Commonwealth ex rel. Rahill v. Rahill, 97 Mont. 306 (1974), the supporting husband reported his income as between $13,000 - $16,000 per year. But he had built up a savings account of $10,000 and a stock portfolio worth $30,000. The court awarded support payments exceeding one-third of the husband's reported income saying that his accumulation of savings following led it to believe his income was "far in excess of that which he reported."

The instant case does not present a situation in which the supporting individual's capital is disproportionate to his income. Were that so, cash assets could no doubt be considered in "upping" the amount of support awarded. But here, Emma will receive reasonable support payments based on George's post-retirement income. She has a savings account in her own name of $1,800, lives in a house which she owns jointly with George and on which he is making the mortgage payments, has worked in the past, though her present ability to get a job at age 53 with heart murmur and high blood pressure may be questioned. In addition to making the mortgage payments, George is also paying the tuition and other expenses for their son who is attending the University of Pittsburgh.

All support orders are subject to modification if conditions change. With the obligations George has accepted to pay the mortgage and to pay his son's expenses, even considering that there may be some income from his credit union account, we believe that the order of $100.00 is a correct one and see no reason to change it.

We file this opinion in support of that order.

BARNHART v. BOROUGH OF GREENCASTLE, ET AL., C.P. C.D., Franklin County Branch, No. 97, November Term, 1976

Civil Procedure - Preliminary Objections - Motion to Strike - Joint and Several Liability

1. The Court will not strike a complaint in trespass where persons other than those named defendants allegedly inflicted the harm insofar as negligence to render a person liable need not be the sole cause of an injury it may be a concurring cause.

2. Seperate lawsuits may properly be brought where there is no legal relationship between the persons who commit seperate trespasses, or do seperate acts tending to produce injuries to another.

Denis M. DiLoreto, Esq., Attorney for Plaintiff

Rudolf M. Wertime, Esq. and *Robert J. Stewart, Esq.*, Attorneys for the Defendants

OPINION AND ORDER

EPPINGER, P.J., November 30, 1978:

Donald E. Barnhart (Barnhart) was in the Hotel Greencastle. An encounter lasting for a period of time culminated in the Proprietor, Joseph E. Henson, Jr., shooting Barnhart. Before the shooting occurred, the Greencastle Police Department was summoned but did not respond. Barnhart has sued the Borough of Greencastle, the Chief of Police and three officers stating the Borough and the individual officers were negligent in not going into the hotel to quell the disturbance.

Another suit has been filed by Barnhart against Henson, his father and his brother, all of whom Barnhart alleges were involved in the encounter. The Hensons have joined the defendants in this case as additional defendants in that case which is No. 96 November Term, 1976.

The principal thrust of the preliminary objections filed by the Borough and the named police officers (collectively the borough) is that this complaint should be stricken since Barnhart has not joined the Hensons as defendants in this case.

It would seem that with the joinder of the borough in the suit against the Hensons there is no need for this suit, especially since in this suit it is alleged that the injuries inflicted upon Barnhart were inflicted by persons other than the borough. We would by inclined to this view and in the interest of economy in judicial proceedings would think it wise to strike this case on general principles and because not all of the alleged responsible parties are joined.

However, negligence to render a person liable need not be the sole cause of an injury, it may be a concurring cause. Thus where two causes combine to produce injuries, a defendant is not relieved because he is responsible for only one of them. *Gorman v. Charlson, et al. (No. 1)*, 287 Pa. 410, 135 A. 250 (1926). Moreover, where there is no legal relationship between persons who commit separate trespasses, or do separate acts tending to produce injuries to another, the resulting liability is several and not joint. *Shaull v. A. S. Beck New York Shoe Co., Inc.*, 369 Pa. 112, 117, 85 A. 2d 698, 701 (1952). We conclude therefore that a separate suit is properly brought against the borough and that it is not necessary to strike that suit in order to effectively try this case.

