

BAR NEWS ITEM

CONGRATULATIONS !!! :

TO: Timothy David Wilmot, Esq. and David Russell Yoder, Esq. upon their admission to the Franklin County Bar Association and ceremonies conducted in courtroom 1 in the Franklin County Court House on March 4, 1996.

Attorneys Tim Wilmot and Ave Yoder have been serving, since in 1995 as lawclerks for two of our District's Common Pleas Court Judges, and as headnoters of the Court Opinions, appearing in this publication. We welcome them to our midst and wish them well in the practice of their profession.

HELEN L. SUHRIE and CHARLES A. SUHRIE, PLAINTIFFS vs
BARBARA A. GRAY and JEROME E. GRAY, DEFENDANTS
Franklin County branch, Civil Action - Law No. A.D. 1995 - 427

PLEADING - PUNITIVE DAMAGES

1. Only when matter asserted is wholly irrelevant to the cause of action will it be deemed impertinent.
2. Where allegations relate to the causation of the injuries claimed the allegations are not impertinent and will not be stricken.
3. For the factual averments in a complaint to warrant an award of punitive damages, the complaint's allegations should establish that the defendant actually knew or had reason to know of facts which created a high risk of physical harm to the plaintiff and that defendant proceeded to act in conscious disregard of or indifference to that risk.
4. While it might be better pleading practice to incant the language necessary to sustain the derivative cause of action for punitive damages, that language is conclusory and thus, unnecessary, where its content is implicit in the factual averments set forth in the complaint.

Philip S. Cosentino, Esquire, attorney for plaintiffs

Stephen L. Banko, Jr., Esquire, attorney for defendants

OPINION

William H. Kaye, J.

This is an action in which Helen L. Suhrie and Charles A. Suhrie ("plaintiffs") seek money damages from Barbara A. Gray and Jerome E. Gray ("defendants") as a consequence of a collision between two automobiles driven by the first-named plaintiff and defendant which occurred in Peters Township, Franklin County. We currently have before us defendants' preliminary objections which have been briefed and argued.

DISCUSSION

For purposes of this decision, we will accept as true all well-pleaded facts contained in the complaint, and all reasonable inferences arising therefrom. The facts are as follows:

On June 22, 1994, Helen L. Suhrie was driving a 1994 Toyota Tercel automobile in an easterly direction on S.R. 30 near its intersection with S.R. 75 at about 11:00 o'clock p.m. Mrs. Suhrie was then aged 72 years, having been born on March 4, 1922. At the same time, Barbara A. Gray was driving a 1992 Chevrolet automobile southbound on S.R. 75, approaching the intersection of that road with

S.R. 30. The aforesaid intersection is controlled with stop signs which require operators on S.R. 75 to stop their vehicles before crossing or entering S.R. 30.

Defendant Barbara A. Gray failed to stop at the intersection, and collided with the left rear side of the vehicle driven by plaintiff Helen L. Suhrie, causing plaintiff's vehicle to flip onto its roof. Although she was aware of the collision, defendant Barbara A. Gray failed to stop at the scene and left plaintiff Helen L. Suhrie inside her turned-over vehicle in an injured condition and suspended upside-down by the safety harness of the vehicle. The victim remained in that position until being rescued by passers-by and the Pennsylvania State Police. She alleges that she sustained physical and emotional injuries in the collision, and seeks both compensatory and punitive damages. Defendants' preliminary objections assert 1/ the allegation regarding the defendant's, Barbara A. Gray, fleeing the scene of the collision is impertinent, and should be stricken, and 2/ the complaint does not allege conduct on the part of defendant Barbara A. Gray which could provide a basis for an award of punitive damages, and thus the claim therefor must be stricken.

We will address these issues in the order set forth above.

I. Whether the flight of the first-named defendant from the scene of the collision is impertinent.

Under prior decisions, an assertion is "impertinent" if it is irrelevant to the material issues of the case and which cannot influence the decision in the case, *Ryon v. Andershonis*, 42 D&C 2d 86 (C.P. Schuylkill Co., 1967), and only when the matter asserted is wholly irrelevant to the cause of action will it be deemed impertinent. *Jeffries v. Hoffman*, 417 Pa. 1, 207 A.2d 774 (1965).

In the instant case, defendants would have us strike as impertinent the allegation that defendant Barbara A. Gray fled the scene of the collision. However, we cannot say, as a matter of law, that this allegation is wholly irrelevant to plaintiffs' cause of action, both as to their claims to compensatory and punitive damages. We infer that plaintiff Helen L. Suhrie claims her physical and psychological injuries were exacerbated by the predicament she was left in when defendant Barbara A. Gray fled the scene, i.e. hanging upside down in a safety harness in an overturned vehicle. As these allegations go

both to causation of the injuries, and to the issue of punitive damages, which will be addressed in the next section hereof, this assertion is not impertinent and will not be stricken.

