certified pediatrician, however, there are unresolved questions of fact presented surrounding the control that the Hospital through its nurses exerted over the program. The record discloses that as a part of her regular duties the nurse was charged with the primary responsibility for running the program, that she read several SIDS articles given to her by Dr. Hartman before class, that she was present when the advice in question was given and that on other occasions she had followed up on a doctor's advice and advised students to check with their family physicians. The non-moving party has presented enough facts that we are not going to summarily conclude that the Hospital could not be liable as a result of Nurse Mirabello's failing to correct or supplement statements made by a doctor speaking at the Hospital's program.

The plaintiffs also endeavor to hold the Hospital liable for its failure to make reasonable efforts to determine whether Dr. Hartman was qualified to answer questions about SIDS. On the other hand, the Hospital contends that the plaintiffs have attempted to state a cause of action for corporate negligence, a theory of recovery which has not been recognized in Pennsylvania. According to that theory,

> "the liability of the hospital is based on its independent negligence in appointing to its medical staff a physician who is unfit or in failing to properly supervise members of its medical staff." *Cause of Action Against Hospital for Negligent Selection or Supervision of Medical Staff Members,* 8 COA 427, 431 (1985).

The "corporate negligence" theory of liability has been recognized in twenty-two states but not in Pennsylvania. 8 COA 427 (1985), *Brown v. Lancaster General Hospital,* 69 Lanc. L.R. 480 (1985). Apparently, this is the cause of action stated by the plaintiffs. Since we would prefer having the benefit of counsel's briefs and arguments before reaching a conclusion, we decline to express any opinion until the issue is properly before the court, as the subject of a preliminary objection in the nature of a demurrer or a motion to strike.

ORDER OF COURT

NOW, this 8th day of December, 1986, the motion for summary judgment of defendant, The Chambersburg Hospital, is denied.



RISBON ESTATE, C.P. O.D., Fulton County Branch, No. 4 of 1986 - OC

*Probate of Will - Undue Influence - Lack of Testamentary Capacity*

1. Ordinary social contacts between sisters is not clear and convincing evidence of a confidential relationship.

2. Testimony of one incident of mental confusion carries little weight in light of testimony of mental alertness both during and after the drafting of a will.

*Dewayne Thomas Newman, Esquire,* Counsel for Petitioner
*Stanley J. Kerlin, Esquire,* Counsel for Appellant

WALKER, J., December 19, 1986:

On January 5, 1986, Imogene Risbon, decedent, executed a holographic will in the presence of her friend, Harold Baumgardner, and her sister, Gladys Ford. Under the terms of the will, decedent's property at Wells Tannery was to be sold with the proceeds to be distributed as follows: $25,000 to Robert Amberg, $5,000 to Gladys Ford, $5,000 to Clinton Figard, and the "estate money at the shore" to her son, Richard Risbon. The "estate money" is worth $43,338.57. Gladys Ford was named as executrix of the will. A few months after the will was executed, Imogene Risbon died.

When the will was admitted to probate, Richard Risbon, appellant, challenged its validity. He claims that Gladys Ford exerted undue influence over Imogene Risbon and that an earlier will should be given full force and effect. The earlier will, drawn up in testatrix' attorney's office in 1984, stated that appellant was to receive all of the estate except for $10,000 which was to be given to decedent's granddaughters. Alternatively, appellant asserts that testatrix lacked testamentary capacity when she drew up the second will. A hearing was held and testimony taken before this court on October 18, 1986.

To show undue infludence, "The contestant must establish by clear and convincing evidence that (1) when the will was executed the testator was of weakened intellect, and (2) that a person in a confidential relationship with the testator (3) receives a substantial benefit under the will." *Fickert Estate,* 461 Pa. 653, 657, 337 A.2d 592, 594 (1975). Appellant relies on the following facts to support his contention that Gladys Ford exercised undue influence

over the testatrix: testatrix left appellant less money under the terms of the second will, she was taking heart medication when she drafted the second will, she did not consult with an attorney before changing her will, and she misidentified appellant as his deceased brother once over the phone. These facts shall be examined in light of the elements of undue influence as listed above.

The mere fact that decedent left appellant less money than was originally designated under the first will is not probative of mental infirmity. Likewise, taking heart medication does not, in and of itself, signify the presence of a weakened intellect. Considering that the medication made Imogene Risbon more lucid, this fact works against appellant's position. That Imogene Risbon changed her will without expending the time and money to consult with an attorney is hardly clear and convincing evidence of mental imbalance.

