

NEW MEMBERS ANNOUNCEMENT

On December 13, 1994, at ceremony conducted in Courtroom No. 1 of the Franklin County Courthouse, the following new members were enrolled in the Register of Attorneys Practicing Regularly Before the Courts of the Franklin County Branch of the 39th Judicial District, Pennsylvania. They are (in alphabetical order):

Kimberly Shaw Gray, Esquire
George Kominos, Esquire
Richmond Thomas Murphy, Esquire
Cassandra L. Weiner, Esquire

Congratulations to these new members of Franklin County Bar Association. The editors and staff of Franklin County Legal Journal wish them each a long and productive career.

SOSAN LAHDU, A MINOR, BY ELIAS LAHDU V. ROWE MENNONITE CHURCH, ET AL, C.P. Franklin County Branch, A.D. 1992-642.

Defendant is seeking summary judgment against plaintiff asserting that because he was not present when plaintiff informed co-defendant members of co-defendant non-member's actions, nor was present when the altercation took place and because he had no knowledge of any previous problems between plaintiff and co-defendant non-member, he could not foresee that an altercation would arise between them and therefore is not individually liable for co-defendant non-member's actions towards plaintiff and can not be joined solely because he is a member of an unincorporated association.

1. Subsection (c) of Rule 2153 of the Pennsylvania Rules of Civil Procedure allow joinder of one or more members of an unincorporated association as party defendants.
2. Subsection (c) of Rule 2153 of the Pennsylvania Rules of Civil Procedure only allows joinder of those members in their individual capacity for the purpose of enforcing individual liability of those members on the cause of action sued upon.
3. Therefore, in order to enforce liability against a member of an unincorporated association as an individual, one must show that there is some basis for holding that member individually liable.
4. Members of an unincorporated association may not recover from that association in tort because the association is not a legal entity and exists only through its members.
5. Because an unincorporated association exists only through its members, negligence of a member of that unincorporated association is imputed to each and every member of that association.
6. The imputation of negligence of a member of an unincorporated association to each and every member of that association does not in itself make them individually liable to a plaintiff.
7. Individual liability will not be imposed on one who is simply acting in a representative capacity.
8. A duty of care can be shifted from one party to a third party.
9. Factors which need to be examined when determining whether a duty of care has shifted center on the character and position of the third party who is said to have taken responsibility, the third party's relationship to the parties, his knowledge of the danger and the magnitude of the risk.

10. Although one acting as a pastor, bishop and supervisor of a church has a special relationship with his members, that relationship does not extend to non members.

11. One can not reasonably foresee an altercation which arises between parties when that person has no reason to know of an existing problem between the parties, was not present when others were informed of such a problem, nor was present when the altercation arose.

12. One will not be held individually liable for an incident he was never warned about, did not witness, nor could have reasonably foreseen.

David R. Breschi, Esquire, Attorney for Plaintiff
Joseph A. Macaluso, Esquire, Attorney for Defendant Ellis L. Martin

OPINION AND ORDER

WALKER, P.J., September 23, 1994:

FINDINGS OF FACT

This case arises from an incident which occurred on February 27, 1991 outside the Rowe Mennonite Church. As a result of this incident, plaintiff suffered several injuries which included a broken wrist and coccyx. Plaintiff filed a complaint on December 18, 1992 against the Rowe Mennonite Church, Ellis L. and Blanche L. Martin, Esther Ricker, and Shawn, Eldon and Joyce Diller.

On the night in question, plaintiff and defendant Shawn Diller had been in attendance at an evening Bible School class. After the class was dismissed, plaintiff went outside of the church with some friends. After a verbal incident with defendant Shawn Diller, plaintiff returned to the church where she informed defendants Esther Ricker and Blanche L. Martin what had occurred. Plaintiff was instructed by them to return outside and to speak with defendant Shawn Diller. Upon plaintiff's return outside, a physical altercation developed resulting in plaintiff's injuries.

