

STATE OF MICHIGAN  
IN THE CIRCUIT COURT COUNTY OF GENESEE

TONYA L. BATTLE,  
Plaintiff,

13-99763-CD

v.

RICHARD B. YUILLE  
P-22864

THE BOARD OF HOSPITAL MANAGERS OF HURLEY  
MEDICAL CENTER and/or HURLEY HOSPITAL and/or  
HURLEY MEDICAL CENTER, MARY OSIKA,

Defendants.

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GAFKAY & GARDNER, PLC  
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**A TRUE COPY**  
Genesee County Clerk

There is no other civil action between the parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between the parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a Judge in this Court.

**COMPLAINT AND JURY DEMAND**

**NOW COMES** Plaintiff, Tonya Battle, by and through her attorneys, Gafkay & Gardner, PLC, and for her Complaint against the Defendants states as follows:

1. This is a civil action brought pursuant to 42 USC 1983 seeking money damages against Defendants for purposeful discrimination, under color of law, in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.
2. Plaintiff also asserts claims against Defendants under the Michigan Elliott-Larsen Civil Rights Act and for intentional infliction of emotional distress.
3. This court has jurisdiction over plaintiff's claims and venue is proper because the events giving rise to Plaintiff's Complaint arose in Genesee County.
4. Plaintiff is an African American citizen of the United States and a resident of the City of Flint, in County of Genesee, State of Michigan.
5. Defendant The Board of Hospital Managers of Hurley Medical Center and/or Hurley Hospital and/or Hurley Medical Center is a municipal subdivision of the City of Flint and administers a public hospital in the City of Flint commonly known as Hurley Medical Center (hereinafter referred to as Defendant Hurley Medical Center)
6. Defendant Mary Osika is and was at all relevant times the duly appointed Nurse Manager of Defendant Hurley Medical Center.

#### **STATEMENT OF CLAIM**

7. On or about June 6, 1988, Plaintiff began her employment with Defendant Hurley Medical Center.
8. At all relevant times, Plaintiff held the position of Registered Nurse in the Neonatal Intensive Care Unit (NICU).

9. On or about October 31, 2012, Plaintiff was working her scheduled shift in the NICU caring for an infant and the said infant's father asked to speak to Plaintiff's supervisor.
10. Plaintiff informed the Charge Nurse, Deborah Herholz, of the request and she talked with the father.
11. The father told the Charge Nurse that he did not want any African Americans taking care of his baby. While telling the Charge Nurse, he pulled up his sleeve and showed some type of tattoo which was believed to be a swastika of some kind.
12. After the father made the discriminatory request to not allow African Americans to take care of his baby, instead of flatly denying the request, the Charge Nurse called the Nurse Manager, Defendant Osika.
13. Defendant Osika told the Charge Nurse, Herholz, to re-assign the baby to another nurse and to advise Plaintiff that Defendant Osika, would speak to her supervisor and take care of it the next day.
14. Plaintiff was re-assigned on or about October 31, 2012 because she is African American.
15. Plaintiff was shocked, offended, and in disbelief that she was so egregiously discriminated against based on her race and re-assigned.
16. On or about November 1, 2012, Defendant Osika, under color of state law, met with the Director of Women and Children Services and Director of Nursing. A decision was made to grant the father's request that no African American employees take care of the baby. A staff meeting followed and was conducted by

Defendant Osika wherein she informed those present of the policy decision of Defendant Hurley Medical Center to not allow African American employees, like Plaintiff, be assigned to the care of this baby in the NICU.

17. Defendant Osika called Plaintiff at home and informed her that the request was going to be granted. Plaintiff was shocked by the decision of Defendants to grant the discriminatory request.

18. Plaintiff was scheduled to work her shift later that day on or about November, of 2012.

19. When Plaintiff reported to her work, she learned that during that day there was a note prominently posted on the assignment clipboard that read as follows: "NO AFRICAN AMERICAN NURSE TO TAKE CARE OF BABY." Plaintiff was shown a picture of the note.

20. At some point after the discriminatory request was granted and above sign posted, the attorney for Defendant Hurley Medical Center advised Defendant Osika that they couldn't do that. The father of the baby was advised that his request could not continue to be granted.

21. However, the discriminatory request was, in fact, followed in practice for the balance of the time that the baby was in the NICU and African Americans, like Plaintiff, were intentionally not assigned to the baby. African American nurses, like Plaintiff, were not assigned to the baby for approximately the next month because of their race.