The only evidence that, at one time, Imogene Risbon suffered from confusion was appellant's testimony about a phone conversation that occurred in December, 1985. When appellant called Imogene Risbon that month, she momentarily mistook him for his deceased brother. Assuming that this incident is true, it carries little weight in light of testimony that she was mentally alert both during and after the drafting of the will.

Appellant's contention that Gladys Ford took advantage of her confidential relationship with the testatrix is also unsupported by the evidence. A "confidential relationship" exists when a person exerts an over-mastering influence over the testatrix. *Matter of Estate of Ross,* 316 Pa. Super. 36, 462 A.2d 780 (1983). Here, Gladys Ford took the testatrix shopping, to dinner, and to the Senior Citizen's Center once a week. The only position of dominance that Gladys Ford had over the testatrix was that she had a driver's license and her sister did not. Ordinary social contacts between sisters is not clear and convincing evidence of a confidential relationship.

Finally, to establish undue influence, it must be shown that the person in a confidential relationship with the testatrix received a substantial benefit under the will. *Fickert,* supra. Since the elements of weakened intellect and confidential relationship have not been established here, the court finds it unnecessary to decide whether

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Legal Reference Service of
Franklin and Fulton Counties
Franklin County Court House
Chambersburg, Pennsylvania 17201
Telephone No. - Chambersburg
(717) 264-4125, Ext. 213

COUNSELING SERVICE NOTICE

By law the Court in which this divorce case is commenced is required to notify the plaintiff and defendant of the availability of counseling sessions for both parties upon request of either party or by Order of Court.

The defendant is herewith notified that a list of qualified professionals who provide such counseling service is available at the Prothonotary's Office on request.

By filing of this complaint the plaintiff acknowledges having been advised by her attorney of record of the availability of counseling sessions and of a list of qualified professionals.

The choice of a qualified professional shall be at the option of the plaintiff and defendant and need not be selected from the list available on request. Arrangements for and the payment of the charges of the qualified professional shall be the responsibility of the parties and will not be included in the docket costs of this proceeding.

Kenneth E. Hankins, Jr.
Attorney for Plaintiff

COMPLAINT

Now comes the plaintiff, and for cause of action against the defendant, she complains and says:

1. Plaintiff is Sherry M. Sanchez, who lives and resides at 310 Mickeys Inn Lane, Chambersburg, Franklin County, Pennsylvania 17201.

LEGAL NOTICES, cont.

2. Defendant is Gabino Perez-Sanchez, who lives and resides in Durango, Mexico.

3. Plaintiff has been a bona fide resident of the Commonwealth of Pennsylvania, for at least six months immediately previous to the filing of this complaint.

4. Defendant, at the time of the marriage of the parties and ever since then, so far as is known to plaintiff, was and is a citizen and national of the Country of Mexico, and his last known residence was Durango, Mexico.

5. The plaintiff and the defendant were married to each other on April 9, 1977, in Manchester, New Hampshire.

6. There have been no prior actions for divorce or annulment of this marriage, in this or any other jurisdiction.

7. The marriage is irretrievably broken.

8. Plaintiff requests the Court to enter a decree of divorce.

I verify that the statements made in this complaint are true and correct, I understand that false statements herein are made subject to the penalties of perjury contained in 18 Pa. C.S. Section 3904, relating to unsworn falsification to authorities.

Sherry M. Sanchez

Date: July 21, 1986

Kenneth E. Hankins, Jr.
Attorney for Plaintiff

5-8-87

the $5,000 bequest to Gladys Ford is "substantial". Suffice it to say, though, it seems unusual that someone who supposedly destroyed Imogene Risbon's ability to exercise her free agency would settle for such a small portion of the estate.

Incorporating the above discussion, appellant has also failed to demonstrate by clear and convincing evidence that Imogene Risbon lacked testamentary capacity. His appeal shall be dismissed.

ORDER OF COURT

December 19, 1986, the appeal of Richard Risbon is dismissed.

ALBERT E. HAAS, ET AL. V. BRUCE FOSTER, MD, ET AL., C.P. Franklin County Branch, AD 1985 - 259

*Medical Malpractice - Depositions - Sanctions*

1. For information to be discoverable, it need only be reasonably calculated to lead to the discovery of admissible evidence.

2. Where a question is easily answerable, it is not an undue burden for the defendant to answer it even if it may have been asked before.

3. The Court is not limited to imposing sanctions only where a party is in violation of a Court order.

*Richard C. Angino, Esquire,* Counsel for the Plaintiffs
*Wayne R. Spivey, Esquire,* Counsel for Defendant Foster
*C. Kent Price, Esquire,* Counsel for Defendant Foster
*R. Stephen Shibla, Esquire,* Counsel for Defendant Waynesboro Hospital

OPINION AND ORDER

WALKER, J., January 5, 1987: