

**COURT OF APPEALS, STATE OF
COLORADO**

2 East 14th Avenue
Denver, CO 80203

**DISTRICT COURT, COUNTY OF BOULDER,
COLORADO**

Honorable Morris W. Sandstead Jr.
Civil Action No. 07CV1113

AMI SADLER; COMPASSION & CHOICES;
COMPASSION & CHOICES OF COLORADO;
STEPHEN KREBS, MD; SHANNON LEWIS;
COLORADO RELIGIOUS COALITION FOR
REPRODUCTIVE CHOICE; AND ASSOCIATES
IN WOMEN'S HEALTH, P.C.,

Plaintiffs-Appellants,

v.

COMMUNITY FIRST FOUNDATION f/k/a
LUTHERAN MEDICAL CENTER
FOUNDATION; SISTERS OF CHARITY OF
LEAVENWORTH HEALTH SYSTEM, INC.;
EXEMPLA, INC., in its corporate capacity and in
its trade dress of EXEMPLA LUTHERAN
MEDICAL CENTER; EXEMPLA GOOD
SAMARITAN MEDICAL CENTER LLC;
KAISER HOSPITAL ASSET MANAGEMENT,
INC.; and KAISER FOUNDATION HEALTH
PLAN OF COLORADO

Defendants-Appellees.

▲ COURT USE ONLY ▲

Case Number: _____

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CAUTIONARY NOTICE OF APPEAL

Plaintiffs-Appellants Ami Sadler, Compassion & Choices, Compassion & Choices of Colorado, Stephen Krebs, MD, Shannon Lewis, Colorado Religious Coalition for Reproductive Choice, and Associates in Women's Health, P.C. (collectively the "Plaintiffs-Appellants"), through their counsel, Koncilja & Associates, P.C. and Heizer Paul LLP, file this Cautionary Notice of Appeal of the District Court's two February 26, 2008 Rulings and Orders.

I. DESCRIPTION OF NATURE OF CASE

A. Nature of the Controversy

On February 26, 2008, the trial court *sua sponte* issued two Rulings and Orders in which it erroneously granted Community First Foundation's ("CFF") and the Sisters of Charity of Leavenworth Health System, Inc.'s ("SCLHS") motions to dismiss. The trial court's Rulings and Orders were premised on a ground not raised by any of the parties; specifically, that Plaintiffs-Appellants did not file responses to the motions to dismiss as required by Colorado Rule of Civil Procedure 121 § 1-15.

However, in fact, Plaintiffs-Appellants did timely respond to SCLHS's and CFF's motions to dismiss by filing, as a matter of right, a First Amended Complaint pursuant to C.R.C.P. 15(a), on February 5th, 2008. Moreover, immediately after the trial court issued these two Rulings and Orders, Plaintiffs-Appellants filed a Motion to Reconsider and Vacate such Rulings and Orders on February 27, 2008. Neither CFF nor SCLHS filed a brief in opposition to this motion. However, the trial court has not addressed this motion and has not reconsidered nor vacated its February 26, 2008 Rulings and Orders.

B. Judgment and Order Being Appealed and Basis for Appellate Court's Jurisdiction

In an abundance of caution, Plaintiffs-Appellants appeal the two February 26, 2008 Rulings and Orders entered by the Honorable Morris W. Sandstead Jr. These rulings have not been certified as final pursuant to C.R.C.P. 54, and it is unclear whether under Colorado law these rulings are final and appealable. Thus, Plaintiffs-Appellants file this cautionary appeal in the event that the February 26, 2008 Rulings and Orders constitute final appealable orders.

Specifically, in the trial court's two February 26, 2008 Rulings and Orders, the trial court *sua sponte* erroneously granted CFF's and SCLHS's motions to dismiss. The trial court's Rulings and Orders were premised on a ground not raised by any of the parties; specifically, that Plaintiffs-Appellants did not file responses to the motions to dismiss as required by Colorado Rule of Civil Procedure 121 § 1-15. However, in fact, Plaintiffs-Appellants did timely respond to SCLHS's and CFF's motions to dismiss by filing, as a matter of right, a First Amended Complaint pursuant to C.R.C.P. 15(a), on February 5th, 2008. Moreover, immediately after the trial court issued these two Rulings and Orders, Plaintiffs-Appellants filed a Motion to Reconsider and Vacate such Rulings and Orders on February 27, 2008. Neither CFF nor SCLHS filed a brief in opposition

to this motion. However, the trial court has not reconsidered nor vacated its February 26, 2008 Rulings and Orders.

Furthermore, the parties to this lawsuit have responded to the First Amended Complaint by filing Answers, as well as motions to dismiss the First Amended Complaint (which were filed by CFF and SCLHS). These motions to dismiss the First Amended Complaint are still pending and the trial court has not yet ruled upon them.

