

(Second Case)*: SOSAN LAHDU, A MINOR, BY ELIAS LAHDU V. ROW MENNONITE CHURCH, ELLIS L. AND BLANCHE L. MARTIN, HUSBAND AND WIFE, ESTHER RICKER, SHAWN DILLER, AND ELDON AND JOYCE DILLER, HUSBAND AND WIFE, C.P. Franklin County Branch, A.D. 1992-642

Defendant church is seeking summary judgment against plaintiff asserting that it owed no duty to plaintiff for another's actions as they were both non-members, because the incident which caused harm to plaintiff occurred outside its worship service and outside the church, and because it did not participate in harming the plaintiff as it did not know plaintiff was in danger nor was it foreseeable that plaintiff would be harmed by the other party.

1. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Pa.R.C.P. 1035(b)
2. Members of an unincorporated association may not recover from that association in tort as the association is not a legal entity and only exists through its members.
3. Negligence of a member of an unincorporated association is imputed to each and every member of that association.
4. Liability will not be imposed on a church because a member of that church causes harm to another when the only reason for imposing liability is based on membership.
5. If a church has the right to control the member when the harm takes place, liability can be imposed based on a theory of respondeat superior.
6. A member who merely invites another to attend a church function does not act as an agent of the church for those purposes unless he/she is a member or known worker of a church committee in charge of fostering non-member attendance.
7. Case law supporting the assertion that a possessor of land is liable to those who have been injured by natural or artificial defects of the property are not relevant where the injury was caused by a third party who the possessor had no control over, where there was no reason to know of such danger, and where such danger was not foreseeable.

David R. Breschi, Esquire, Attorney for Plaintiff

* Editor's Note: See previously published Opinion involving another party, on another motion in this case, at 12 Franklin 86.

Joseph A. Macaluso, Esquire, Attorney for Defendant Rowe Mennonite Church

OPINION AND ORDER

WALKER, P.J., May 30, 1995:

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. Summary judgment was entered in favor of defendant, Ellis L. Martin, by order of court dated September 23, 1994.

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.

Plaintiff contends that Rowe Mennonite Church was negligent by not exercising its duty to "control the violent or dangerous conduct of individuals who are associated or are members of the Church," and its duty to "protect" plaintiff. Plaintiff has not alleged that the Rowe Mennonite Church directly participated in the incident nor that Rowe Mennonite Church had any knowledge of danger to plaintiff prior to the incident. However, plaintiff contends that Esther Ricker and Blanche Martin were acting as agents of Rowe Mennonite Church and that therefore, Rowe Mennonite Church is liable for their actions.

Defendant Rowe Mennonite Church has filed a motion for summary judgment alleging that no genuine issues of any material fact exist regarding Rowe Mennonite's liability toward the plaintiff, Sosan Lahdu. Rowe Mennonite Church argues that it

had no duty to plaintiff for defendant Shawn Diller's actions as they were both invitees and the incident which caused the harm occurred outside its worship service and outside the building. Rowe Mennonite Church also asserts that it owed no duty to plaintiff for defendant Shawn Diller's actions as it did not participate in harming plaintiff, it did not know that plaintiff was in danger, nor was it foreseeable that plaintiff would be harmed by defendant Shawn Diller.

DISCUSSION

The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Pa.R.C.P. 1035(b).

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) alloc. den. 592 A.2d 1304; *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 asserts that because Rowe Mennonite Church as an unincorporated association exists only through its members, each member acts as an agent of Rowe Mennonite Church. Applying this rationale, plaintiff then argues that any negligent acts committed by any of Rowe Mennonite's members is imputed to the Rowe Mennonite Church.

Plaintiff has cited an Indiana case dealing with the liability of a church for the actions of one of its members. In *Trinity Lutheran Church, Inc. of Evansville, Indiana v. Miller*, 451 N.E.2d 1099 (Ind. App. 1 Dist., 1983), William Goodman, a member of the Trinity Lutheran Church engaged himself as a driver for the church guild's yearly Christmas cookie delivery program. Goodman drove his wife, a guild member, as she delivered the

cookies. During the course of the deliveries, Mr. Goodman was involved in an accident with Bernard Miller.

The church conceded that it was liable for the guild. The guild had carried out the cookie program for approximately fifty years and it was the responsibility of the guild to prepare a list of shut-ins, designate which guild member would deliver cookies to which recipient, and check to see whether the recipients actually received the cookies.

Goodman had been involved with the program for four or five years prior to this occurrence and the guild was aware that Goodman would be driving his wife on the day of the accident. Goodman testified that he was doing it for the church and that he would deliver only to the places he was told to deliver and would not have delivered the cookies if he had been told not to.

The court found that the church was liable to Mr. Miller under the doctrine of respondeat superior which imposes liability on a master for the torts which his servant commits while acting within the servant's scope of employment. The court found that although Mr. Goodman was acting gratuitously by helping the church, the church nonetheless had the right to direct and control the conduct of Mr. Goodman at the time of the accident by directing where the deliveries would be made.

It is important to note that the court specifically enunciated that "[l]iability is not being imposed because of Goodman's membership in the church, but because the Guild had the right of controlling him at the time of the accident." *Id.* at 1103. Consequently, the court found that the church would have been liable even if Goodman had not been a member.

Plaintiff in our case on the other hand imputes negligence on the Rowe Mennonite Church merely because defendants Esther Ricker and Blanche Martin are members of the church. In the present case, defendants were no longer involved in any type of church activity when the incident occurred. At the time plaintiff approached the defendants about what had occurred outside, the Bible study class was dismissed for the evening and the attendees were dispersing. Had the defendants been teachers of a Bible study class and had they been organized as a class by carrying out class activities at the time of the incident, it is apparent that the

defendants would have been acting in the capacity as the church's agents by carrying out a specific church activity. Nonetheless, this type of situation is totally lacking in the present case.

Plaintiff next contends that because defendant Esther Ricker invited plaintiff to church that defendant was acting as an agent of the Rowe Mennonite Church thereby imputing liability. No facts have been alleged which would indicate that there was an organized committee whose purpose was to foster church attendance by non-members. It appears that defendant Ricker may have been doing a "neighborly" thing by inviting others to her church. Had defendant Ricker been a member of a church attendance committee of which she was in charge of encouraging outside attendance, this court is of the opinion that plaintiff would have a better argument. However, this court fails to find any basis upon which to find that defendants Ricker and Martin could be found to have been acting as agents of the Rowe Mennonite Church.

Plaintiff next contends that Rowe Mennonite Church should be held responsible for her injuries because they failed to maintain their parking lot in a reasonably safe and suitable condition. Plaintiff cites several cases which support the assertion that the possessor of land is liable to those who have been injured by natural or artificial defects of the property. These cases have no relevance concerning the matter now before the court. Plaintiff was not injured by a defect of the land. Rather, she was injured by a third party who Rowe Mennonite Church had no control over. Likewise, Rowe Mennonite Church had no reason to know of such a danger to the plaintiff nor was that danger foreseeable considering all the facts.

CONCLUSION

For the above stated reasons, this court is granting defendant Rowe Mennonite Church's motion for summary judgment.

ORDER OF COURT

May 30, 1995, the court grants defendant Rowe Mennonite Church's motion for summary judgment.

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