



IN THE DISTRICT COURT OF DOUGLA

JACKSON CUENCA, A Minor, By and)
Through His Parents and Next Friends,)
John and Emily Cuenca, EMILY CUENCA,)
Individually, and JOHN CUENCA,)
Individually,)

Plaintiffs,)

vs.)

PHYSICIANS CLINIC, INC. and THE)
NEBRASKA METHODIST HOSPITAL,)

Defendants.)

CASE NO. CI 12 5413

STATE OF NEBRASKA'S
MOTION TO INTERVENE
AND NOTICE OF HEARING

#13 FILED
IN DISTRICT COURT
DOUGLAS COUNTY NEBRASKA
NOV 23 2016
JOHN M. FRIEND
CLERK DISTRICT COURT

COMES NOW the State of Nebraska, and, pursuant to Neb. Rev. Stat. § 25-21,159 and the inherent power of the Court, moves this Court for an Order permitting it to intervene in the above captioned case for the purpose of defending the constitutionality of Neb. Rev. Stat. § 44-2825. In support of its Motion, the State of Nebraska shows the Court as follows:

1. This action is governed by the Nebraska Hospital-Medical Liability Act, Neb. Rev. Stat. §§ 44-2801, *et seq.* ("the Act").
2. The jury in this matter returned a verdict in excess of the maximum amount recoverable pursuant to § 44-2825 of the Act. The Court is thus required to enter judgment in accordance with the terms of the Act.
3. Plaintiffs seek to have the Court enter judgment in excess of the maximum amount recoverable under the Act. Plaintiffs argue that § 44-2825 of the Act is unconstitutional and, therefore, the Court should enter judgment in the amount of the jury's verdict despite the limitation of § 44-2825.

4. Plaintiffs served the Office of the Attorney General with notice of this request for monetary and declaratory relief on June 13, 2012. The constitutional question did not become ripe until the jury returned their verdict.

5. The State of Nebraska has a direct interest in this matter in that it involves the constitutionality of a statute and the administration of this and future medical malpractice claims pursuant to the regime created by the Legislature when it adopted the Act.

6. Neb. Rev. Stat. § 25-21,159 provides that, “[i]f a statute is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.” In addition, this Court has the inherent authority to permit the State of Nebraska to intervene where the constitutionality of a statute is at issue and where the state has a direct interest in the outcome of the proceeding.

WHEREFORE, the State of Nebraska prays for an Order permitting it to intervene in the above captioned case for the purpose of defending the constitutionality of Neb. Rev. Stat. § 44-2825.

STATE OF NEBRASKA, Intervenor,

BY: s/William M. Lamson, Jr.
William M. Lamson, Jr., #12374
LAMSON, DUGAN & MURRAY, LLP
10306 Regency Parkway Drive
Omaha, NE 68114
(402) 397-7300 – office
(402) 397-7824 – facsimile

ITS ATTORNEYS

NOTICE OF HEARING

You are hereby notified that the State of Nebraska's Motion to Intervene will be heard before the Honorable Marlon A. Polk, Douglas County District Court, Courtroom 506, on Tuesday, November 29, 2016 at 2:00 p.m., or as soon thereafter as the parties may be heard.

STATE OF NEBRASKA, Intervenor,

BY: s/William M. Lamson, Jr.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 22, 2016, the foregoing Motion to Intervene and Notice of Hearing was filed with the Clerk of the Court using the JUSTICE online filing system (www.nebraska.gov/apps-EFILE/login/index), and then a true and correct copy of same was sent either by electronic service or U.S. First-class mail, postage pre-paid, or facsimile, to the following:

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s/William M. Lamson, Jr.