pictures from her phone and did not retain them. She did not send the pictures to anyone else, and she does not know what Dr. Pustilnik did with the pictures.

17. On or around October 1st, 2018, NAAG signed a contract with Lubbock County to provide medical examiner services on a more permanent basis. Dr. Matshes came to Lubbock and had a meeting with the staff and told them that somebody had sent photos to the media, to law enforcement, to the Midland District Attorney's Office and the Texas Medical Board. He went on to say that "Whoever did that will go to jail" and "We think we know who did it". Apparently NAAG thought Kayla Schoenhals may have been the source of the leak, since she had been recently fired by text message, and was presumed to be upset about that. Present for that meeting were Logan Kuss, Kason McGuinness, Evan McElwain, Andrew Peebles, and Ms. Graves.

18. Later, around late September 2018, Ms. Graves saw Dr. Matshes in an autopsy room where an autopsy was being conducted on an infant who had died from meningitis. As soon as the child's skull cap was removed, everyone agreed that the cause of death was an obvious case of meningitis. Dr. Matshes then stated that he "needed more naturals like this for research" and directed the staff to take all the tissue outlined in the new protocol. The staff eventually understood that Dr. Matshes was doing research to identify certain markers for child abuse but needed more studies of tissue from infant and children who had died natural deaths, to compare to the tissue from children who had died from abuse, and that was the purpose of the tissue harvest.

19. Many other employees quit over the next few months, many of them because they were upset by what appeared to be unnecessary and inappropriate harvesting of tissue from infants and children, and the unnecessary harvesting of those bodies. Those who quit include Evan McElwain, Logan Kuss, and Andrew Peeples. NAAG brought in some its own employees, including James Buckley as Senior Investigator, Lisa Hang would be in charge of the autopsy suites and a paralegal named Lee Bennett.

20. On or about December 4th, an Lubbock Police Department employee named Whitney McClendon from the ID division was at the ME's office. Ms. Graves reported to Ms. McClendon her concerns that an unlicensed physician was performing autopsies, about the excessive tissue harvest, and other concerns about the professionalism and competence of the contractor.

21. On January 4th, Ms. Graves reported her concerns to Lubbock County Commissioner, Jason Corley. Ms. Graves signed an affidavit at the request of Mr. Corley describing her concerns about excessive tissue harvest and the unlicensed practice of medicine by Dr. Matshes.

22. On or about January 14th Dr. Matshes came to Lubbock. James Buckley called Ms. Graves into a conference room to meet with Dr. Matshes. Dr. Matshes accused Ms. Graves of talking to the County Commissioner and to Law Enforcement. He told her that LPD is "not completely on your side". He said, "the Captain and Chief of Police do not agree with you." He asked, "Why are you so mad?" and "What should I do with you?" Ms. Graves took the next day off, and returned Wednesday, when James Buckley asked Ms. Graves to answer the following questions in writing, such as: Why do you like your job?; Do you want to keep your Job?; Why were you mad?; Why

did you behave that way?; and, What are you going to do to correct it? Ms. Graves was fired Thursday January 17th by Dr. Andrews.

23. On January 29th Ms. Graves emailed Greg George, Human Resources Director for Lubbock County, inquiring about her employment status. He responded that she had been terminated by Dr. Andrews as of January 17th. *See* Exhibit A.

V. CAUSES OF ACTION

TORTIOUS INTERFERENCE WITH CONTRACT

24. Defendant Andrews and Matshes both willfully and intentionally interfered with Plaintiff's employment by inducing Lubbock County to fire Plaintiff because she reported her concerns about potentially illegal activity within the Medical Examiner's Office to the authorities. Such conduct amounts to tortious interference with contract. Both Defendant Andrews and Matshes were employees or agents of NAAG and were acting within the course and scope of that employment.

VI. PLAINTIFF'S DAMAGES

25. Plaintiff seeks actual damages and exemplary damages for Defendants' tortious interference with her contract. Defendants acted maliciously.

26. As a direct and proximate result of Defendants' tortious interference, Plaintiff suffered damages and, as provided by Texas law, is entitled to recover for those damages. Plaintiff has suffered damages as follows:

- a. Mental anguish sustained in the past;
- b. Mental anguish that, in reasonable probability, Plaintiff will sustain in the future;

- c. Loss of earnings sustained in the past;
- d. Loss of earnings that, in reasonable probability, Plaintiff will sustain in the future;

VII. JURY DEMAND

27. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

VIII. PRAYER

28. WHEREFORE, Plaintiff requests that Defendants be cited to appear and answer, and that on final trial Plaintiff has judgment against Defendants for:

- a. Actual and exemplary damages;
- b. Prejudgment and post-judgment interest;
- c. Declaratory relief as outlined in this petition;
- d. Costs of court;
- e. All other relief to which the Plaintiff may be justly entitled.

Respectfully submitted,

Glasheen, Valles & Inderman, LLP
1703 West Avenue
Austin, Texas 78701
(512) 851-1035
(512) 298-1009—Fax
efile.hayden.hatch@glasheenlaw.com

/s/ Hayden Hatch

Kevin Glasheen
State Bar No. 08001510
Hayden Hatch
State Bar No. 24109983

ATTORNEYS FOR THE PLAINTIFF

From: Greg George <GGeorge@co.lubbock.tx.us>
Date: January 29, 2019 at 2:04:20 PM CST
To: senee <seneegraves@yahoo.com>
Subject: RE: Employment Status

Dr. Andrews communicated to you on January 17, 2019 your employment with the LCME department ended on January 17, 2019. This communication took place in person with you in his office on January 17, 2019.

Greg George, PHR
Human Resources Director
Lubbock County
(806)775-1690
(806)775-7977 FAX

"This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail and delete the message."

From: senee <seneegraves@yahoo.com>
Sent: Tuesday, January 29, 2019 5:28 AM
To: Greg George <GGeorge@co.lubbock.tx.us>
Subject: Employment Status

Mr. George:
I am writing to inquire about the status of my employment.
My full name is Tita Senee Graves.
Can you please inform me of what that status is?
Thank you for your quick reply.

Senee

Sent from [Mail](#) for Windows 10

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