

United States Court of Appeals for the Fifth Circuit

No. 23-20525

United States Court of Appeals
Fifth Circuit

FILED

December 11, 2023

Lyle W. Cayce
Clerk

IN RE LARRY D. FORD,

Petitioner.

Petition for Writ of Mandamus to the
United States District Court
for the Southern District of Texas
USDC No. 4:21-CV-3017

UNPUBLISHED ORDER

Before STEWART, GRAVES, and OLDHAM, *Circuit Judges*.

PER CURIAM:

Larry D. Ford has filed in this court a pro se petition for a writ of mandamus and a motion requesting leave to file his mandamus petition in forma pauperis (IFP). The motion for leave to proceed IFP is GRANTED.

The instant mandamus petition relates to a civil action Ford filed in September 2021. Ford's civil action sought monetary damages for the acts and omissions of six defendants in providing care for his mother, Doris Jean Ford, who passed away in April 2018. By way of an order dated June 30, 2022, the district court dismissed Ford's claims as to defendant Ana L. Leech, M.D., based on a determination that the claims were barred by the applicable two-year statute of limitations. On September 8, 2022, the district court dismissed Ford's claims against the remaining defendants, without

No. 23-20525

prejudice, for want of prosecution. The district court determined that the remaining defendants had not made an appearance in the case and that service had never been perfected.

Ford subsequently moved for leave to file an amended complaint, which the district court denied. This court dismissed, for lack of jurisdiction, Ford's appeal from the order denying leave to amend. *Ford v. Mem'l Hermann Greater Heights Hosp.*, No. 22-20566 (5th Cir. Nov. 22, 2022) (unpublished order).

In his mandamus petition, Ford contends that the defendants were properly served but that they failed to respond, in violation of the Federal Rules of Civil Procedure. He seeks an order directing the district court to allow his case to proceed and to grant him leave to amend his complaint.

"Mandamus is an extraordinary remedy that should be granted only in the clearest and most compelling cases." *In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987). A party seeking mandamus relief must show both that he has no other adequate means to obtain the requested relief and that he has a "clear and indisputable" right to the writ. *Id.* (internal quotation marks and citation omitted). "Where an interest can be vindicated through direct appeal after a final judgment, this court will ordinarily not grant a writ of mandamus." *Campanioni v. Barr*, 962 F.2d 461, 464 (5th Cir. 1992).

In essence, Ford's mandamus petition seeks to challenge the dismissal of his civil action. However, Ford had an available appellate remedy, but failed to properly pursue it. He may not now resort to the extraordinary remedy of mandamus, which does not substitute for an appeal. *See Willy*, 831 F.2d at 549.

The petition for a writ of mandamus is DENIED. To the extent that Ford seeks damages, costs, and pre-judgment interest, his requests are DENIED.



A True Copy
Certified order issued Dec 11, 2023

Lyfe W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

FIFTH CIRCUIT COURT ORDER NO 23-20525

Case: 23-20525 Document: 27-1 Page: 2 Date Filed: 12/11/2023

No. 23-20525

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Steph W. Conner
Clerk, U.S. Court of Appeals, Fifth Circuit