It is not alleged that defendant Ellis L. Martin was immediately present at the time plaintiff told defendants Esther Ricker and Blanche L. Martin what had happened, nor when the incident occurred. Defendant Ellis L. Martin is asserting that because he was not present when the plaintiff informed defendants Esther Ricker and Blanche L. Martin of defendant Shawn Diller's actions nor when the altercation took place and because he had no knowledge of any previous problems between the two individuals, he could not have foreseen that an altercation would arise between them and therefore is not liable for defendant Shawn Diller's actions towards the plaintiff. Consequently, defendant Ellis L. Martin has filed a motion for summary judgment with this court claiming that no genuine issue of material fact exists as to Ellis L. Martin.

DISCUSSION

Plaintiff is correct in stating that the Pennsylvania Rules of Civil Procedure allow joinder of one or more members of an unincorporated association as party defendants. However, the Pennsylvania Rules of Civil Procedure only allow joinder of those members in their individual capacity for the purpose of enforcing individual liability of those members on the cause of action sued upon. Pa.R.C.P. 2153(c). Thus, plaintiff must show that defendant Ellis L. Martin is individually liable to her for the injuries upon which she is suing.

In order for plaintiff to enforce liability against defendant Ellis L. Martin individually as a member of an unincorporated association, she must show that there is some basis for holding him individually liable. *Binkowski v. Highway Truck Drivers and Helpers*, 389 Pa. 116, 132 A.2d 281 (1957).

It is true that members of an unincorporated association may not recover from that association in tort. *Zehner v. Wilkinson Memorial United Methodist Church*, 399

Pa.Super. 165, 581 A.2d 1388 (1990), *Plasterer v. Paine*, 375 Pa.Super. 407, 544 A.2d 985 (1988). The rationale behind this is that the association is not a legal entity and only exists through its members. Therefore, negligence of a member of an unincorporated association is imputed to each and every member of that association. *Id.*

Plaintiff argues that because defendant Ellis L. Martin is a member of the Rowe Mennonite Church, an unincorporated association, the negligence of any member is imputed to each and every other member of that association. Unlike the cases cited by plaintiff, there is no indication that plaintiff or defendant Shawn Diller is or ever was a member of the Rowe Mennonite Church. Plaintiff cites no case in which a plaintiff not a member of the unincorporated association sues a member of that association by imputing the negligence of a third party nonmember onto that other member.

Esther Ricker and Blanche L. Martin are members of the Rowe Mennonite Church. However, plaintiff forgets that to impose liability on Mr. Martin individually, plaintiff must show that Mr. Martin is individually liable to her for her damages. The cases cited by plaintiff do not support the general contention that a plaintiff will prevail as against all members of an association individually merely because they are members of that association. This court cannot impose individual liability on a person who in this case is simply acting in a representative capacity.

Factors which need to be examined when determining whether a duty of care has shifted from one party to a third party center on the character and position of the third party who is said to have taken the responsibility, the third party's relationship to the parties, his knowledge of the danger and the magnitude of the risk. *Gutzan v. Altair Airlines, Inc.*, 766 F.2d 135 (1992). Although Ellis L. Martin is the pastor, bishop and supervisor of the Rowe Mennonite

Church, this relationship did not extend to either the plaintiff or to defendant Shawn Diller or his parents. Neither plaintiff, defendant Shawn Diller nor his parents were members of the Rowe Mennonite Church. Mr. Martin was never informed of any problem existing between the plaintiff or Shawn Diller. Mr. Martin was not present when plaintiff informed two other members of the church what had occurred immediately prior to the plaintiff returning inside the church nor was he present when the physical altercation arose. Therefore, there is no indication that Ellis L. Martin could have reasonably foreseen that any physical altercation would arise between plaintiff and defendant Shawn Diller.

CONCLUSION

Although Ellis L. Martin is pastor, bishop, and supervisor of the Rowe Mennonite Church, this court feels that it cannot impose individual liability upon him for an incident he was never warned might arise, for which he did not witness, nor which he could reasonably have foreseen. Therefore, this court is granting defendant Ellis L. Martin's motion for summary judgment.

ORDER OF COURT

September 23, 1994, the court grants summary judgment for Ellis L. Martin and directs that he be removed as a defendant in the pending action.