22. Plaintiff was discriminated against based on race with regard to work assignment.

23. Plaintiff made several internal complaints regarding Defendants' discrimination including to corporate compliance, but did not hear any response regarding resolution of the complaint.

24. On or about December 11, 2012, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission based on race due to Defendants' discriminatory conduct.

25. Plaintiff's workplace was permeated with discriminatory intimidation, ridicule, and insult which altered Plaintiff's employment and created an abusive working environment.

26. Plaintiff suffered damages as result.

**COUNT I - EQUAL PROTECTION VIOLATION BY DEFENDANT HURLEY MEDICAL CENTER AND DEFENDANT OSIKA, in her individual capacity for RACE HARASSMENT AND/OR DISCRIMINATION**

27. Plaintiff hereby re-alleges and incorporates the above paragraphs.

28. This Court has jurisdiction to hear and decide this claim pursuant to the First and Fourteenth Amendments to the United States Constitution and 42 USC Section 1983.

29. Defendant Hurley Medical Center set policy when it implemented a policy that prohibited African American employees, such as Plaintiff, to be assigned to job duties related to a baby in the NICU.

30. The individual Defendant here owed Plaintiff a Constitutional duty to not purposely interfere with her federally protected rights under the United States Constitution, in particular, the Equal Protection Clause of the 14th Amendment and not to be subjected to discrimination including harassment based on race.

31. The individual acted with malice and/or reckless disregard of plaintiff's constitutional rights to be free from race discrimination. Thus, plaintiff is entitled to recover punitive damages from this individual Defendant.

32. That as a direct and proximate result of Defendants' aforesaid violations of Plaintiff's 14th Amendment rights, she was caused to suffer and sustain reassignment of her job, emotional distress and mental anguish, past and future, injury to feeling including extreme embarrassment and humiliation past and future, outrage, damages to reputation, and whatever punitive damages are recoverable against the individual Defendant herein.

**COUNT II - MICHIGAN ELLIOTT-LARSEN CIVIL RIGHTS ACT CLAIM  
AGAINST DEFENDANTS FOR RACE DISCRIMINATION**

33. At all material times, plaintiff was an employee, and Defendants were her employer covered by and within the meaning of the Michigan Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq.

34. Plaintiff's race was at least one factor that made a difference in Defendants' decision to re-assign her with regard to her position.

35. Had Plaintiff been Caucasian, she would not have been re-assigned.

36. Plaintiff's workplace was permeated with discriminatory intimidation, ridicule, and insult which was severe and altered the conditions of plaintiff's work environment causing her to suffer an adverse employment action as a result of her race.

37. Defendants, through its agents, representatives and employees was predisposed to discriminate on the basis of race and acted in accordance with that predisposition.

38. Defendants' actions were intentional in disregard for Plaintiff's rights and sensibilities.

39. As a direct and proximate result of Defendants' unlawful action, Plaintiff has sustained injuries and damages including, but not limited to humiliation and embarrassment, mental and emotional distress, and of ordinary pleasures of life.

**COUNT III - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS OF  
PLAINTIFF BY DEFENDANT MARY OSIKA**

40. Plaintiff hereby re-alleges and incorporates by reference the above paragraphs.

41. Defendant Osika's conduct as outlined above was intentional.

42. Defendant Osika's conduct as outlined above was extreme, outrageous, and of such character as not to be tolerated by a civilized society.

43. Defendant Osika's conduct as outlined above was for an ulterior motive or purpose.

44. Defendant's conduct resulted in severe and serious emotional distress.

45. As a direct and proximate result of Defendant's conduct Plaintiff has been damaged in the manner outlined above.

PLAINTIFF REQUESTS that this Court enter judgment against Defendants for the following relief:

1. An award to Plaintiff of compensatory damages sufficient to compensate her mental anguish and emotional distress, embarrassment and humiliation, and damage to her professional reputation as a result of Defendants' actions
2. An award to Plaintiff of punitive damages against Defendant government official as a result of the reckless indifference with which she violated Plaintiff's right to equal protection of the laws.
3. An award to Plaintiff of the costs and disbursements of this action, including reasonable attorney fees pursuant to the Civil Rights Attorney's Fees Awards Act of 1976, 42 USC 1988(b).
4. An award to Plaintiff of other and additional legal and/or equitable relief to which she may be entitled.

**JURY DEMAND**

Plaintiff demands a jury trial in the above-captioned case.

Respectfully submitted;

GAFKAY & GARDNER, PLC

  
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