C. Whether the Judgment or Order Resolved All Issues Pending

It is unclear whether the February 26, 2008 Rulings and Orders resolved all of the pending issues. Specifically, those Rulings and Orders addressed all claims against CFF and SCLHS. However, additional Defendants, Exempla, Inc., Exempla Lutheran Medical Center, Exempla Good Samaritan Medical Center LLC, Kaiser Hospital Asset Management, Inc., and Kaiser Foundation Health Plan of Colorado, were named in Plaintiffs-Appellants' Complaint and First Amended Complaint as C.R.C.P. 57 necessary parties. And, as noted, the parties to this lawsuit have responded to the First Amended Complaint by filing Answers, as well as motions to dismiss the First Amended Complaint (which were filed by CFF and SCLHS). These motions to dismiss the First Amended Complaint are still pending

and the trial court has not yet ruled upon them.

D. Whether the Order was Made Final for Purposes of Appeal Pursuant to C.R.C.P. 54(b)

Again, as discussed, the February 26, 2008 Rulings and Orders have not been certified as final pursuant to C.R.C.P. 54. However, Plaintiffs-Appellants are filing this cautionary appeal in the event that the February 26, 2008 Rulings and Orders constitute final appealable orders.

E. Date the Judgment or Order was Entered

Both Rulings and Orders were entered and served upon counsel on February 26, 2008.

F. Whether there were Any Extensions Granted to File Any Motions for Post-Trial Relief

Plaintiffs-Appellants filed a Motion to Reconsider and Vacate the February 26, 2008 Rulings and Orders dismissing the claims against CFF and SCLHS. Neither CFF nor SCLHS filed a brief in opposition to this motion. However, the Court never ruled upon the motion.

G. Date Any Motion for Post-Trial Relief was Filed

Plaintiffs-Appellants filed a Motion to Reconsider and Vacate the February 26, 2008 Rulings and Orders dismissing the claims against CFF and SCLHS.

Neither CFF nor SCLHS filed a brief in opposition to this motion. However, the Court never ruled upon the motion.

H. Date Motion for Post-Trial Relief was Denied

Plaintiffs-Appellants filed a Motion to Reconsider and Vacate the February 26, 2008 Rulings and Orders dismissing the claims against CFF and SCLHS.

Neither CFF nor SCLHS filed a brief in opposition to this motion. However, the Court never ruled upon the motion.

I. Were there Any Extensions Granted to File Any Notice of Appeal

No extensions have been granted to file a Notice of Appeal.

II. ADVISORY LISTING OF ISSUES TO BE RAISED ON APPEAL

The following is an advisory listing of the issues to be raised in this appeal.

The issues to be raised include, but are not limited to, the following:

1. Whether the trial court erred in *sua sponte* dismissing Plaintiffs-Appellants' claims against CFF and SCLHS?

III. TRIAL TRANSCRIPT

There is no trial transcript.

IV. PREARGUMENT CONFERENCE

Plaintiffs-Appellants do not request a pre-hearing conference pursuant to

C.A.R. 33 at this time.

V. IDENTIFICATION OF COUNSEL

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VI. APPENDIX

Copies of the following are attached to this Notice of Appeal:

1. Ruling and Order Regarding Defendant Sisters of Charity Leavenworth, Inc.'s Motion to Dismiss Plaintiff's First and Second Claim for Relief dated February 26, 2008.
2. Ruling and Order Regarding Defendant Sisters of Charity Leavenworth, Inc.'s Motion to Dismiss Plaintiff's First and Second Claim for Relief dated February 26, 2008 (although its title refers to Defendant SCLHS, the body of the ruling addresses CFF's motion to dismiss).
3. Plaintiff's Motion to Reconsider and Vacate Rulings and Orders Regarding Defendant Sisters of Charity Leavenworth, Inc.'s Motion to Dismiss Plaintiff's First and Second Claim for Relief and Defendant Community First Foundation's Motion to Dismiss.

Respectfully submitted this 11th day of April, 2008.

KONCILJA & ASSOCIATES, P.C.

In accordance with C.R.C.P. 121 § 1-29(9), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

By: /s/ Frances A. Koncilja
Frances A. Koncilja

and

HEIZER PAUL LLP
Dean C. Heizer II

ATTORNEYS FOR PLAINTIFFS-
APPELLANTS

CERTIFICATE OF SERVICE

I hereby certify that on April 11th, 2008, I caused a true and correct copy of the above and foregoing CAUTIONARY NOTICE OF APPEAL (with attachments) to be served upon the following via the method shown:

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/s/ Zeb Schorr _____
 Zeb Schorr