In arriving at this conclusion, we are not unmindful of the decision in *Smith v. Barker*, 368 Pa. Super. 472, 534 A.2d 533 (1987), alloc. denied 549 A.2d 137, in which it was held that the trial court had not erred in failing to permit the plaintiff to introduce evidence of defendant's post-collision conduct in leaving the scene of the accident as that conduct was not relevant to causation of plaintiff's injuries, and liability had been admitted. However, we now are only in the pleading stage in the instant case and do not yet know whether defendants will admit liability, as they had in *Smith*. (Contrary to defendants' assertion, it would *not* be proper for us to assume this to be the case for purposes of disposing of this preliminary objection, because it is entirely possible they will not do so). Moreover, the *Smith* case is also distinguishable from the instant case as there is no suggestion therein that flight from the accident scene did anything to delay the victim's medical treatment, nor that the injuries were affected in any way as a consequence of flight. For the foregoing reasons, we will deny defendant's motion to strike.

II. Whether the complaint asserts conduct by defendant Barbara A. Gray that could provide the basis for a punitive damage claim.

With regard to the issue of punitive damages,

we must utilize the principles contained in Restatement (Second) of Torts section 908(2). See *Martin v. Johns-Manville Corp.*, 508 Pa. 154, 494 A.2d 1088 (1985). That section provides:

(2) Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

In determining whether the actor exhibited "reckless

indifference to the rights of others" so as to provide a basis for an award of punitive damages, we must analyze whether the complaint's allegations establish that the actor actually knew or had reason to know of facts which created a high risk of physical harm to plaintiff. Further, the defendant must have proceeded to act in conscious disregard of or indifference to that risk *Martin v. Johns-Manville Corp.*, *supra*. If the defendant actually does not realize the high degree of risk involved, even though a reasonable man in his position would, the mental state required for the imposition of punitive damages under Pennsylvania law is not present. If that mental state is present, a jury question on the issue of punitive damages exists. Punitive damages are available in Pennsylvania only for outrageous conduct, which must be deterred, and which evidences a reckless indifference to the plaintiff's safety. In deciding whether punitive damages are assessable, the motive for the tortfeasor's act must be taken into account, not just the nature of the act itself. The imposition of damages to punish a civil defendant is appropriate only where the conduct is egregious. *Id.*

Field v. Philadelphia Electric Co.,
388 Pa.Super. 400, 425-26, 565
A.2d 1170, 1182-83 (1989).

In applying the foregoing standard to the instant case, we note initially that the complaint alleges that the collision occurred in the manner set forth above, and that defendant Barbara A. Gray thereafter fled the scene without stopping. Although it is not clear from the complaint, we infer, from the failure of plaintiffs to plead to the contrary, that defendant Barbara A. Gray was not accompanied by her co-defendant when the collision occurred, yet the claim for punitive damages is asserted against both. We cannot find that plaintiffs have asserted a cause of action against the co-defendant where there is no allegation that this defendant even had knowledge of the circumstances leading to this cause of action. Thus, we think it is necessary to strike the punitive damage claim as to the co-defendant.

The situation is much different with respect to defendant, Barbara A. Gray, who is alleged to have left the scene of a violent collision late at night with the other vehicle overturned without stopping to ascertain the condition of the other vehicle's occupant(s), or to seek assistance for such occupant(s) of the other vehicle. Whether such conduct will warrant a "punitive damage" charge to the fact finder will depend on the development of evidence, and we find that it is premature to determine at this junction that such conduct *could* not provide a basis for such instruction.

While we find that the complaint alleges conduct that could provide a basis for an award of punitive damages, for the factual averments in the complaint to warrant an award of punitive damages,

the complaint's allegations should establish that the defendant actually knew or had reason to know (regardless of whether a "reasonable man" would have known) of facts which created a high risk of physical harm to the plaintiff and that defendant proceeded to act in conscious disregard of or indifference to that risk.

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§21:66 [citing *Field, id.*].

In the instant complaint, it is alleged that defendant Barbara A. Gray fled from the collision with the knowledge that the collision had occurred, and that the other vehicle was overturned [¶8]. The complaint does not expressly aver that Mrs. Gray had knowledge of facts which "created a high risk of physical harm to the plaintiff and that defendant proceeded to act in conscious disregard of or indifference to that risk". However, we find that such knowledge can be inferred from the pleading. Certainly, it is implicit in a pleading that a car, being driven down the highway, is occupied by at least one person even if the driver of the other vehicle does not specifically know that due to darkness, poor visibility, failure to observe, or any other factor, and that person is put in jeopardy when abandoned after being struck by the observer's vehicle, causing it to overturn with the person(s) left inside. While it might be better pleading practice to incant the language necessary to sustain the derivative cause of action for punitive damages, that language is conclusory and thus, unnecessary, where its content is implicit in the factual averments set

forth in the complaint. We will deny the defendants' preliminary objections as to this issue.

ORDER OF COURT

NOW, February 20, 1996, upon consideration of the defendants' preliminary objections, briefs submitted, and oral argument, the defendants' preliminary objections are DENIED, except as to the claim for punitive damages as to defendant Jerome E. Gray, as to whom the motion to strike the claim for punitive damages is SUSTAINED.

Plaintiffs are granted twenty (20) days to file an amended complaint, or suffer non pros as to the matter to which the preliminary objection was sustained.

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