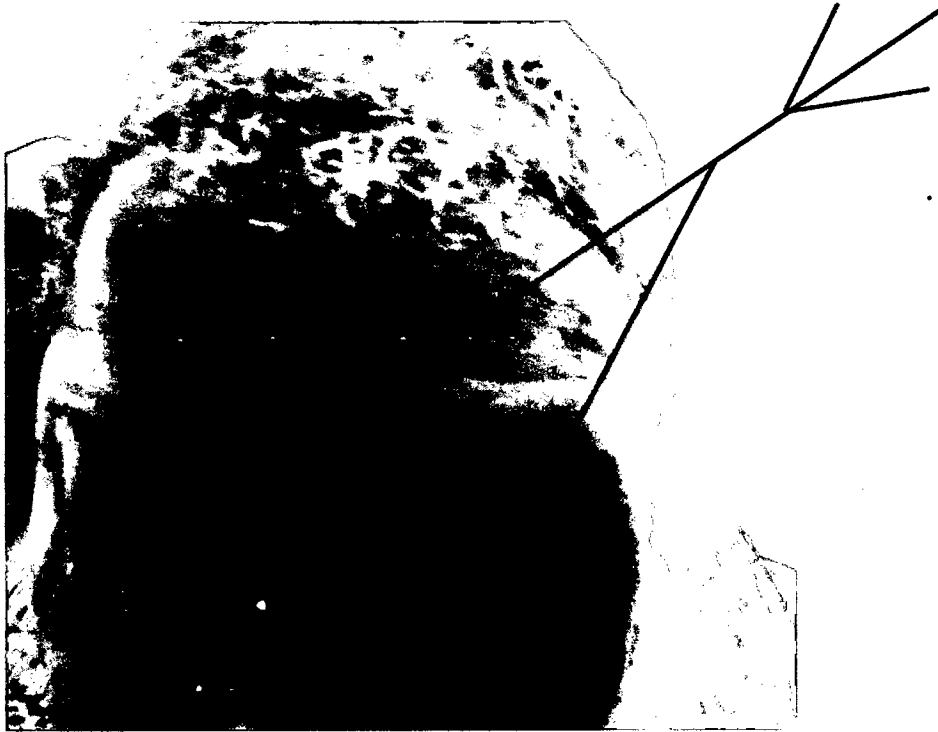
APPENDIX A

(Chronological Facts)

	2015	2016	2017	2018
Brook Hollow Nursing Home	<p>Blunt Force Trauma Starvation - Dehydration Rushed by ambulance to Memorial Hermann's ER NEXT DOOR</p> <p>"she fell out of bed" was their response.</p>	<p>Blunt Force Trauma Neglect of Memorial Hermann and Memorial Herman Hospice Pt admitted to ER with pneumonia</p> <p>"she fell out of bed" was their response.</p>	<p>Blunt Force Trauma Sutures applied to head</p> <p>"she fell out of bed" was their response.</p>	<p>Murdered April 13, 2018</p> <p>Memorial Hermann Hospice Brook Hollow Nursing Home Lethal Dosages of Morphine</p>
Memorial Hermann ER	<p>Nursing staff mistakenly treated her as DNR for 8-10 hrs. neglected nutrition and hydration</p>	<p>ER again allow pt to suffer over 8 hrs. No DNR status</p> <p>ER X3 for the year</p>	<p>Again ER mistakingly waited for over 8 hrs. Thought Mrs. Ford was a DNR</p>	
Memorial Hermann Hospital	<p>Feeding tube (Peg tube) Dr. Garcia release her before stabilizing. Learned later that he was also director of Brook Hollow Nursing Home</p>	<p>Pt. intubated and placed on life support. Pt. was again released before recovery or improvement.</p>	<p>Treated and released from ER. No medication administered.</p>	
Memorial Hermann Hospice		<p>Gross neglect of nutrition hydration. No baths, hygiene. Contracted Urinary Infection Rushed to ER again.</p>	<p>Memorial Hermann Hospice continued to blame poor nutrition on Brook Hollow and back and forth. Another urinary tract infection and mouth infection.</p>	
  			 	<p>Vital Signs 2 days before murder Heart rate 78 Oxygen 98% Blood Pressure 135/89 Temp. 97 Blood Glucose 130</p>

BLUNT FORCE TRAUMA AND CONTUSIONS

Two Severe Subdural Hematomas



**First Lady:
Mrs. Doris Jean Ford**

**Houston Mayor:
Sylvester Turner**



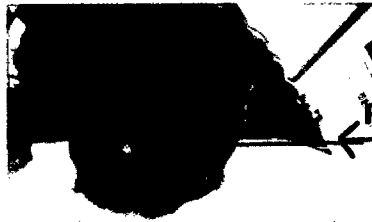
**Pastor:
Dr. Leon Ford**

Mrs. Doris Jean Ford



Severe Subdural Hematomas

Mrs. Doris Jean Ford



Full Facial Subdural Hematomas

Mrs. Doris Jean Ford

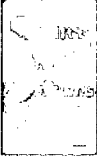

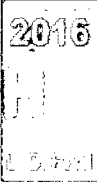
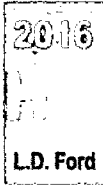


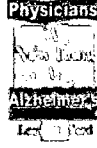


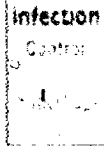
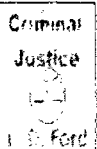


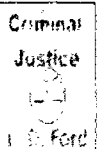


Severe Head Contusions

APPENDIX B

AUTHOR LARRY D. FORD, RRT

36 TEXTBOOKS – PUBLICATIONS (PEER REVIEWED)

	Cardiology Science for the Millennial By Larry Donnell Ford	Kindle eBook LIVE Submitted on April 26, 2017 View on Amazon ASIN: B0713S4Z7G		Cardiology Science for the Millennial By Larry Donnell Ford	Kindle eBook LIVE Submitted on April 27, 2017 View on Amazon ASIN: B0722KGYHC
	2016 Hospital Compliance Manual 2015-2016 By Larry Donnell Ford	Paperback LIVE Submitted on July 24, 2017 View on Amazon ASIN: 1521921758		2016 Hospital Compliance Manual: The... By Larry Donnell Ford	Paperback LIVE Submitted on July 13, 2017 View on Amazon ASIN: 1521529489
	Occupational Therapy Saving Lives... By Larry Donnell Ford	DRAFT Unpublished Last modified on April 11, 2016 View on Amazon ASIN: B00D417E7C		Occupational Therapy Saving Lives... By Larry Donnell Ford	Paperback LIVE Submitted on July 26, 2017 View on Amazon ASIN: 1521941157
	Physicians: A New Look At Alzheimer's By Larry D. Ford	Kindle eBook LIVE Submitted on May 13, 2017 View on Amazon ASIN: B0725HMZ8H		Infection Control: Stops Superbugs... By Larry Donnell Ford	Kindle eBook LIVE Submitted on April 26, 2017 View on Amazon ASIN: B071RMV6GS
	EMTs and Infection Control: EMTs are... By Larry Donnell Ford	Paperback LIVE Submitted on July 13, 2017 View on Amazon ASIN: 1521828528		Infection Control: Stops Superbugs... By Larry Donnell Ford	Paperback LIVE Submitted on June 29, 2017 View on Amazon ASIN: 1521710430
	Criminal Justice Infection Control... By Larry Donnell Ford	Kindle eBook LIVE Submitted on May 18, 2017 View on Amazon ASIN: B0711T16PR		Paramedics and Infection Control: P... By Larry Donnell Ford	Kindle eBook LIVE Submitted on May 23, 2017 View on Amazon ASIN: B072LVGZ18
	Military and Infection Control: The... By Larry Donnell Ford	Kindle eBook LIVE Submitted on May 23, 2017 View on Amazon ASIN: B0717538BD		Criminal Justice Infection Control... By Larry Donnell Ford	Kindle eBook LIVE Submitted on May 23, 2017 View on Amazon ASIN: B072C3Q1P7



COVID-19 & SARS-COV-2: Prevention...
By Larry Donnell Ford

Last modified on August 28, 2020

Paperback
DRAFT
Last modified on September 3, 2020

Kindle eBook
LIVE
Submitted on January 17, 2014
[View on Amazon](#)
ASIN: B00HWKJVLK

Paperback
LIVE
Submitted on June 24, 2017
[View on Amazon](#)
ASIN: 1521559023



The ultimate and total delivery of ...
By Larry Donnell Ford

Kindle eBook
LIVE
Submitted on January 17, 2014
[View on Amazon](#)
ASIN: B00HWLQWCA

Paperback
LIVE With unpublished changes
Submitted on June 24, 2017
[View on Amazon](#)
ASIN: 1521567468



Cardiopulmonary Science for Respira...
By Larry Donnell Ford

Paperback
LIVE
Submitted on June 24, 2017
[View on Amazon](#)
ASIN: 1521559023



NDR - Nurses Desk Reference: Nurses...
By Larry Donnell Ford

Kindle eBook
LIVE
Submitted on May 31, 2017
[View on Amazon](#)
ASIN: B071FPJM78

Paperback
LIVE With unpublished changes
Submitted on June 28, 2017
[View on Amazon](#)
ASIN: 1521583420



2016 Nursing Home Compliance Manual
By Larry Donnell Ford

Kindle eBook
LIVE
Submitted on May 9, 2016
[View on Amazon](#)
ASIN: B01FEDR8MA

+ Create paperback



RDR Respiratory Desk Reference for...
By Larry Ford

Kindle eBook
LIVE
Submitted on July 7, 2018
[View on Amazon](#)
ASIN: B07FBHLG96

Paperback
LIVE
Submitted on July 8, 2018
[View on Amazon](#)
ASIN: 198339632X

LIVE
Submitted on October 22, 2016
[View on Amazon](#)
ASIN: B01M3TC576



Police (Split Seconds) Infection Co...
By Larry D. Ford

Kindle eBook
LIVE
Submitted on May 23, 2017
[View on Amazon](#)
ASIN: B071VZCKMB

Paperback
LIVE
Submitted on July 3, 2017
[View on Amazon](#)
ASIN: 1521750513

LIVE
Submitted on May 18, 2017
[View on Amazon](#)
ASIN: B071FB28ZF

+ Create paperback

Why offer multiple formats?



2019 -2020 Nursing Home Compliance ...
By Larry Donnell Ford

Paperback
LIVE With unpublished changes
Submitted on July 3, 2017
[View on Amazon](#)
ASIN: 1521744815



Nurses Understanding Alzheimer's: ...
By Larry D. Ford

Kindle eBook
LIVE
Submitted on May 23, 2017
[View on Amazon](#)
ASIN: B0723BBSYT

+ Create paperback

Why offer multiple formats?



Surgeon Desk Reference: Orthopedic ...
By Larry Ford

Kindle eBook
LIVE
Submitted on January 16, 2019
[View on Amazon](#)
ASIN: B07MVNCK8W

Paperback
LIVE
Submitted on September 24, 2015
[View on Amazon](#)
ASIN: 1549928562



Correctional Officers Infection Con...
By Larry Donnell Ford

+ Create paperback

Why offer multiple formats?



Fire Fighters and Infection Control...
By Larry Donnell Ford

Kindle eBook
LIVE
Submitted on May 23, 2017

Paperback
DRAFT
Last modified on March 29, 2021

APPENDIX C

POWER OF ATTORNEY

FORD, DORIS MCDONALD

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000513114

Page 2 of 6

PATIENT REGISTRATION FINANCIAL RESPONSIBILITIES

In consideration of the services to be rendered to the patient, the patient and/or other legally responsible person signing this document authorizes credit investigation and individually assumes full financial responsibility for the payment of the patient's account in accordance with the regular rates and terms of the hospital. If the account is referred to an attorney or collection agency, the same person agrees to pay actual attorney's fees and collection expenses. All delinquent accounts may bear interest at the legal rate. If charity services are required, eligibility determination should be requested upon admission to the hospital or upon receipt of itemized bill or statement.

IRREVOCABLE ASSIGNMENT OF INSURANCE BENEFITS

In consideration of services rendered, I hereby irrevocably assign and transfer to the hospital for myself and my dependents all rights, title and interest in the benefits payable for services rendered by the hospital provided in any insurance policy(ies) under which I or any of my dependents are insured. Said irrevocable assignment and transfer shall be for the purpose of granting the hospital an independent right of recovery in any policy(ies) of insurance, to which benefits may be payable for this hospitalization or outpatient treatment, but shall not be construed to be an obligation of the hospital to pursue any such rights or recovery.

I hereby authorize and direct all insurance company(ies) under which I am insured to pay directly to the hospital, all benefits due under said policy(ies) by reason of services rendered therein. I will pay the hospital for all charges incurred, or alternately, for all charges in excess of the sums actually paid by said policy(ies).

I also irrevocably assign to the hospital all rights, title, and interest in benefits payable out of any third party action against any other person, entity, or insurance company, or out of recovery under the (uninsured motorist provisions or the medical payment provisions of any automobile insurance policy(ies) or any other insurance policy(ies) under which I may be entitled to recover.

I also irrevocably authorize payment directly to the anesthesiologist, pathologist, and radiologist and other treating physicians rendering professional services. Each person signing the Admission Consent is financially responsible for charges not collected by this assignment.

AUTHORIZATION FOR USE AND DISCLOSURE OF HEALTH INFORMATION TREATMENT: I (the patient or the patient's legal representative/personal representative) understand(s) that the hospital may use and disclose my (the patient's) medical information to physicians or other health care providers in order to provide treatment to me (the patient).

PAYMENT: To the extent necessary to determine liability for payment and to obtain reimbursement, I (the patient or the patient's legal representative/personal representative) authorize(s) the hospital and the patient's physicians to disclose my (the patient's) health care information, including demographic information, to any person, Social Security Administration, insurance or benefit payor, health benefit plan, or employer or worker's compensation carrier which is, or may be, liable for all or a portion of the hospital's or treating physician's charges, and to complete claim forms on behalf of the patient.

HEALTH CARE OPERATIONS: I (the patient or the patient's legal representative/personal representative) understand(s) that the hospital may use and disclose my health information in connection with provider operations of the hospital. Examples of health care operation uses and disclosures are: quality assessment and improvement activities, accreditation and certification, licensing, medical reviews, legal services, debt collection and auditing, business planning and general business management and litigation, including subpoenas and court orders.

I (the patient or the patient's legal representative/personal representative) also understand that my (the patient's) health care information will be used and disclosed according to Memorial Hermann's Joint Notice of Privacy Practices.

I (the patient or the patient's legal representative/personal representative) also understand that a written authorization from me (the patient) will be required for all other uses and disclosures.

I (the patient or the patient's legal representative/personal representative) understand that special written authorization from me (the patient) will be requested by the hospital prior to releasing health care information if I (the patient) am (is) receiving mental health services or care in an alcohol or drug abuse treatment program or facility.

DECLARATION

I have read and understand the above agreements, authorizations, and irrevocable assignments. The terms and consequences of this document have been fully explained to me and I have signed it freely and without inducement other than the rendition of services. All questions have been fully answered. I understand that physicians are independent contractors and are not employees of the Hospital.

A PHOTOCOPY OF THIS DOCUMENT SHALL BE CONSIDERED AS EFFECTIVE AND VALID AS THE ORIGINAL

<i>Doris Ford</i>	3/28/2015	FORD, DORIS MCDONALD	3/28/2015
PATIENT SIGNATURE	DATE	PRINT NAME	DATE
000513114	3/28/2015		
GUARANTOR/INSURED SIGNATURE	DATE	PRINT NAME	DATE
000513114	3/28/2015		
WITNESS SIGNATURE	DATE	PRINT NAME	DATE

CONSENT TO PHOTOGRAPH/VIDEO TAPE

I authorize Memorial Hermann and/or physicians to take photographs or other images of me or parts of my body while under treatment for use in medical evaluation, medical education and/or research.

3/28/2015

Patient Signature/Legal/Personal Representative

Date

If signed by someone other than the patient, please state relationship/authority

MEMORIAL
HERMANN

Authorization for Use/Disclosure and
Waivers/Insurance Assignments

39248161-7501 D A-03/28/15
FORD, DORIS MCDONALD F
DOB: 04/14/1935 79Y SER: EMR



**MEMORIAL
HERMANN****PATIENTS' RIGHTS**

Our facility cares for all patients, regardless of race, creed, sex, national origin, religion, disability, or economic status.

As a patient in our facility, you have the right to be treated with dignity and respect, to participate in the development and implementation of your plan of care, and to make informed decisions regarding your care. You have the right to have your pain appropriately assessed and managed, and to have your care and treatment provided in a setting that is safe, which affords privacy, and which is free of all forms of abuse or harassment.

You (or your legally authorized representative) will be asked by your physician to give voluntary and informed consent before any medical procedure. You have the right to know who will perform the procedure, and what its risks, benefits, and alternatives are. If you are asked to voluntarily participate in clinical research, that research can begin only after appropriate informed consent has been given.

You have the right to determine who may visit you without restriction based on race, color, national origin, religion, sex, sexual orientation, gender identity or disability.

You should expect all persons involved in your care to identify themselves by name and title. They should explain to you the nature and purpose of the procedures to be performed. You have the right to communicate with all who are involved in your care; reasonable effort will be made to overcome language barriers.

You have the right to be free from the use of any form of restraints, including physical restraints and drugs that are not medically necessary.

You have the right to have protective services offered to you, for example, guardianship, or child or adult protective services through county agencies.

You have the right to prepare advance directives (medical decision-making tools that assist you to communicate your wishes regarding medical treatment in the event you cannot communicate with your physician). In Texas, you can complete four kinds of advance directives: 1) a directive to your physician which allows you to decline or request aggressive medical treatment when you have a terminal or irreversible condition; 2) a Medical Power of Attorney which allows you to appoint an individual to make medical decisions for you if you are incapable of doing so; 3) a directive which allows you to decline cardiopulmonary resuscitation (CPR) and other treatment by emergency medical personnel and other health care providers outside of the hospital and in the hospital emergency room and outpatient departments; and 4) a directive that describes the types of mental health treatment you would or would not like to receive at a time when you cannot communicate your wishes.

Our facility is committed to providing quality health care to our patients in accordance with the prevailing standards of medical care and State and Federal laws. We maintain written policies on the advance directives listed above. These policies do not require a physician to provide or perform procedures which are not in accordance with prevailing standards of medical care, or which the physician deems inappropriate in a particular clinical setting (medically futile). Although medically futile treatment is not provided, our patients continue to receive care to provide comfort and pain relief. (In accordance with Texas law, if brain death is pronounced, artificial life support is removed.)

We will provide advance directive forms to you at your request. Our facility also offers our patients, their families, and surrogate decision-makers an opportunity to meet with our ethics committee to discuss difficult questions regarding end-of-life care and other complex medical issues. Please contact your nurse if you need advance directive forms, or if you would like to speak with someone from the ethics committee.

You have the right to confidentiality of your clinical record, and to obtaining information contained in your record within a reasonable time frame.

If your physician decides that you should be transferred to another facility, you will be moved only after you have received a complete explanation of the need for transfer and of the alternatives of transfer. The receiving facility must agree to the transfer before it occurs.

You have the right to receive an itemized bill unless you have voluntarily waived the right under a special billing agreement.

You have the right to register complaints about care or treatment through the hospital's Patient Relations Department, and to receive a timely response to those complaints.

For patients who have not yet reached the age of majority, these rights are exercised by the patient's parent or legal guardian.

You have the right to register complaints about care or treatment and receive a response to those complaints by informing your direct care giver, management, or by contacting the hospital's Patient Relations Department. Outside agencies that may be contacted to register complaints are listed below.

Texas Dept. of State Health Services
1100 West 49th Street
Austin, Texas 78756
1-888-973-0022

The Joint Commission
One Renaissance Blvd.
Oakbrook Terrace, IL 60181
1-800-994-6610 Email: complaint@jointcommission.org

PATIENT'S RIGHTS: I acknowledge receipt of a statement of the "Patient Rights."

6443-B-F-2 12/11

39248161-7501 D A 03/28/15
FORD, DORIS MCDONALD F
DOB: 04.14.1935 79Y SER: EMR