The borough is concerned about the appearance of things as the case goes to trial. In the other case all of the parties are before the court. In this one, as the borough contends, those charged with the active conduct causing Barnhart's injury are not. The borough would like the court to intervene under Pa. R.C.P. 2232(c) which permits the court, at any stage in the action, to order joined any additional person who could have been joined in the action. The borough seems to say that this can be done despite the fact that the statute of limitations has run in this case and that at this point the borough could not join the Hensons by their own action.

We quote from Goodrich-Amram, 2d. Sect. 2232(c):3: ". . . if a person who could have been joined as a defendant can not be sued because of the statute of limitations he can not be joined by the court." See also *Buranowsky v. Himes (No. 2)*, 34 D & C 509, 510 (C.P. Elk County, 1964).

We are of the firm opinion, however, that the two cases must be tried at the same time. At the argument we suggested that the attorneys for all parties be circularized to determine whether they would agree that this case would be discontinued with Barnhart preserving all his rights as though the case had not been discontinued. Barnhart's attorney did this, but apparently the attorneys for the other parties failed to respond. At any rate, we received no word that an agreement could be reached.

Under the court's inherent power to control the way these cases will proceed, *First Nat. Bank v. Baird*, 300 Pa. 92, at 101, 150 A. 165 at 169 (1930); Goodrich-Amram 2d Sections 213(a): 10, 223:1, 224:1, we will make an order, concurrent with our order overruling the preliminary objections, that the cases will be joined for trial, that the trial will proceed with Barnhart presenting his case, to be followed by the presentations of the Hensons in the order they are named in the caption to No. 96 November Term, 1976, followed by the presentation of the case of the Borough of Greencastle and the individual police officers in the order they are named in the caption to No. 97 November Term, 1976. Thus the trial will proceed as though one suit has been filed and during the course of the proceedings there will be no necessity to make reference to the fact that there are two separate suits.

At the time of the pretrial conference, the details with regard to challenges and other matters can be worked out.

ORDER OF COURT

NOW, November 30, 1978, the defendants' preliminary objections are overruled. Exceptions granted to the defendants.

ROMALA INVESTMENT CORPORATION v. JOINER, ET AL., C.P. Franklin County Branch, Equity Doc. Vol. 7. Page 157

Preliminary Objections - Pa. R.C.P. 1019(h) - Impertinent Matter - 1019(f)

1. Pa. R.C.P. 1019(h) does not require letters between litigants, which are not the basis of the legal claim, to be attached to the pleadings.

2. An averment that a party acted in an unreasonable manner is an evidentiary conclusion, not a material fact, and consequently impertinent.

3. Preliminary objections to the absence of averments of time and place should be in the nature of a motion for a specific pleading not demurrer.

H. Anthony Adams, Esq., Counsel for Plaintiff

Harvey C. Bridgers, Jr., Esq., Counsel for Defendants

OPINION AND ORDER

KELLER, J., November 17, 1978:

This action was commenced by filing of a complaint in equity on April 19, 1978, and service of the same upon both defendants on April 22, 1978. On May 12, 1978, the defendants filed preliminary objections to the complaint and in response thereto the plaintiff filed an amended complaint on May 22, 1978. Preliminary objections to the amended complaint in the nature of a motion for more specific complaint, a motion to strike, and a demurrer were filed by defendant on June 9, 1978.

First, it should be noted that plaintiff has conceded the need for greater specificity except as to paragraph 1(c) of the defendants' motion for a more specific complaint which pertains to paragraph 17 of the amended complaint. Paragraph 17 alleges: "The defendant was informed of the surface water damage being done to the land of the plaintiff by numerous letters from the plaintiff's president and by letters from the township supervisor." In their motion for more specific complaint, the defendants contend that copies of the alleged letters or their dates must be attached to the complaint.

Pa. R.C.P. 1019(h) requires that a copy of a writing be attached to the complaint if ". . .any claim or defense set forth therein is based on a writing."